

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 158 of 2011

Thursday, this the *27th* day of September, 2012

CORAM:

HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

V.G. Bhaskaran,
SPA/Grade II/Diesel ERS,
Diesel Loco Shed, Ernakulam.
Residing at Thittethara House,
Gandhi Nagar, Kadavanthra (P.O),
Cochin – 682 020.

- Applicant

(By Advocate Mr. Siby J. Monippally)

Versus

1. Union of India represented by
The Additional Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 695 001.
2. Divisional Personnel Officer,
Southern Railway,
Trivandrum Division, Trivandrum – 695 001. - Respondents

(By Advocate Mr. K.M. Anthru)

The Original Application having been heard on 18.09.12, the
Tribunal on 27-09-12 delivered the following :

ORDER

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant while working as SPA Grade-I, Diesel Loco Shed, Ernakulam, unauthorisedly absent from duty from 02.07.2000 onwards for which a penalty of removal from service was imposed on him. The Appellate Authority modified the penalty as reduction to the post of SPA Grade-II for a period of 2 years with cumulative effect. The period of absence from 02.07.2000 to 30.06.2004 was to be treated as non-duty. The Revisional Authority confirmed the modified penalty. The R.A. No. 08/2010

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in O.A. No. 604/2008 filed by the applicant was disposed of directing the respondent No. 2 to consider any representation, if filed by the applicant for subsistence allowance for the period he absented from service and decide it within a period of 45 days from the date of receipt thereof. In compliance with the above direction, Annexure A-4 order dated 19.01.2011 was issued by the Assistant Personnel Officer for the Additional Divisional Railway Manager, Southern Railway, Thiruvananthapuram. Aggrieved by the said order, the applicant has filed this O.A, praying to set aside the impugned order and to direct the respondents to grant him salary and all other benefits from the date he was not allowed to join duty till reinstatement with interest.

2. The applicant submitted that he was not given an opportunity to make representation as to how the period of absence should be considered. He is entitled to get the amount equivalent to subsistence allowance for the period of his absence from duty on reinstatement. The applicant was neither suspended nor allowed to join duty during the pendency of the disciplinary proceedings. The disciplinary proceedings were delayed beyond reasonable period to the prejudice of the applicant. The respondents have no power to initiate disciplinary proceedings on the same set of charges once it is cancelled.

3. The respondents in their reply statement submitted that the prayer of the applicant for payment of salary for the period spent on unauthorised absence is hit by res judicata. He had filed O.A. No. 1061/2000 for regularisation of the period and for payment of salary. He had filed O.A. no. 397/2005 for a direction to grant all monetary benefits with effect from 02.07.2000 with interest. O.A. No. 405/2007 was filed by him for a direction



to disburse salary and other benefits for the period from 30.06.2004 to 02.11.2006. O.A. No. 131/2008 was filed for grant of consequential benefits upon quashing Annexure A-2 dated 30.01.2008. O.A. No. 604/2008 was filed for a direction to grant salary and other benefits from the date he was not allowed to join duty till he was reinstated. In none of the cases he could get a favourable order. The disciplinary proceedings initiated do not have any direct relevance to the prayer in this O.A. The charge sheet issued first was cancelled without prejudice to issuing a fresh charge sheet. The charge in the charge sheet was regarding the unauthorised absence of the applicant. The applicant himself refrained from reporting for duty and did not make himself available for performing the duty for a long period. O.A. No. 604/2008 was summarily dismissed after elaborate hearing. R.A. No. 08/2010 in the said O.A was disposed of as per Annexure A-2 order. The applicant was not shown any order to permit an opportunity of being heard before arriving at a decision as per Annexure A-4. In Annexure A-3 representation, he has not explained as to how and under what authority/rule the period of absence ought to be considered for grant of salary and other benefits. The authority concerned under the Discipline and Appeal Rules, has already considered the case of the applicant with specific reference to the treatment of period of absence from 02.07.2000 to 30.06.2004. if the applicant was of the opinion that the disciplinary proceedings were delayed beyond reasonable period, he could have raised the point in the enquiry. The penalty awarded is not challenged.

4. We have heard Mr. Siby J. Monippally, learned counsel for the applicant and Mr. K.M. Anthru, learned counsel for the respondents and perused the records.

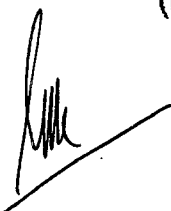


5. We have carefully considered the contentions of the rival parties.

The applicant could not substantiate the contention that the order passed by the respondent No. 1 is not in consonance with the Railway Services (Discipline and Appeal) Rules, 1968. The competent authority has passed orders treating the period from 02.07.2000 to 30.06.2004 as 'non-duty'. The applicant could not prove any procedural infirmity on the part of the respondents in the impugned order resulting in denial of justice to him. Hence, we do not find any reason to interfere with it.

6. In the light of the above, the O.A. is dismissed with no order as to costs.

(Dated 27th September, 2012)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER