

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.187/05

Tuesday this the 13th day of December 2005.

CORAM:

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

Kurian K.Kuriakose,
Chief Travelling Ticket Inspector, Grade I,
Southern Railway, Ernakulam Junction,
residing at Kayyalathu House,
Kottayam District. Applicant

(By Advocate Shri M.P.Varkey)

Vs.

1. Union of India represented by
General Manager,
Southern Railway, Chennai-600003.
2. The Additional Divisional Railway Manager,
Southern Railway, Trivandrum-695014.
3. Senior Divisional Commercial manager,
Southern Railway, Trivandrum-695014. Respondents

(By Advocate Shri K.M.Anthru)

The application having been heard on 13.12.2005
the Tribunal on the same day delivered the following

ORDER (Oral)

HON'BLE MR. KV SACHIDANANDAN, JUDICIAL MEMBER

The applicant sought permission to purchase a motor cycle as required under Railway services (Conduct) Rules, 1966, and it was followed by a loan application dated 9.4.99 for purchase of a "Hero Honda Splender" Motor Cycle from MS & S (Motors) Ltd., Kottayam. The cost of vehicle being Rs.42,031/- and the loan limit being Rs.30,000/- the balance amount of Rs.12,031/- was to be met by personal savings of the applicant. The sanction was accorded by A-1 for the above purpose for an amount of Rs.30,000/- which was made available after 4 & 1/2 years i.e. in November 2003, without any prior intimation. The cost of the vehicle had gone up and the applicant's personal savings of Rs.12,000/- was almost spent on his children's education. Therefore, he sought approval of the


respondents for the purchase of a second hand 'Honda Activa' Scooter from Sri P.A.Mathai for Rs.36,000/- to be met by loan amount of Rs.30,000/- and personal savings of Rs.6,000/-. There was no immediate response to the said application. Recovery towards the loan at the rate of Rs.500/- per month was started from the salary for the month of November, 2003 onwards. Under such circumstances and in anticipation of approval, the applicant purchased the second hand Honda Activa Scooter on 28.12.03 for Rs.36,000/- vide A-2. A copy of A2 was sent to the Divisional personnel Officer, Trivandrum on 30.12.03. The ownership was transferred in the name of the applicant on 23.1.04 only, which is evident from pages 1,3, and 8 of the R.C.book of the vehicle as per A-3. The applicant produced the attested copy of A-3 in the office of the DPO and he applicant was asked to produce the original R.C.Book and other documents were also produced. The originals were also subsequently produced. While awaiting approval the applicant received a charge memo dated 14.1.04 issued by the 3rd respondent alleging that the applicant had committed misconduct by not producing Registration Certificate and other documents of the vehicle within the stipulated time, which is evidenced by A4. On 18.3.04 the applicant got the approval of the 2nd respondent for the purchase of second hand vehicle(vide Annexure A5). The applicant submitted a reply dated 24.3.04(A6) to the A-4 charge memo. But without considering the facts, the 3rd respondent issued the impugned order (A7) withholding the applicant's annual increment due on 1.9.2004 raising his pay from Rs.7075 to 7250 in scale Rs.5500-9000 for six months (NR). The applicant submitted an appeal dated 17.7.04(A8) which was rejected by Annexure A-9 letter dated 20.12.04. Aggrieved by the inaction on the part of the respondents, the applicant has filed this O.A. seeking the following main reliefs:

- i. Declare that A-7 and A-9 are unjust, illegal, unconstitutional and without jurisdiction and quash the same.
 - ii. Declare that the applicant is entitled to get his normal increment due on 1.9.04 as if A-7 and A-9 are not issued, with all consequential arrears and direct the respondents accordingly.
2. The respondents have filed a detailed reply statement contending that the O.A. is not maintainable since the applicant is not entitled to the reliefs prayed for. The competent authority had imposed only a minor penalty on the applicant viz., withholding of his increment for six months for the misconduct committed by him and Annexure A9 is the appellate order affirming the said punishment.



Sanctioning of loan amount is subject to availability of funds and on relative merits, considering the volume of applications seeking the loan. Granting of loan is not automatic to all applicants. The disbursement of loan amount is made in accordance with funds set apart under the relevant head from the consolidated fund of Government of India and depending on funds some delay is often inevitable and the applicant cannot have any genuine grievance over that. The amount was sanctioned to the applicant for a specific purpose, that is to acquire a Hero Honda Splender Motor Cycle and he had not utilized the same for the purpose for which it was sanctioned, which is borne out from Annexure R-1. As per Annexure R-1, the employee who receives the Scooter/Motor Cycle Advance should submit the Certificate of Registration of vehicle along with cash receipt, insurance certificate and tax receipt to the office within one month from the date of purchase of the vehicle or within two months from the date of drawal of advance. But in the case of applicant these conditions have not been complied with, which is a clear violation of the norms laid down. Fresh administrative sanction towards purchase of another vehicle is required since sanction has not been obtained for it, nevertheless, applying for fresh sanction does not absolve the employee from fulfilling the conditions stipulated for grant of loan amount initially. The conditions laid down in Annexure R-1 have been totally ignored. The charge memo was issued since the employee had availed the advance but failed to submit the certificates of registration and other related documents in proof of having acquired the vehicle within the stipulated time. The time limit for production of documents has not been adhered to. As per the provisions contained in Indian Railway Establishment Manual (IREM for short), he has not complied with the conditions prescribed therein. The penalty and appellate orders have been passed with due application of mind.

3. The applicant has filed a rejoinder reiterating the same contentions raised in the O.A. Challenging the averments made in the reply statement learned counsel for the applicant submitted that, Annexure R-1 pertains to a new vehicle and it does not ipso facto apply to a second hand vehicle and it has to be applied mutates mutandis to a second hand vehicle as well. He has not violated any rules and he has done everything as per law. There was no delay in submitting the documents. Even if there was delay, penal interest alone and no penalty is envisaged. The penalty that is imposed will go along with in the service of the applicant, which is not justified.



4. I have heard Shri M.P.Varkey, learned counsel appearing for the applicant and Shri K.M.Anthru learned counsel appearing for the respondents. Counsel for the parties have taken me to various pleadings, evidence and material placed on record. Learned counsel for applicant argued that, post facto sanction made by the 2nd respondent will absolve the irregularities, if any, made on the side of the applicant and he could not have been find fault. The respondents has no locus standi to proceed under the disciplinary proceedings.

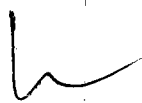
5. Learned counsel for respondents on the other hand persuasively argued that though post fact sanction was granted by the 2nd respondent that does not absolve the applicant from all liability. The conditions stipulated in Annexure R-1 have not been complied with the applicant and therefore, he has violated the rules and regulations and Annexure A-4 Charge memorandum issued is justified.

6. I have given due consideration to the arguments advanced by the counsel for the parties.

7. The short question arises for consideration in this case is that whether the applicant has violated the conditions and rules to attract the disciplinary proceedings which have been laid down in Annexure R-1 or not? The Annexure R-1 dated 13.10.03 is the list of employees who were granted Scooter/Motor Cycle advance and the applicant figures at Sl.No.15 and one of the conditions(Clause-1) that has been stipulated in Annexure R-1 which reads as under:

“ The employee who receives the Scooter/Motor Cycle Advance should submit the certificate of registration of vehicle along with cash receipt, insurance certificate and tax receipt to this office within one month from the date of purchase of the vehicle or within 2 months from the date of drawal of the advance. “

8. Clause 4 of Annexure R-1 stipulates that, in exceptional cases, extend period of one month prescribed in this rule can be extended upto two months. Clause 5 also stipulates that , if the advance is retained beyond one month without purchase of the vehicle, in contravention of the provisions of paragraph 1108(5) of IREM. Vol.I, 1989, penal interest will be charged in the manner as indicated in paragraph 1108(6) of IREM, Vol.1989 and failure to produce the certificate of registration of the vehicle within one month of purchase or within 2 months of drawal of the advance will render the employee liable for levy of penal interest. For better elucidation, it is profitable to quote Rule 1108(I) of



IREM Volume-I 1989 which reads as under:

“As per the provisions contained in paragraph 1108 (1) of IREM Volume-I, 1989 unless the Railway servant who is sanctioned the Scooter/Motor Cycle advance for the purchase of the conveyance completes the purchase of and pays for the conveyance within one month of the date of receipt of the advance, he shall refund forthwith the full amount of the advance together-with interest thereon for one month. Competent authority, may in exceptional cases, extend the period of one month prescribed in this rule to two months.”

9. Therefore, the rule position is very clear as laid down in IREM that if the advance is retained beyond one month without purchase of the vehicle, in contravention of the provisions of paragraph 1108(5) of IREM the penal interest will be charged and the failure to produce the certificate of registration of the vehicle within one month of purchase or within two months of drawal of the advance will render the employee liable for levy of penal interest. Annexure A-4 charge memo was issued under Rule 3.1(ii) and (iii) of Railway Service (Conduct) Rules 1966 for violation of certain rules and as such, the applicant has behaved in a manner of unbecoming of a Railway Servant.

10. In a broad perspective we find that, the very purpose of the scheme for sanction of loan to purchase Scooter/motor cycle, is to increase the efficiency of the employee and the employer Railway is not sanctioning the full amount and a portion of the amount is shared by the employee. In the given set of facts I find that the applicant was given permission to acquire a Hero Honda Splender Motor Cycle which is estimated to Rs.42,031/- dated 20.5.99. At that point of time the applicant thought that Rs.12,031/- can be mobilized from his personal savings. His case is that the loan was sanctioned subsequently in 2003 (Annexure R-1), the price of the vehicle has gone up and also the amount that has been mobilized by the employee from his personal savings has been utilized for the purpose of the education of his children. Naturally he was in short of funds. Therefore, he has applied for purchase of a second hand vehicle from one Mr. P.A. Mathai who is an employee of the Railway and this was sanctioned on 16.12.04 which is evidenced by A-5 Memorandum dated 16.3.2004 as quoted below:

SOUTHERN RAILWAY

No.V/P.182/III/KKK

Divisional Office,
Personnel Branch,



Trivandrum 695014

Dated 16-3-2004.

MEMORANDUM

Reg:- Railway Services (Conduct) Rules 1966.

Ref:- This Office letter of even No.dt. 20-5-1999.

In terms of this office letter quoted above, sanction has been accorded to Sri. Kurien K.Kuriakose, CTI.II/ERS to acquire a Hero Honda Splender Motor Cycle fro M/s.MS&S (Motors) Ltd., Kottayam at a cost of Rs. 42,031/- by availing Rs.30,000/- as advance from Railways & Rs.12,031 from personal savings.

The above named employee vide his application dt. 27.11.2003, intimation has been given that he is acquiring a 2nd hand 'Honda Activa' Scooter from Sri.P.A.Mathai, CTTI.I/ERS at a cost ofRs.36,000/- by utilizing Rs.30,000/- as advance received from Railways and Rs.6000/- from personal savings.

The change in acquisition of the movable property has the approval of ADRM/TVC.

Sd/-

For Senior Divisional Personnel Officer,

11. This was sanctioned by the 2nd respondent . In the meantime, the Annexure A-4 Charge Memo was issued, for which the applicant has given a detailed reply and was not convinced by the said reply, Penalty Advice(A7) was issued. This is not a case of the respondents that the applicant had not produced Annexure A2 & A3 documents to prove that he has purchased the vehicle. But the case of the respondents is that, he has not produced the documents within the stipulated period prescribed in Annexure R-1 and therefore, he is entitled for punishment.

12. On going through the records, this court found that, the Appellate order A-9 dated 20.12.2004 has been issued by ADRM, who was the same authority who has given the post facto sanction (A5) dated 16.3.2004 to the applicant.. It is quite evident that A-5 sanction was granted by the said authority nine months before A-9 was passed. It is also brought to my notice that, in the Appeal Memorandum (A8) he has specifically pleaded that he had waited for the revised sanction and therefore, without going through the said document or the said facts it appears that, the appellate authority has passed A-7 impugned order imposing penalty, without due application of mind and not considering the relevant facts of the case.



13. In the above circumstances, I am of the view that, since the post facto sanction has already been granted by the competent authority, the applicant should have been absolved from all the charges, because the charges were framed on a different footing and circumstances. It is quite obvious that, on going through Annexure A-7 order, the punishment has been imposed based on different facts which were controverted in Annexure A-5. Had the proper application of mind been applied before passing this order, the respondents could not have reached to such a conclusion and therefore A-7 has passed without due application of mind. Apart from that, the contention of the applicant is that, in such circumstances at least, only minor penalty be visited rather than initiating the disciplinary proceedings, which has got great force, as per the provisions of IREM as mentioned above and also the condition No.5 stipulated in Annexure R-1.

14. For all these reasons I am of the considered view that the impugned orders A-7 and A-9 will not stand in its legs and therefore these has to be quashed.

15. In the conspectus of facts and circumstances of the case I quash A-7 and A-9 and direct the respondents to grant all consequential benefits flowing out of this order to the applicant within a period of two months form the date of receipt of a copy of this order.

16. O.A. is allowed. In the circumstances, there is no order as to costs.

Dated the 13th day of December, 2005.



K.V.SACHIDANANDAN
JUDICIAL MEMBER