

**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**ERNAKULAM BENCH**

**Original Application No. 17 of 2010**

**Monday, this the 29<sup>th</sup> day of March, 2010**

**CORAM:**

**Hon'ble Mr. Justice K. Thankappan, Judicial Member**  
**Hon'ble Mr. K. George Joseph, Administrative Member**

K.P. Varghese, aged 40 years, S/o. K.A. Papputty,  
 Loco Pilot/Goods/Southern Railway/Ernakulam Junction,  
 Residing at : No. 114-D, Railway Quarters,  
 Ernakulam Junction, Cochin-682 016. ....

**Applicant**

**(By Advocate – Mr. T.C. Govindaswamy)**

**V e r s u s**

1. Union of India, represented by the General Manager,  
 Southern Railway, Headquarters Office, Park Town P.O.,  
 Chennai-3.
2. Shri N. Balaji, Sr. Divisional Electrical Engineer/  
 Operations, Southern Railway, Trivandrum Division,  
 Trivandrum-14.
3. The Sr. Divisional Electrical Engineer/  
 Operations, Southern Railway, Trivandrum Division,  
 Trivandrum-14. ....

**Respondents**

**(By Advocate – Ms. Simla for Mr. P. Haridas)**

This application having been heard on 29.3.2010, the Tribunal on the same day delivered the following:

**ORDER**

**By Hon'ble Mr. Justice K. Thankappan, Judicial Member -**

Aggrieved by Annexure A-1 warning order dated 14.7.2009 passed by the Senior Divisional Electrical Engineer/OP/TVC, the 2nd respondent, the applicant has filed this Original Application praying to quash the said



order and for a declaration that any of the superior officers of the applicant are not entitled to consider Annexure A-1 on his service career as an obstruction to his promotion or any service matter.

2. The few facts which are necessary for the decision of this Original Application are as follows:-

a) The applicant is presently working as a Loco Pilot (Goods) at the Ernakulam Junction of the Southern Railway, Trivandrum Division. The applicant is under the official supervision of the 2nd/3rd respondents. The applicant is also an active member of the All India Loco Running Staff Association, a registered trade union, under the Trade Unions Act, 1926.

b) While the applicant was working under the 2nd respondent, on the purport of exercising supervisory jurisdiction, the 2nd respondent passed Annexure A-1 order which according to the applicant is without any notice to him or any charge against him or even on any factual basis. The further case of the applicant is that Annexure A-1 remarks has been entered into the service records of the applicant. He filed a petition under the provisions of Rights to Information Act to the Public Information Officer, the 2nd respondent himself is acting as the same officer and in an answer to the said representation he has been given Annexure A-5 letter dated 24th August, 2009. The answer given to him would show that there was no material for drawing of a conclusion or passing a remark as of



Annexure A-1. Further the applicant filed another appeal as per Annexure A-8 to the 2nd respondent for getting further information, if any, perused the records which could be the basis for Annexure A-1 remarks. But as per Annexure A-9 reply it is further answered that there was no material before the office of the 2nd respondent, being the Public Information Officer to pass Annexure A-1 but he was allowed to peruse the file and accordingly he had perused the file and the file does not contain any thing except a copy of Annexure A-1 remarks. Hence, the applicant filed this Original Application.

3. The Original Application has been admitted by this Tribunal on 8.1.2010 and in pursuance to the notice issued to the respondents a reply statement has been filed on behalf of the respondents. The only stand taken in the reply statement to support Annexure A-1 is that it was a remark on the official powers of the 2nd respondent while functioning as a Senior Divisional Electrical Engineer. It is further stated in the reply statement that the applicant has not denied any thing about the remarks made in Annexure A-1 and 2nd respondent while exercising the power of superior officer or reviewing officer is empowered to issue such remarks or orders like Annexure A-1 against an officer including that of the applicant.

4. We have heard the counsel appearing for the applicant Mr. T.C. Govindaswamy and also learned counsel appearing for the respondents 1 & 3. Though it is seen that the reply statement has been signed by the 2nd respondent as the Senior Divisional and Electrical Engineer, he has not



signed the reply statement as his personal capacity. We have considered the impugned order passed by the respondents especially respondent No. 3. In the light of the arguments advanced on behalf of the applicant, the question to be considered is that whether Annexure A-1 remarks is warranted or justifiable on any material or on any factual basis. Yet another question to be considered is that whether the 2nd respondent in his official capacity as the Senior Divisional Electrical Engineer and being the reviewing officer of the applicant is justified in passing Annexure A-1 order and incorporating a copy of the same in the service records of the applicant or not. Before we answer the questions raised it is interesting and advantageous to read Annexure A-1 in extenso:-

"It has come to notice that you have been abusing the ministerial staff, loco running staff and other supervisors on duty, preventing them from the discharge of their official work, but only coercing them to do the work more often to your personal favour and to an unrecognised union. It has also come to notice that you are using vulgar language against the said staff, accuse them with false allegations, threaten them with dire consequences, and shout at them and even instigating others to act against them, if they do not toe to your line. You even threaten them not to complaint against you to higher officials. Thus staffs are in severe mental distress and pain. Cordial atmosphere which has to be prevailed in Crew Lobby is being spoiled by your above said actions. Staffs mental peace and tranquillity has been utterly disturbed causing much hard ship to them. The frontline staff i.e. crew who are the indispensable assets of railways are totally at loss mentally because of your actions. Your behaviour is thus totally not acceptable.

It has also come to notice that your have been conducting yourself in a highly indisciplined manner, indulging in "chit-fund" business in your official work-place, and also carrying out unrecognised union-activities, unbecoming poster-preparation and pasting these unauthorisedly in the office and the platforms.

It is reported that you even coercing on-duty-railway staff to shell out their hard-earned money towards contributions to sustain your personal "chit-fund" business and your unrecognised union activities. You are also using the office premises for storing outside



materials and also for carrying out unlawful activities for unrecognised trade-unions.

Your conduct as mentioned above is indeed very bad and unacceptable.

This letter is issued to you to keep on record all these acts of misbehaviour, misconduct and indiscipline that you have been indulging in so far. You are hereby communicated the displeasure of the Railway administration in this regard. You are also hereby directed to immediately take all necessary steps to improve your conduct, behaviour and discipline; failing which, you are hereby cautioned that stringent action as per rules in force will have to be taken to set right the uncalled for aberrations on your part."

5. A reading of the above would show that the Senior Divisional Electrical Engineer has not assessed the facts which are necessary or warranted to issue Annexure A-1 supporting any factual basis or any documentary evidence. Even if the 3rd respondent being the Senior Divisional Electrical Engineer has got the power to check or assess the work of the applicant and satisfied that the remarks now made in Annexure A-1 are justifiable for which the officer should have given at least a notice. Even without issuing a notice or any show cause notice or any charge such remarks made in Annexure A-1 are without any basis and malafide and with ulterior motive to take personal vengeance on the applicant. Even for taking any such personal facts, for issuing such order, it shall be only after giving an opportunity for the applicant to explain his position or his case. In this case the 3rd respondent has not issued any communication to the applicant and as per Annexure A-5 answer given to the applicant it is very clear that there is no material before the 3rd respondent to come to a conclusion as that of contained in Annexure A-1. If so, prima facie, we feel that such a remark is detrimental to the service career of the applicant and also against



all the approved principles of natural justice and against the service jurisprudence.

6. In the above circumstances, we feel that the reply given to the applicant as per Annexures A-5 and A-9 would indicate that the remarks contained in Annexure A-1 is only an imagination of a jealous officer against his subordinate and even if any official remarks to be made as against the character or conduct of an employee, it shall be only on issuing such notice to him and without issuing such notice or giving such opportunity the remarks made in Annexure A-1 have no stand in the eye of law. Even though Annexure A-1 cannot be considered as a punishment contemplated under the provisions of the service rules and it will have a bearing on the annual confidential report of the applicant if it is allowed to rest in the service records. Though we are of the view that even if the 3rd respondent is competent to take any action against the applicant it shall be only in accordance with the rules governing the field. It is also noted by us that the stand taken in the reply statement that the remarks contained in Annexure A-1 is on the purport of exercising official power. But we have no hesitation to hold that such an exercise of powers of an officer is not conducive as far as this Tribunal is concerned and it cannot be justified at all. One more aspect we have to consider is that the 3rd respondent himself being the Public Information officer admitted in Annexures A-5 and A-9 that there was no material for basing the remarks contained in Annexure A-1. If so, whatever the official capacity or the official power the remarks now made in Annexure A-1 cannot be justified and if it is allowed to continue in



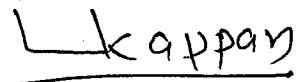
the service records of the applicant it will spoil the service career of the applicant at least for assessing his annual confidential reports. If it is allowed to continue in service records the officers who are empowered to review his ACR would be carried by the same remarks.

7. Hence, we allow this Original Application and Annexure A-1 stands quashed and we also declare that the entry made in the service records of the applicant regarding Annexure A-1 shall stand expunged for all purpose for assessing the character and conduct of the applicant.

8. With the above, the Original Application stands allowed with no order for costs.



**(K. GEORGE JOSEPH)**  
**ADMINISTRATIVE MEMBER**



**(JUSTICE K. THANKAPPAN)**  
**JUDICIAL MEMBER**

**"SA"**