

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~xxxxxx~~

194

1990

DATE OF DECISION 28.6.1991

V.M.Sajeev Roy

Applicant (s)

Mr.P.Sivan Pillai

Advocate for the Applicant (s)

Versus

UOI rep. by General Manager, Respondent (s)
Southern Railway, Madras & 2 others

Smt.Sumathi Dandapani

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji

-

Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan

-

Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *Yes*

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant, a Diesel Assistant in the Trivandrum Division of the Southern Railway has challenged the propriety, validity and correctness of the order dated 9.12.1988 issued by the third respondent imposing a penalty of withholding of increment for a period of 12 months from 1.5.1989 at Annexure-A-10 and the appellate order dated 11.8.1989 of the second respondent by which the procedure followed by the Disciplinary Authority has been upheld and the punishment has only been varied to withholding of increment for a period of 6 months instead of 12 months.

2. The facts of the case can be briefly stated as follows. On 1.8.1988 the applicant signed on duty to work in Train No. IQE Goods at Ernakulam^{station} at 2 AM and the train left at 2.40 AM. When the train reached Chengannur at 10.40 AM the applicant gave a message to the Power Controller informing him that he was on duty from 2 AM and requesting for arranging relief after normal duty hours. The train took 3 hours to reach Kayamkulam station from Chengannur, but no relief was arranged. ~~Thereafter~~ At 1.20 PM the applicant claimed rest and ~~he~~ was given a duty pass to return at Headquarters. But the same day, the third respondent issued to him a memo (Annexure-A3) calling for his explanation for claiming rest at KYJ after 10 hours duty at 13.20 hrs. without previous information. The applicant in his explanation submitted on 6.8.1988 stated that he had given prior intimation claiming rest and enclosed a copy of Annexure-A1 counter signed by the Station Master, Chengannur. But the Assistant ~~Mechanical Engineer~~, Trivandrum, the Disciplinary Authority issued to him a memorandum of charges for minor penalty under Rule 11 of the Railway Servants (Discipline and Appeal) Rules 1968. The charge reads as follows:

"Dereliction on duty in that while working as Dsl. Asstt. of IQE goods on 1.8.1988 without prior notice, claimed and availed himself of rest, which resulted in the blockage of Road 3 & 4 of KYJ station and detention to IQE goods for 237 mts. Thus he has violated rule No. 2.06 of GRS."

Annexure-A5 is a copy of this memorandum of charges. On receipt of the memorandum, applicant submitted his explanation dated 22.8.1988, (Annexure-A6) wherein he explained that he had given prior notice at 10.40 hrs. before claiming rest, that, if he had been apprised of inability to provide relief, he would have worked the train to its destination inspite of his tiredness and, that, therefore he has not committed any misconduct. On receipt of this explanation the Assistant Mechanical Engineer issued a letter dated 23.9.1988 stating that the charge memo issued against him had ^{been} withdrawn without prejudice to DAR action. But on 15.10.1988 the third respondent issued Annexure-A8 charge sheet. The charge sheet reads as follows:

"Obstructive working in that Shri V.M. Sanjeev Roy, DSL Asst/ERM. while working as ~~Ø~~ DSL/ASST of IQE goods on 1.8.88 claimed rest at KYJ at 13/20 hrs and deserted the loco without permission which remitted in the blockage of Road No.3 & 4 at KYJ. ^S Station and detention to IPE goods for 237 mts. Thus he has violated GR. 206 and provisions of RLT awards 1969.

As per RLT award the duty of Running Staff may extend to a maximum of 12 hours and further than ^t total minimum hours of duty from signing on to signing off does not exceed 14 hours."

The applicant submitted an explanation on 12.11.1988 at Annexure-A9 stating that ^{since} the Disciplinary Authority had dropped the charge against him ^{after} considering his explanation, the issuance of the charge sheet at Annexure-A8 is irregular and unjustified, and that as he had claimed rest only after completion of 10 hours work he has not


violated any of the instructions of the Railway Board on the subject or any provisions of RLT award. The third respondent after considering this explanation held the applicant guilty and awarded to him a punishment of withholding of increment from Rs.970 to Rs.990 in the scale Rs.950-1500 due on 1.5.1989 for a period of 12 months by the impugned order at Annexure-A10. Though the applicant filed an appeal to the Sr.Divisional Mechanical Engineer, a copy of which is at Annexure-A4, the third respondent did not accept his contentions and held him guilty, but reduced the punishment to withholding of increment for a period of 6 months instead of 12 months, by the Annexure-A12 order. Aggrieved by these orders the applicant has filed this application. It has been averred that, as per the hours of employment regulating ~~xxxxxx~~ running staff, the normal duty hours of running staff should not ordinarily exceed 10 hours, and that as the applicant had given prior intimation claiming relief, the applicant has not committed any misconduct as alleged, and that the Annexure-A10 order of the third respondent imposing punishment on him without applying his mind to the facts mentioned in the explanation is unsustainable in law. It has been further contended that the appellate order is also bad in law being cryptic and non-speaking. It has also been contended that, as the Annexure-A5 charge sheet issued by the Assistant Mechanical Engineer, the Disciplinary

Authority, was dropped by him after considering his representation at Annexure-A7, the third respondent who is the Appellate Authority has gone wrong in issuing a charge sheet on the very same allegation.

3. The respondents in the reply statement have contended that, as the Annexure-A7 letter was issued by the Assistant Mechanical Engineer without prejudice to DAR action, there was nothing irregular in the third respondent's issuing the Annexure-A8 charge sheet. The impugned order at Annexure-A10 is sought to be justified on the ground that as it is the duty of the running staff to obey the orders and instructions of the Railway Board and other authorities, the refusal on the part of the applicant to continue to work till the train reached its destination in spite of the request made to him amounts to dereliction of duty. To substantiate the contention that the applicant was requested to continue for some more time, the respondents have produced Exbt. R.1 and R.2 which are copies of statement alleged to have been given by the Driver of the train and Station Master, Kayamkulam.

4. We have heard the arguments of the counsel on either side and also carefully perused the documents produced. It is an admitted fact that the applicant

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who signed on duty at 2.00 AM claimed rest at 13.20 hrs. On his claiming rest at 13.20 hrs. though he was relieved, Annexure-A3 memo was issued to him calling for his explanation for claiming rest at 13.20 hrs. without previous information. The applicant in his explanation at Annexure-A4 submitted that he had as a matter of fact given previous intimation that he wanted relief, enclosing a copy of the Annexure-A1 communication issued by him at 10.40 hrs. to the Power Controller, Trivandrum through Station Master, Chengannur. Despite this the Annexure-A5 charge sheet was issued to him by the Assistant Mechanical Engineer. On receiving his explanation at Annexure-A6 in which he had ^{stated} that he had given previous intimation before claiming rest, and that had he been ^{of} informed ² the inability to provide relief, he would have continued to work in the train though he was tired, the Assistant Mechanical Engineer withdrew the charge sheet Annexure-A7, though it was stated that the withdrawal was without prejudice to DAR action. It is not disputed that the Assistant Mechanical Engineer is the Disciplinary Authority and the Divisional Mechanical Engineer, the third respondent is the Appellate Authority. Since the Disciplinary Authority has dropped the Disciplinary proceedings initiated against the applicant by issuance of Annexure-A5, ~~according~~ ² in the Railway Servants (Discipline & Appeal) Rules, there is no provision for the

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Appellate Authority to issue a charge sheet on the same set of facts. Though the Appellate Authority is a higher authority than the Disciplinary Authority, we are of the view that the third respondent was wrong in arrogating to himself the functions of the Disciplinary Authority by issuing a fresh charge sheet. Be that, as it may, let us see whether the materials on record justify the impugned order at Annexure-A10 holding the applicant guilty of the misconduct and awarding him punishment. The charge in Annexure-A8 charge sheet is that, the applicant violated GR 2.06 and provisions of RLT award by claiming rest at 13.20 hrs. and deserting the loco without permission. Reliance is placed by the respondents on Exbt.R3, the Railway Board's letter to General Managers of All India Railways which reads as follows:

"References the Ministry of Railways letter No.E(LL)77/HER29 dt.31.8.78, No.E(LL)/78/HER 76 dt.23.10.78 and No.E(LL)77/KER/79 dt.28.3.79 on the above subject.

A number of reference have been received by Board in regard to the manner in which the 10 hour rule is to be implemented. In supersession of all the previous orders on the subject the Ministry of Railways have decided that the 10 hour rule as applicable to the running staff should be implemented subject to the following provisions:

1. The undermentioned periods will count for duty under the 10 hour rule.
 - i) Engine attendance time as prescribed and
 - ii) Time taken from starting station upto crew changing station including intermediate detentions.
2. The following periods will not count.
 - i) From Bahar line to the station at the starting point, pre-departure detentions and travelling pilot, and

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ii) At the terminal stations from the station to the shed; where the destination point is other than a station say, a yard, a convenient point or area would have to be locally demarcated as the destination station for the purpose of 10 hrs. rule.

3. Measures have already been taken by the Railways to restrict the duty hours at a stretch from the time of 'signing on' to the time of 'signing off' to 10 hrs and provide them with relief thereafter save in exceptional circumstances of unavoidable operational exigencies or of accidents, flood emergencies, etc.

4. The time spent by running staff on non-running duty such as travelling spare on duty or waiting at a station for returning to headquarters, etc. will continue to be excluded for the purpose of 10 hour rule.

i) The Ministry of Railways also desire to clarify that the running staff will not claim relief within 10 hours of their duty at a stretch while running through their headquarters nor will they resort to stabling of trains short of destination on completion of 10 hours duty at a stretch.

5. The instructions in regard to the 10 hour rule have no applicability in respect of payment of overtime in regard to which there are other directive in force.

6. Orders mentioned above will come into force with immediate effect."

It is evident from paragraph 3 of this letter that the normal hours of duty in the case of running staff at a stretch was restricted to 10 hours from signing on to signing off, and that relief should be provided to such staff after 10 hours of duty at a stretch, save in exceptional circumstances of unavoidable operational exigencies or of accidents, flood emergencies, etc..

The applicant had signed on duty on the date in question

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at 2.00 hours. At 10.40 hours from Chengannur Railway Station the applicant had by Annexure-A1, requested for relief after completion of normal working hours. It was only at 13.20 hours after completing 11.20 hours of duty that he has claimed rest and availed rest at Kayamkulam station. There is no case for the respondents that on receipt of Annexure-A1 request from the applicant that he wanted relief after completion of normal duty hours, the Power Controller had ^{either} arranged for relief or requested the applicant immediately that he would be required to continue to work even beyond the normal duty hours on account of unavoidable reasons. In his explanation submitted to Annexure-A5 charge sheet the applicant had submitted that he had claimed rest only after giving prior intimation, and that he was not apprised of any emergency or unavoidable situation requiring him to continue to work beyond the normal working hours, and that as he would have worked the train to its destination enduring the fatigue and suppressing natural calls had he been so requested, he may not be found guilty of any misconduct. It was after receiving this explanation, ^{that} the Assistant Mechanical Engineer has dropped the proceedings by Annexure-A7, though it was without prejudice to DAR action. Even in the charge sheet, Annexure-A8 issued by the third respondent, it has not been stated that on account of unavoidable circumstances to provide

relief, he was asked to continue duty beyond normal duty hours. Therefore the contention of the respondents that the applicant was guilty of dereliction of duty, and that he deserted loco without permission does not appear to be well founded. If as a matter of fact there was an emergency and if it was not possible to provide relief, the applicant should have been told so by the authorities concerned. In the impugned charge sheet, Annexure-A8 there is not even such an intimation. The alleged statements of the driver and the Station Master, Annexure-R1 and R2 in which it is ^{seen} stated that at 13.20 hours the applicant was requested to work further had not been made mention of in the Annexure-A8 charge sheet, Annexure-R2. The alleged statement of the Station Master is dated 18.10.1988 i.e. after the Annexure-A8 charge sheet dated 15.10.1988. So the attempt on the part of the respondents to make out that the applicant was requested to continue to work even after the normal duty hours by producing these documents can be considered only as an after-thought with a view to substantiate the impugned orders. No material which was not furnished the applicant along with the charge sheet or to which the attention of the applicant was not invited can be made use of for holding the applicant guilty. The respondents have a case that the applicant has violated RLT award. At page 143 of the RLT award it is seen stated as follows:

"Though running duty is not of an intensive character, it is duty which demands continued attention", alertness and exertion in its performance. Any over exertion from such staff has important and far reaching repercussions on safety of public, person and property. Such staff has to work under conditions which may set in fatigue earlier than it may occur in case of staff working indoors or at stations and depots. Having regard to all these considerations, in my opinion running duty at a stretch of 10 hours only can be considered reasonable."

3n Award
The Tribunal has further stated as follows:

"Therefore, my decision is as follows. Running duty at a stretch of running staff should not ordinarily exceed 10 hrs but such duty may extend to a maximum period of 12 hours provided the concerned administration give at least 2 hours notice before the expiration of 10 hrs. to the staff that it will be required to perform running duty for two hours more, provided further that the total maximum hours of duty from signing on to signing off does not exceed 14 hours, provided further that the total maximum hours of duty will be progressively reduced by half an hour every two years from the date of the report till the target of 12 hours is reached i.e. at the end of 8 years from the date of this report the total maximum hours of duty at a stretch from signing on to signing off shall not exceed 12 hours."

So, according to the recommendations in the RLT award which was accepted by the Railways, the normal duty hours of running staff would be restricted to 10 hours and if the administration wanted an extension by 2 hours, the administration should give the staff a notice in that regard two hours before the expiration of 10 hours duty. I:

In this case the applicant signed on duty on 2.00 AM. He claimed rest at 13.20 hours, i.e. after an expiration of 11.20 hours of duty. Though the applicant had at 10.40 hours intimated the Power Controller that he wanted relief after normal duty hours, the respondents did not give a notice before 2 hours prior to the expiry of 10 hours duty, that he would be required to work for 2 extra hours. Therefore, obviously it is the respondents who have violated the provisions in the RLT award by making the applicant to work after 10 hours at a stretch without giving him prior notice as required. The respondents who have violated this condition in the RLT award and ignored the request of the applicant that he required rest after the normal duty hours cannot be allowed to find fault with the applicant for claiming rest after he had continuously worked for a period of 11.20 hours. The learned counsel for the respondents invited our attention to paragraph 4(1) of the letter of the Govt. of India, Ministry of Railways, Railway Board dated 3.4.1981 No.F(LL)/77/HER/29 issued to the General Manager, All India Railways which reads as follows:

"i. The Ministry of Railways also desire to clarify that the running staff will not claim relief within 10 hours of their duty at a stretch while running through their headquarters nor will they resort to stabling of trains short of destination on completion of 10 hours duty at a stretch."

Relying on this the learned counsel argued that, though the applicant has claimed rest only after completion of

10 hours of duty, Since he had resorted to stabling of train short of destination, the applicant is guilty of the misconduct alleged. We are not in a position to agree with the learned counsel on this point. It is not correct to say that the applicant has resorted to stabling of trains short of destination. The applicant had well in advance at 10.40 hours claimed relief on completion of his normal hours of duty. It was the duty of the Power Controller to make arrangement for relief to the applicant at the appropriate time or if it was not found practicable for any unavoidable reasons the Power Controller should have immediately appraised the applicant of the situation, and directed him to continue even after completion of 10 hours. If the train had to be stabled before reaching the destination the circumstances of the case reveal, that it was the Power Controller or the other authorities who are responsible for arranging relief duty or to give instructions to the running staff ^{has} who caused the stabling. If the destination is 200 kms. away it is not just to expect a tired Diesel Assistant to continue until the train reaches its destination. Such a situation would not only be hazardous to running staff but also dangerous to the safety of the train properties carried in the train and also to the persons of Board. Therefore, on a careful scrutiny of the materials on record, we are convinced that the

impugned order at Annexure-A10 cannot be justified. Though the applicant had in his explanation at Annexure-A9 invited the attention of the third respondent to the fact that he had claimed rest only after completion of normal duty hours after giving prior intimation inviting to the directions contained in the RLT award, the third respondent has not taken into consideration these aspects and has simply stated that the explanation was found unacceptable without consigning any reason. Therefore, we have no hesitation to quash Annexure-A10 as illegal and unjustified. Similarly in the appeal memorandum, Annexure-A11, the applicant had inviting attention to RLT award stated that, * his action in claiming rest after 11.20 hours of duty cannot be characterised as misconduct. The Appellate Authority has not considered these aspects. On the other hand what is stated about this contention of the applicant in the impugned order at Annexure-A12 is as follows:


"His other points quoting RLT award & RB's circular cannot be accepted. Stabling of the trains and consequential dislocation of train services in to be considered serious and this would have avoided. Hence it is regretted that his contention cannot be accepted."

We are of the view that the Annexure-A12 order is devoid of application of mind. Therefore, we quash Annexure-A12 order also.

5. In the conspectus of facts and circumstances, we are convinced that the respondents have wrongly proceeded



against the applicant, that the applicant is not guilty of any misconduct, and that for these reasons, Annexure-A8, A10 and A12 are liable to be quashed. We, therefore quash these impugned orders and direct the respondents to restore the annual increment of the applicant due on 1.5.1989 in the scale of Rs.950-1500 with effect from 1.5.1989 and to disburse him the arrears, if any, consequent on such withholding within a period of one month from the date of communication of this order. There is no order as to costs.


28/6/91
(A.V. HARIDASAN)
JUDICIAL MEMBER


28.6.91
(S.P. MUKERJI)
VICE CHAIRMAN

28.6.1991

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

RA-45/91 in
O. A. No. 194/90
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DATE OF DECISION 6-1-1992

Union of India, GM, S.Rly. / Review
Applicant (s)

Smt Sumathi Dandapani Advocate for the Applicant (s)

Versus

VM Sanjeev Rag Respondent (s)

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The respondents in the original application have filed this Review Application challenging the decision on merits. Any error apparent on the face of records or any other circumstance warranting a review is not even averred in the application. The stand of the review applicant is that the decision is wrong in the facts and circumstances of the case. A review of the judgement or order cannot be sought on this ground. The remedy of the aggrieved party in such cases is to challenge the judgement before an appellate forum. In this circumstances, finding no merit in the R.A., we reject the same.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

6-1-1992

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