

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.176 OF 2010

Friday, this the 23rd day of September, 2011

CORAM:

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

K.Balasubramanian
Loco Pilot (under suspension)
Office of Senior Section Engineer (C&W)
Southern Railway, Calicut
Residing at S.S. Apartment, XVII-554 C
Near Muthappan Temple, Alavin PO
Kannur District

... Applicant

(By Advocate Mr. T.A.Rajan)

versus

1. Union of India represented by the General Manager
Southern Railway
Chennai

2. Senior Divisional Personnel
Southern Railway
Palghat

... Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been heard on 23.09.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant while working as Loco Pilot was ordered to be under deemed suspension with effect from 02.12.2008 as per Annexure A-3 order dated 05.01.2009 as he was detained in custody for more than 48 hours. 90 days period of his suspension ended on 02.03.2009. But his order is suspension was revoked by Annexure R-1 order dated 27.04.2010. It is contended that in terms of Rule 5 (6) and (7) the suspension has to be reviewed before completion of 90 days period. Unless it is so reviewed



and extended by a positive order, the suspension becomes invalid beyond 90 days. Even after such extension, by virtue of Rule 5 (7) a further extension has to be made within 90 days of the first extension. Therefore, it is prayed that there may be a declaration that his suspension beyond 90 days, in so far as it is not reviewed in terms of rule 5 (6), is not valid.

2. Respondents in their reply statement have contended that suspension has since been revoked by Annexure R-1 order and thus redressed the grievance of the applicant.

3. We have heard the counsel for both sides. As per Rule 5 (6) and (7) of the Railway Servants (Discipline and Appeal) Rules, notwithstanding an order of suspension made or deemed to have been made under Sub Rule (1) or Sub Rule (2) shall not be valid after a period of 90 days unless it is extended after review in the manner provided in Sub Rule 7 of the said Rule for a period of 90 days. Admittedly, the review was made only by Annexure R-1 order but no extension was made in terms of Rule 5(6) as afore mentioned by conducting a review. In terms of the specific rule contained in Rule 5 (6) of the Railway Servants (Discipline and Appeal) Rules, 1968, there cannot be any doubt that in so far as the provision is mandatory that the suspension becomes invalid beyond 90 days unless reviewed and extended in terms of Sub Rule 7 of Rule 5. In the circumstances, we declare that the suspension beyond 90 days, after 90 days expired on 02.03.2009 is invalid. Respondents shall work out regarding the amount of salary to be paid beyond 90 days and be paid, if not already paid, within a period of two months from the date of receipt of a copy of this order.

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4. OA is **allowed** as above. No costs.

Dated, the 23rd September, 2011.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

VS