IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

(1) O.A. 215/90, (2) O.A.188/90, (3) O.A. 191/90 , (4) O.A. 209/90 (5) O.A. 214/90, (6) O.A. 222/90, (7) O.A. 246/90, (8) O.A. 253/90 (9) O.A. 310/90, (10) O.A 317/90, (11) O.A. 386/90, (12) O.A. 402/90 (13) O.A. 444/90, (14) O.A. 463/90, (15) O.A. 477/90, (16) O.A. 664/90, (17) O.A. 685/90, (18) O.A. 908/90, (19) O.A. 910/90 & O.A. 915/90.

DATE OF DECISION : 10.1.1992

(1) In O.A 215/90

Laly Joseph : Applicant

vs.

The Union of India through the General Manager, S.Rly, Madras-3 and 3 others. : Respondents

(2) In O.A. 188/90

M.K.Abdul Rehiman : Applicant

vs.

Union of India represented by the General Manager,S.Rly,Madras-3 and 3 others.: Respondents

(3) In O.A. 191/90

C.Muraleedharan : Applicant

vs.

Union of India through the General Manager,S.Railway, Madras-3 and 3 others. : Respondents

(4) In O.A. 209/90

C.Muraleedharan : Applicant

vs.

Union of India represented by the General Manager, S.Rly, Madras-3 and 3 others. : Respondents

(5) In O.A. 214/90

A.Abdul Nazer : Applicant

vs.

Union of India represented by the General Manager,Southern Railway, Madras-3 and 3 others : Respondents

(6) O.A.222/90

C.I.Anto : Applicant

vs.

The Union of India through the General Manager, S.Rly, Madras-3 and 3 others. : Respondents

(7) O.A. 246/90

E.P.K.Sunil Kumar : Applicant

vs.

The Union of India through the General Manager, S.Rly, Madras-3 and 3 others : Respondents

(8) O.A. 253/90

K.A.Yesudas : Applicant

vs.

The Union of India through the General Manager, S.Railway, Madras -3 and 3 others : Respondents

(9) O.A 310/90

B.Radhakrishnan : Applicant

vs.

The Union of India represented by the General Manager, S.Railway, Madras-3 and 3 others. : Respondents

(10) O.A. 317/90

M.Thirupathi : Applicant

vs.

The Union of India represented by the General Manager, Southern Railway, Madras-3 and 3 others. : Respondents

(11) O.A. 386/90

K.N.Radhakrishnan : Applicant

vs.

The Union of India through the General Manager,S.Railway, Madras-3 and 3 others. : Respondents

(12) O.A. 402/90

M.K.Subramanian : Applicant

vs.

Union of India & 3 others. : Respondents

13. O.A. 444/90

U.N.Ravivarma : Applicant

vs.

The Union of India through
the General Manager, S.Railway,
Madras-3 and 3 others. : Respondents

(14) O.A.463/90

Mutham Perumal Pillai : Applicant

vs.

Union of India represented
by the General Manager,
Southern Railway,Madras-3 and 3 others. : Respondents

(15) O.A 477/90

B.Chandramanohar : Applicant

vs.

The Union of India throughthe
General Manager, S.Rly,
Madras and 3 others. : Respondents

(16) O.A 664/90

Jomy Paul : Applicant

vs.

The Union of India through
the General Manager, S.Railway,
Madras-3 and 3 others. : Respondents

(17) O.A 685/90

Laly Joseph : Applicant

vs.

The Union of India through
the General Manager,
Southern Railway,Madras-3 and 3 others. : Respondents

(18) O.A 908/90

C.K.Babu : Applicant

vs.

Union of India through the
General Manager,S.Rly,
Madras-3 and 3 others. : Respondents.

19. O.A 910/90

C.K.Rajendrakumar : Applicant

vs.

The Union of India through
the General Manager,
S.Railway,Madras -3 and 3 others. : Respondents

20 O.A 915/90

C.K.Babu : Applicant

vs.

Union of India through
the General Manager,
Southern Raily ,Madras-3 and 2 others. : Respondents.

M/s.P.Sivan Pillai &
R.Sreekumar : Advocates for all the Applicants.

Mr.T.R.G.Warrier
M/s.M.C.Cherian & T.A.Rajan
Mrs.Sumathi Dandapani : Advocates for the Respondents.

C O R A M

THE HON'BLE MR.S.P.MUKERJI, VICE CHAIRMAN

THE HON'BLE MR.A.V.HARIDASAN,JUDICIAL MEBER

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether their Lordships wish to see the fair copy of the judgment ? No

4. To be circulated to all Benches of the Tribunal? No

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JUDGMENT

(Hon'ble Shri S.P.Mukerji,Vice Chairman)

Since common questions of law, facts and reliefs have been raised in these twenty applications and since they have been argued together by the rival parties, we dispose them of by a common judgment as follows. For the purpose of detailed examination, we have taken up by the consent of the counsel for both the parties O.A 215/90 as a representative case. Accordingly we proceed to examine O.A.215/90 in detail and thereafter other applications separately as follows.

2. In this application (O.A 215/90) dated 19th March, 1990, the applicant who has been working as Diesel Assistant, Southern Railway has challenged the order of the Railway Board dated 3.4.1981(Annexure A-6) in which inter alia certain hours of work have been excluded for reckoning the limit of 10 hour of duty for the running staff and it has also been ordained "that the running staff will not claim relief within 10 hours of their duty at a stretch while running through their head-quarters nor will they resort to stabling of trains short of destination on completion of 10 hours duty at a stretch". He has also challenged the impugned order of punishment dated 13.6.89(Annexure A9) withholding his increment due to him on 1.7.89, for a period of three months without the effect of postponing future increments. He has challenged the appellate order also dated 17.11.89(Annexure A-11) rejecting his appeal and confirming the punishment. The brief facts of the case are as follows.

3. The applicant joined as Diesel Assistant in 1986 when he was 23 years old. He belongs to the category of running staff. While resting at Jolarpettai he was called to work on the goods train, Palghat Jumbo loaded with rice and scheduled to leave in the early hours of 6.4.89. The applicant joined duty and 'signed on' duty at exact midnight, i.e, 00.00 hours on 6.4.89. The goods train actually started admittedly at 2.50 hours. According to the applicant after a strenuous run without any rest, relaxation or break during the whole night and without answering the call of nature and the minimum human needs, he continued on running

duty till 12 noon on 6.4.89 and claimed rest when the train reached Sankaridurg station (at 9.55 a.m.) and 'signed off' from duty at 12.20 hours after completing 12 hours 20 minutes of duty at a stretch from 'signing on' to 'signing off' . On 7.4.89 he was served with a chargesheet (Annexure A7), the Statement of Allegation against him reads as follows:-

> "Statement of allegation
>
> While the aforesaid was functioning as DSL. Asstt of train No.PGT/JB on 6.4.89 ex JTJ-ED, claimed rest at SGE at 12.00 hours, short of destination and refused to work further upto ED, resulting in stabling of train enroute."

The memorandum indicated that it was proposed "to take action against him under Rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968. A statement of imputation of misconduct or misbehaviour on which actions is proposed to be taken, as mentioned above, it is given overleaf". He represented on 17.4.89 at Annexure A8 arguing that in accordance with the "RLT award of 1969 accepted by the Railway Administration after 1977 the total maximum hours of duty at a stretch from signing 'ON' to signing 'OFF' shall not exceed 12 hours". Since he had claimed rest after this limit there is no violation of the condition of his employment. He also indicated that the charges are vague and cryptic. He explained that when claiming of rest itself was lawful, claiming of rest at short of destination or otherwise, was also lawful. The disciplinary authority, however, without considering his explanation imposed the penalty by the impugned order at Annexure A9. The appeal was also rejected by the impugned order at Annexure A10 by a non-speaking order. The applicant has surveyed the history of the fixation of hours of work of Railway servants starting from 1946 when the Government of India in the Labour Department appointed Mr.Justice Rajadhyaksha to adjudicate upon the hours of work of Railway servants, who submitted his report on 15.5.1947. In para 276 of his Award Mr.Justice Rajadhyaksha observed as follows.

> "Nevertheless humanitarian considerations as well as public safety and confidence demand that there should be a maximum limit to the hours of duty at a stretch".

The Adjudicator further pointed out that the witnesses who appeared before him were unanimous in view that continuous duty can be performed upto 12 hours and the witnesses of the Administration accepted the plea that fatigue will set in after completion of that period. The Adjudicator recommended that hours of running duty at a stretch should not ordinarily exceed 10 hours and such staff should be entitled to claim relief after a running duty of 12 hours provided two hours notice is given to the Administration in advance. The Government having accepted the recommendations, the Railway Board issued Subsidiary Instructions regarding the Loco and Traffic running staff as in Part C thereof contained in the Handbook on Hours of Employment Regulations, as at Annexure A-1. According to this annexure, hours of work of the running staff should be calculated from 'signing on' to 'signing off' and that the "overall duty at a stretch of running staff from the time of 'signing on' should not exceed 14 hours and they should be entitled to claim relief after 14 hours provided they have given two hours notice for relief to the Controller". It was also provided that "their running duty at a stretch should not ordinarily exceed 10 hours and they should be entitled to claim relief after 12 hours provided they have given two hours notice for relief to the Controller". For the purposes of computing running duty at a stretch the time should be calculated from the actual departure of the train. According to the applicant if the crew is detained at the starting station itself, that period will count for the 14 hours limit of overall duty at a stretch and that the running duty from the time of departure of the train cannot exceed ordinarily 10 hours and in any case it cannot exceed 12 hours on prior notice by staff. With changing circumstances when it became difficult to follow the prescribed maximum limits, the Government in 1969 appointed Hon'ble Mr.Justice Miabhoy to adjudicate upon again on service conditions including the question of duty at a stretch of running staff. He submitted his report in 1972 which was accepted by the Government in toto vide para 412 of the Indian Railway Administration and

Finance Code. The applicant has referred to the observations made in the report in which the need of prescribing the limit of running duty hours at a stretch and the lacuna in the Hours of Employment Regulations (HER) which prescribe only weekly and monthly limits of work and rest, were highlighted. Having regard to the aforesaid considerations the Miabhoy Tribunal recommended as follows:-

> "Running duty at a stretch of running staff should not ordinarily exceed 12 hours. But such duty may extend to a maximum period of 12 hours provided the concerned Administration gives at least two hours notice before the expiration of 10 hours 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 will be progressively reduced to by half an hour every two years from the date of this 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."

The applicant has argued that at the material time (6.4.1989) when the cause of his grievance arose, eight years had expired from the date of submission of the report and accordingly the maximum limit of 14 hours of duty from signing on to signing off had come down from 14 hours to 10 hours which is the same as the limit of running duty at a stretch. Thus the difference between the running duty at a stretch and overall duty between signing on and signing off for the running staff had come to an end. The Administration could extract 12 hours of running duty at a stretch provided as recommended by the Tribunal the Administration gives at least two hours advance notice as soon as 10 hours of running duty is completed. The applicant recalls that in 1973 there was a nation wide strike by Loco running staff demanding a limit of the duty at a stretch of running staff to 10 hours from signing on to signing off irrespective of the duration of running duty involved. The strike was called off on an Agreement signed by the then Labour Minister on behalf of the Government on 13.8.73 which was placed before Parliament on 14.8.73

by the then Railway Minister. Point No.8 in the Agreement reads as follows:-

> "Members of the Loco Running Staff will not be required to work for more than 10 hours as a stretch from signing on to signing off".(emphasis added)

Copies of the Agreement and the Statement made by the then Minister of Railways before Parliament have been appended at Annexures A2 and A3. The following extracts from the Statement would be relevant:-

> "Members of the Loco Running Staff will not be required to work for more than ten hours a stretch from signing on to signing off.
> Details and mode and manner of the implementation of ten hours of work will be discussed and finalised by the committee to be appointed and held between the representatives of the loco running staff and the Government within six weeks from the withdrawal of this agitation".

In reply to a Lok Sabha Question the then Minister of Railways stated on 29.11.77 inter alia, that the agreement that 'loco running staff will not be required to work for more than ten hours at a stretch from 'signing on ' to 'signing off' had been implemented for "all Mail, Express and Passenger trains" and that "coverage in respect of Goods trains is about Bg. Steps are in hand to complete the remaining portion also"(Annex. A4). In accordance with the Agreement a Committee was formed comprising the representatives of the Government and the Locomen. After protracted discussions, study and tests , the Railway Administration finally issued the order dated 31.8.1978 at Annexures A-5 , the relevant portion of which reads as follows:-

> " In August, 1973, the Ministry of Railways decided that the running staff would not be required to work for more than 10 hours at a stretch from the time of 'signing on' till the time of 'signing off' and this decision would be implemented in a phased manner. Accordingly, Railway Administrations were advised to take necessary measures in this respect. Necessary additional staff for the purpose of implementing the decision was cleared for sanction by competent authority by the Minister of Railways in December 1977-January 1978. Accordingly, in supersession of the provisions of Para 17 (iii) of the subsidiary instructions and the decision communicated in Board's letter No.E(LMA)68/HER/56 dated 15.7.1968, referred to above,

> the Ministry of Railways have decided that the Railway Administrations should take measures to restrict the hours of employment at a stretch of the running staff from the time of 'signing on' to the time of 'signing off' to 10 hours and provide them with relief thereafter, save in exceptional circumstances of unavoidable operational exigencies or of accidents, floods, emergencies etc. This will come into effect from 1.10.1978"(emphasis added)

The grievance of the applicant is that having issued the aforesaid decision on the basis of report of the Railway Labour Tribunal, discussions with the staff and making commitment to Parliament to restrict the hours of employment of the running staff to 10 hours not for running duty alone but from the time of 'signing on' to the time of 'signing off', the Railway Administration unilaterally issued a further order dated 3.4.81 at Annexure A-6 on the pretext of implementing the 10 hour rule of Annexure A-5 but totally modifying and repealing in effect the 10 hour rule and excluding the following periods from duty under the 10 hour rule as applicable to the running staff:-

> "(a) The time involved in bringing the engine from the shed (Baher line is the exit line of the shed) to the station after signing on and vice versa before signing off.
> (b) Pre-departure detentions this include time involved for shunting operations if any.
> (c) Time involved in taking the engine to a different station from where the train is to be moved.
> (d) Time involved in travelling on duty either to work a train after 'signing on' or to return to headquarters after working a train to sign off.
> (e) Waiting on duty".(emphasis added)

The applicant is also aggrieved by the following direction in para 4(i) of the order at Annexure A6:-

> "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 head-quarters nor will they resort to stabling of trains short of destination on completion of 10 hours duty at a stretch". (emphasis added)

According to the applicant the aforesaid provisions excluding after signing on, say pre-departure detention, prohibiting claiming relief within 10 hours of duty at a stretch while running through the headquarters and prohibiting stabling of trains short of destination, when in respect of goods train destination may involve journey exceeding 24 hours at a stretch, completely take away the meaning and significance of the 10 hour rule and subject the running staff to inhuman and intolerably exacting duties. According to the applicant,the Annexure A6 order has adversely modified the conditions of service and put the clock back to the position as it existed prior to the Adjudicator's (Mr.Justice Rajadhyaksha's) award of 1947 . He has argued that the rights of the running staff to claim rest on completion of 12 hours running duty or 14 hours overall duty at a stretch provided by the RLT award of 1969 and the requirement of notice to be given by the Administration for exceeding the permissible limits and limiting the duty at a stretch to 10 hours from signing on to signing off have been obliterated by the Annexure A6 order in one stroke. The conditions of service as to the hours of work which were in existence for a period of 34 years were altered to the disadvantage of the running staff by the Railway authorities without assigning any reason "at the whim and caprice of an employer". The impugned order at Annexure A-9 imposing the penalty stated that the applicant violated the provisions of the Railway Board's leter dated 3.4.81 at Annexure A6 when that letter is void, inoperative and unconstitutional and liable to be quashed by the Tribunal on the above grounds. It has also been argued by the applicant that the hours of employment of the Railway servants are governed by the provisions of the Indian Railways Act and the power to make rule has been delegated in the Ministry of Labour. The conditions of service also cannot be altered to the prejudice of the employees by administrative instructions. Accordingly Annexure A6 is ultra vires and beyond the competence of the Railway Board. The applicant has stated that the daily duty hours of all workers classified as continuous in the Indian Railways,

is limited to 8 hours and in no case it exceeds 10 hours and the limit is exceeded only in circumstances(accident, urgency, unforeseen emergency etc.) mentioned in Section 71(C)(4) of the Indian Railways Act. Even in the classification of 'continuous' work with split shifts with two breaks or one break of not less than 30 minutes, the maximum spread-over is limited to 16 hours and if rest between 10 p.m. and 6 a.m. is broken, the spread over is limited to 14 hours and in the first case quarters must invariably be provided to take rest during the break and the total duty hours in split shifts is the same as for other continuous workers. He has referred to para 6.187 of the Miabhoy report(quoted earlier) in which running duty has been stated to demand continued attention, alertness and exertion and it was observed that over exaction from running staff of duties "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 or depots". The applicant has thus stated that Annexure A-6 order in so far as it extends the limit of hours of work/employment beyond 10 hours from 'signing on' to 'signing off' even in circumstances other than those mentioned in Section 71 C(4), is discriminatory. The applicant has also referred to Article 2 of Convention No.1 adopted by the International Labour Organisation in its General Conference held at Washington on 29th of October, 1919 stipulating that the working hours of persons employed in private and public industrial undertakings, which include railways, shall not exceed 8 in a day or 48 in the week and in no case more than 9 in a day. He has also referred to the provisions in the Indian Factories Act 1948 prescribing 9 hours of work as the daily maximum, a compulsory rest interval of half an hour after every 5 hours of work and the daily spread of 10.5 hours. Even in exempted factories, the maximum limit of spread of daily hours of work is 12. Even with over time allowances there is prohibition to allow a worker to work for more than the prescribed hours. The Mines Act of 1952 provides a maximum of 8 hours of daily work for the under-ground workers with a total spread

of 12 hours. The Plantation Labour Act, 1951 prescribes a total spread of duty hours to 12 with compulsory rest interval of half an hour after every 5 hours of work. The National Labour Commission recommended that the hours of work of plantation labour should be reduced to 8 per day. The Motor Transport Workers Act, 1961 prescribe 8 hours as the daily maximum with a compulsory rest interval of half an hour after every 5 hours. The Shops and Establishment Acts of various States prescribe a pattern of daily maximum hours of 8 or 9 with a compulsory rest interval of one or half an hour after certain intervals with a total spread over ranging from 10.5 to 12 hours. He has also referred to Art.39(C) of Constitution of India laying down that the health and strength of the workers should not be abused and also to Art.43 which mandates that the State shall endeavour to secure by suitable legislation or economic organisation or in any other way to all workers conditions of work ensuring a decent standard of life and full enjoyment of leisure etc. The applicant has argued that the principle of providing a reasonable limit in the exaction of duty at a stretch which is applicable to all classes of workers cannot be excluded from certain categories of Railwaymen. The Annex.A5 order which provide a reasonable limit on hours of duty at a stretch of running staff was in conformity with the aforesaid provisions of the Constitution and the equality clause enshrined in Article 14 and 16 of the Constitution. Its repeal by Annexure A-6 order makes the latter order unconstitutional and discriminatory. Annexure A6 order deprives the applicant of his personal liberty after he has crossed the limit of fatigue and exhaustion and is thus violative of Article 21 of the Constitution as also Article 23 of the Constitution since it amounts to forced labour also. He has argued that the power to change limits of work is vested with the Government in the Ministry of Labour, under Section 71-E of the Railways Act and not with the Railway Board which is the employer. No employer is allowed to change the hours of work to the disadvantage of the employees because no one can be a judge of his own case. He has argued that overworking by the running staff has been resulting in

major accidents and therefore, adherence to 10 hour rule is in public interest and public good. The applicant states that immediately after Annexure A-6 instructions, the Railway Board called for a Conference of the General Managers on the 29th and 30th of April, 1981 and one of the directions(Annexure A12) given by the Railway Board was that in order to achieve economy in working expenditure, the special posts sanctioned for fulfilling the 10 hour rule should be abolished. This means that the running staff are to be put to overwork without any limit as per Annexure A-6 which would result in exploitation of labour, perpetual payment of overtime allowance and large scale reduction in employment. Annexure A-6 having been passed without hearing the affected persons is also against the principle of natural justice and therefore, void. The applicant, therefore, states that failure to comply with para 4.i of Annexure A-6 (quoted earlier about not stabling of trains short of destination) cannot be a ground for imposing the penalty on the applicant. Right to claim rest after completion of duty hours is a right exercisable on the basis of hours worked and not on the basis of the place.If he has to claim rest at destination, the question of claiming rest after 10 hours does not arise since at the destination in any case the workman breaks off duty. Destination of train cannot be a deciding factor since majority of trains require 40 to 48 hours involving 2 to 3 days to reach its destinations. Such a condition being impossible of performance and opposed to public policy and public good, cannot be complied with. He has further argued that to make disobedience a misconduct, the order must be specific and unambiguous intended to be implicitly obeyed at all events. An indication of an employer's wishes or desire is not an order unless it is so conveyed that obedience is imposed. Para 4.i of Annexure A-6 does not impose any obligation on the applicant for implicit compliance nor a failure to comply can constitute a misconduct. The order of punishment at Annexure A-9 and the appellate order at Annexure A-11 are thus ultra vires the Discipline and Appeal Rules and void. It has also been

stated that Annexures A3 and A4 , i.e, the Statement made by the then Minister of Railways before Parliament and assurance given in reply to an unstarred question constitutes a definite promise, a representation and a declaration by the respondents that the running staff will not be required to perform duty at a stretch beyond 10 hours from signing on to signing off. On such a representation the running staff withdrew their agitation. The respondents, therefore, cannot go back on Annexure A5 by issuing the unenforceable order at Annexure A-6.

4. In the counter-affidavit the respondents have stated that the general order of the Railway Board at Annexure A6 which was issued in and has been in force from 1981 cannot be challenged by the applicant who joined the Railways five years later. He joined as an Apprentice in the post of Diesel Assistant from 8.9.86 at the age of 23. He was absorbed as a Diesel Assistant on 8.7.87. As a Diesel Assistant his duty in a running train is to assist the Diesel Driver by closely watching the signals etc. and conveying it to the driver, record in the register every half an hour the readings of fuel oil pressure, lube oil pressure, booster pressure, speed of the train, throttle position etc. and obey the lawful orders of the driver. Diesel Assistants are entitled to get running allowance also in addition to the salary and dearness allowance based on the total distance covered in each month. He was working as a Diesel Assistant in goods trains with his headquarters at Erode . The loco staff are put on duty on a specified section after getting them familiarised with that section. The applicant had been familiarised in the section between Erode and Palghat extending to 155 kms and Erode-Jolarpettai section of 178 kms etc. The applicant with headquarters at Erode was to man only the goods trains in these sections and even if the goods trains concerned are bound to destinations beyond Jolarpettai or beyond Palghat, the Erode based crew will not be utilised or permitted to work the train beyond the said stations. According to the respondents on 6.4.89 the applicant was booked to work in a goods train with a driver who was 44 years old. The previous day, i.e, on 5.4.89 also he was working with the same driver from Erode to Jolarpettai after availing of full rest on 4.4.1989 at his headquarters. It is after 10 hours rest at a place other than his headquarters that they were called to work the train for which

the applicant and the driver reported at 1200 hours on the midnight between 5th and 6th of April 1989. The goods train was expected to leave Jolarpettai at 1230 a.m. on that day. It was to go to Palghat duly changing the crew enroute at Erode. The respondents have stated that though the destination of the goods train was Palghat from Jolarpettai from where the train was to start, the crew, i.e., the applicant and the driver were to complete the journey and take rest at Erode which is their headquarters. The distance between Jolarpettai and Erode is about 178 k.ms and thus the crew was expected to cover this distance which normally takes about 6 to 7 hours including detentions at intermediate stations. Thus it was expected that the crew could be relieved at Erode between 6.30 a.m. and 7.30 a.m. on 6.4.89 where there are facilities for crew changing also. However quite unexpectedly the goods train was detained at the starting station namely Jolarpettai upto 2.50 a.m. for attending to vaccum and waiting for line clearance and passage. This was unexpected and unforeseen. There were similar detentions thereafter also in the intermediate stations with the result the train could reach Sankaridurg station which is 20 k.ms short of Erode at 9.55 a.m. The running period from Jolarpettai to Sankaridurg normally is 5 hours and having started from Jolarpettai at 2.50 a.m. the goods train took 7 hours to cover the distance of 158 k.ms because of 2 hours waiting at intermediate stations for line clearance, shunting and attaching dead loco at an intermediate station. According to the respondents the actual running duty was only 5 hours excluding the detention at the intermediate station. During this period of 2 hours of shunting work, the Diesel Assistant had practically nothing to do as shunting is done by the shunters without the assistance of any Diesel Assistant. Accordingly, the detention of 2 hours at Sankaridurg was "practically a period of inaction" in so far as the applicant is concerned. Even otherwise the total working time for the applicant after leaving Jolarpettai station was only 9 hours and 10 minutes by 12 noon when the goods train in question was ready to start from Sankaridurg to Erode station as follows:-

Actual running time	5 hours 4 minutes
Detention at intermediate stations	2 hours 1 minute
Shunting works at Sankaridurg	2 hours 5 minutes

It may however be noted that the above period of 9 hours 10 minutes does not include the pre-departure detention at Jolarpettai of 2 hours 50 minutes after the applicant had reported for duty at midnight till the train started at 2.50 a.m.

5. The respondents have stated the initial fixed destination of the crew was Erode which is only 20 k.ms away from Sankaridurg and the crew were well aware of the facts and another set of crew had been alerted and kept ready at Erode station for working the goods train further to Palghat station duly relieving the crew including the applicant at their headquarters at Erode which is a major crew changing station. In spite of this when the goods train was ready to start from Sankaridurg station on getting line clearance etc. by 12 noon on the 6th of April, the applicant refused to work the train further to Erode and claimed rest at Sankaridurg even though it was only 20 kms short of the initially fixed destination of the crew. They have stated that the applicant had not given any hint about claiming rest short of destination at any time previous to claiming rest which was abrupt and sudden when the destination of Erode was only 20 kms away and the running time for that distance would have been only 30 to 40 minutes. Even though the Power Controller and the Section Controller tried to persuade the applicant to assist the driver in working the train upto Erode he refused to do so and signed off at 12.20 p.m. He took rest in the mini rest-room at Sankaridurg for the day and proceeded to Erode the following day as a passenger but the journey time was treated as duty for all purposes. The result was that the goods train suffered further detention at Sankaridurg blocking one running line though the driver had not claimed rest unlike the applicant. He, however, could not work the train upto the destination without the applicant. The relief crew started from Erode

in a separate engine and the goods train left at 2.40 p.m from Sankaridurg and reached Erode at 3.20 p.m. on 6.4.1989. If the applicant had not claimed rest he could have reached the destination station and his residence place by 12.40 p.m. The adamant stand of the applicant resulted in huge loss to the Railway administration, payment of overtime to driver and guard of the train without any work etc. According to the respondents even though the applicant was technically on duty from 12 o'clock midnight to 12'o clock in the noon, the actual running time after leaving Jolarpettai but including intermediate shunting works was only 7 hours 5 minutes. Even if the shunting work at Sankaridurg is included the actual period of work when the applicant claimed rest was 9 hours and 10 minutes. Thus out of the total duty period of 12 hours, more than 6 hours and 26 minutes (pre-departure detention period of 2 hours 20 minutes at Jolarpettai + intermediate detentions of 2 hours 1 minute + shunting time of 2 hours 5 minutes at Sankaridurg) was completely inactive period. Thus the pretext of claiming rest was a deliberate action on the part of the applicant to cause harassment, inconvenience and loss to the Railway administration and the nation as a whole. In accordance with the order at Annexure A-6 the applicant was duty-bound to work the train upto the destination without stabling the train short of destination under the pretext of 10 hour rule especially when he could have reached the destination in another 30 to 40 minutes. The applicant has tried to justify his misdemeanour by challenging the order of the Railway Board and other authorities. The respondents have argued that even if the order of the Railway Board and other authorities are unjust or unreasonable, an employee cannot of his own, disobey them and it is the duty of the employee to obey the orders and instructions of Railway Board and other authorities so long as they are in force, especially when Annexure A-6 had been in force from 1981, i.e. for 5 years prior to the applicant's joining the Railway service. It is in these circumstances

that the minor penalty of withholding of increment for 3 months without recurring effect was imposed which was confirmed by the appellate order.

6. The respondents have further stated the provisions of Hours of Employment Regulations(HER) are modified from time to time by the orders of the Railway Board and Annexure A-6 order is the latest current order regarding the subject matter for the entire Indian Railways. The applicant cannot invoke the facilities and concessions available in 1946 and 1969 when steam locomotives were in operation for his benefit when he was on duty on a far more comfortable diesel engine. The working condition of the crew in a steam locomotive are far more difficult than in diesel locomotives and the earlier awards and reports have to be viewed in that context. They have argued that a Diesel Assistant works under conditions in a diesel engine not very different from that of the office staff. The respondents have further argued that the Agreement reached with the Action Committee of the loco running staff at Annexure A-2 and the Statement made by the then Minister of Railways in Parliament at Annexure A-3 and the reply to the Lok Sabha question dated 29.11.77 at Annexure A-4 have no legal sanctity.

7. The respondents, however, have stated that the earlier order of the Railway Board dated 31.8.1978(Annexure A5) has to be read along with the impugned order dated 3.4.81 at Annexure A-6 and that "it(Annexure A-6) has not in any way diluted or taken away the 10 hours rule as projected by the applicant". The exclusion of pre-departure detention from the operation of 10 hours rule cannot in any way be said to be unjust. The impugned order at Annexure A-6 states that the employee shall not claim rest in the middle of duty time or before completing 10 hours duty simply because the train passes through his headquarters and station of his residence. This is to avoid operational inconveniences and difficulties which may occur if an employee claims rest after 5 or 6 hours duty. Similarly the other provision in the impugned order prohibiting stabling of trains short of destination simply because

of completion of 10 hours of duty is also very essential. They have clarified that the term'destination' is not meant as the destination of the train but the destination upto which the concerned crew are to work. In the present case, therefore, the destination, so far as the applicant is concerned was Erode. When the applicant was assigned duty at Jolarpettai it was to work the train upto Erode which could have been completed normally within 6 to 7 hours. The pre-departure detentions at Jolarpettai and at intermediate stations were not at all contemplated when the duty was assigned. They have stated that Annexure A-5 order also makes provisions for such unforeseen contingencies "that there is no contradiction between Annexure A5 and Annexure A6 and none of the rights under Annexure A-5 have been taken away by Annexure A6 as stated and alleged by the applicant". They have stated that in case of goods train arrangements are made not to exceed 10 hours duty time and in the present case also in the normal course the applicant would have been on overall duty for about 6 to 7 hours. Due to unforeseen circumstances the overall duty time including pre-departure detention exceeded the initial expectations but such contingencies cannot be avoided in a large Organisation like the Railways. In the Palghat Division about 5000 goods trains are being moved every month and they have to be moved without causing detention to the passenger trains. In such scheduling unexpected engine troubles and wagon defects are unavoidable and it is to avoid stabling of the trains in the mid-stations and causing further inconvenience to the Railway administration and public at large, that sufficient safeguards were provided in Annexure A-5 and A-6 orders.

8. As regards the alleged overwork, the respondents have stated that during the fortnight periods between 26.2.89 and 3.6.89 there was no period of overwork and the applicant as a matter of fact had worked for lesser hours than the rostered hours of duty of 104 hours per fortnight. Between 26.3.89 and 8.4.89 including the date of 6.4.89 in question also, the total period of work including the period of inaction

of the applicant was 89 hours and 15 minutes as against normal rostered hours of duty of 104 hours in a fortnight.

9. The respondents have urged that Annexure A-6 order is not in violation but in effective implementation of the 10 hour rule and there is no injustice or violation of the principle of natural justice in issuing the Annexure A-6 order. The order has been in force for the last 9 years and the applicant entered the service with the said rule as a service condition. He is estopped from challenging the said rule. As regards the vagueness of the charge, the respondents have stated that "it is not the perfection of the language which matters in the charge memo like the one issued to the applicant. The question is whether the applicant has understood the charge levelled against him". From his reply to the charge memo at Annexure A-8 it is clear that he had understood the charge. They have further argued that for imposition of a minor penalty "detailed speaking order is not at all necessary as claimed by the applicant". They have further stated that the punishment order at Annexure A-9 gives the reason for imposition of penalty and that "it is not the descriptive language which matters" . The justification of the applicant that he was claiming rest legitimately after completing 12 hours 20 minutes duty is contrary to the terms of Annexure A6 and that" it is not for the applicant or the disciplinary authorities concerned to analyse orders like Annexure A.6 and act contrary to it". The Railway Board has got full powers to issue orders of general application pertaining to Railway servants and the Supreme Court has held in Subramaniam's case, 1978 KLT 23, that such orders of the Railway Board has got the statutory force and effect. The respondents have further stated that Annexure A-6 order cannot be challenged on the ground that it is against the earlier order of the Railway Board at Annexure A-5 because "it is not in any way in conflict with Annexure A-5". Even if it is in conflict, being a later order, it has to prevail. They have denied that there is any unreasonableness, injustice, arbitrariness or discrimination in Annexure

A-6 order as projected by the applicant. The applicant is unmindful of the responsibilities and duties cast on him and he cannot invoke the provisions of Factories Act, Plantation Labours Act, Motor Transport Workers Act etc. for justifying his action. He is entitled to claim overtime allowance for the inactive period of his duty hours but over and above that he is claiming rest also on account of such inactive period. So long as he opts for the Railway employment he will have to work as per the rules applicable to him. Accidents cannot be avoided simply by allowing the employees to while away their time without any work under the guise of rest. The applicant is trying to confuse the matter by projecting the word 'destination' in a manner which is impossible of performance, when it is meant only in respect of the crew of the running staff.

10. In the rejoinder the applicant has referred to the punishment order at Annexure A-9 in which it was clearly stated that the impugned order at Annexure A-6 was "communicated to all depots vide letter No.J/Tp29/PrRg/10hr.rule, dated 6.3.89. He has also argued that Annexure A-6 is not a general order. It applies only to the running staff who form 2.5% of the Railwaymen. Since Annexure A-6 order is applicable to all running staff including those on steam loco, diesel loco, electric loco as also to goods drivers, passenger drivers, diesel assistants etc., it cannot be justified on the basis of the working conditions of the Diesel Assistants alone. He has further argued that there is no basis in the proposition of Annexure A-6 that a crew can take rest at headquarters short of destination when Annexure A-6 specifically prohibits the same and when according to the respondents, crew changing can be done at any station and at Sankaridurg station itself mini rest room facility is available. According to him attending to vaccum, checking of brake power of the train are not unforeseen and unexpected detentions and they are quite normal and these are well pre-planned and the movement is controlled from a centralised place so that the authorities know when and where the crew and train will be at any subsequent time and thus relief can be provided at any place at appropriate time. According to him by no stretch

of imagination shunting operations and detentions for line clearance can be interpreted as period of waiting and the limit of 10 hours of duty at a stretch was arrived at after making due allowances for these aspects also. If Diesel Assistants are not required to do any duty during the shunting operations and detention periods, the respondents could have asked them to take rest. The running staff are classified as continuous category and their daily hours of work is fixed as 8 and weekly 48. If the period of inaction is more than one hour but less than six hours during the period of duty then the duty becomes continuous. Therefore the classification of running staff as continuous allows and presumes the period of inaction between one to six hours as normal and this has been taken into account in fixing the daily and weekly periods of work. The periods of inaction, therefore, cannot be the basis of increasing their duty hours by excluding them from the computation of ten hours of work/ employment.

11. The applicant has challenged the averment of the respondents that the initially fixed destination of the goods train was Erode, by stating that if it were so then the destination can be changed at the sweet-will of the respondents, that Annexure A.6 refers to destination of the train and not the headquarters of the crew for rest. He has averred that no crew was kept ready at Erode and if it were so the same could have been sent to Sankaridurg which was only 20 k.ms away. He has stated that it is not true that the goods train was ready to start at 1200 o'clock from Sankaridurg. He has averred that he had given prior intimation about the requirement of rest as Annexure A7 charge memo does not allege that the applicant did not give prior intimation. For goods train there is no time limit to cover certain distance. The applicant was fully exhausted when he claimed rest. It was not his refusal but his incapacity to work more without proper rest with sleepless night and devoid of minimum human needs. The mini rest room at Sankaridurg was provided for running staff and if rest could not be availed of 20 k.ms short of the crew headquarters there was no need to construct

a rest room at Sankaridurg. The goods train left Sankaridurg at 2.40 p.m. but if respondents had sent the relieving crew earlier there could not have been any delay. If he had not claimed rest he would have been forced to work till 3.40 p.m. when the train finally reached Erode and his working hours would have exceeded 15 hours at a stretch. He has argued that hours of employment is the period that elapses between the event of signing on and event at signing off. This period must necessarily include the periods of inaction also. The respondents were aware that the applicant had already completed his duty hours and advance information had been given by him. He had worked at a stretch of 12 hours 20 minutes with sleepless night and he could not remain on duty any further. Hence he gave notice and claimed rest. Even sitting in a chair in an air-conditioned room for 12 hours continuously will leave anybody exhausted. If the dirver did not claim rest then it is not understood why he was given relief by another driver. The shunting work accordingly to him was not inactive period but more active than through running. He has produced a statement at Annexure A.13 showing the overworking of the crew to prove how regular and extreme the violation and exploitation is. He denies that he was insubordinate but states that he was incapacitated to work any more. According to him he claimed rest only after continuous duty of 12 hours and 20 minutes when a 'continuous' worker is on an average given only 8 hours of daily work. He has argued that the Railway Board has no power to regulate the rules of hours of work. The power is vested with the Central Government, Ministry of Labour and that in any case Annexure A.6 is not a rule. Since Annexure A.6 applies throughout the Indian Railways and makes no distinction between steam/diesel/electrical tractions, it cannot be justified on the basis of the working conditions of diesel locomotives alone.The pre-departure and post-departure period are considered to be on duty and to say that the running staff is relaxing during the shunting period is a travesty of truth. There was no indication given to him that the destination of the goods train was at Erode when he was called to

work the goods train from Jolarpettai. In accordance with Annexure A.5, the 10 hour rules applies to the period from signing on to signing off and public interest does not warrant running trains at the peril of employees. The 10 hour rule in Annexure A.5 was issued after 5 years (1973-78) of trial and it worked smoothly till 1981 when it was deliberately altered by the Annexure A.6. The rostered weekly hours cannot justify putting the running staff on duty at a stretch upto the weekly limit. An employee in that case can be put to work for 100 hours at a stretch without exceeding the roster hours of 104 in the fortnight. The universally adopted norms about the limit to which a human being or an animal or a machine can be put at a stretch have been ignored in the order at Annexure A.6. The Railways by that order has tried to exploit the labour. This element of exploitation is evident from Annexure A.12 dated May, 1981 in which it was indicated that as a measure of economy "the special posts for 10 hours should be abolished". He has further argued that the charge did not disclose the destination of the train or the rule which had been violated for claiming rest or the limit upto which the applicant was expected to work. Annexure A.6 according to him is only an administrative instruction and not a rule and that if as stated by the respondents Annexure A.6 is not in conflict with Annex. A.5 then there was no reason to issue Annexure A.6. Annexure A.5 was issued in implementation of an agreement and promise made on the floor of Parliament and it is merged with the condition of service which cannot be revoked by Annexure A.6 by the same authority. The limit of 10 hours includes the period of inaction. He has further stated that Annexure A.6 was not brought into force before the applicant entered service and that if the applicant had taken the train upto Erode when no crew was available and claimed rest there, then also he could have been charged for claiming rest short of destination. The applicant has also produced the penalty orders of various goods train drivers for claiming rest in violation of Annexure A.6 order to show that not merely diesel assistants but drivers also were claiming rest.

12. In the additional affidavit, the respondents have stated that the impugned order at Annexure A.6 was issued and brought into force from 1981 onwards, that the order was of general application and has the force of rules. They have clarified that the letter dated 6.3.89 referred to in the order of punishment at Annex. A.9, a copy of which is at Exbt.R.1(a) was only a reminder about the relevant provisions of Annexure A.6 and cannot be construed to mean that Annexure A.6 came into force from the date of such reminder. Violation of Annexure A. 6 amounts to misconduct. They have stated that from the report of Guard and driver at Exbt.R.3 it is evident that the train reached at Sankaridurg at 9.55 a.m. and was detained in shunting operation upto 12 noon and the applicant claimed rest only at 12 noon and not before. They have referred to the charge memorandum at Annexure A.7 in which Erode was mentioned to qualify the destination of the applicant. In his explanation to the charge-memo he had not doubted the destination being Erode nor did he raise the question of his being a case of fatigue. They have explained the justification of having a rest room facility at Sankaridurg by stating that since there is a Cement factory at Sankaridurg the room was provided for the benefit of the shunters who have to operate between the station and the factory. They have reiterated that during the shunting period the Diesel Assistant does not have any work in the real sense. They have stated that every effort is being made to minimise the instances of running staff working for more than 10 hours at a stretch as that would avoid payment of overtime wages also. The instances of running staff working for more than 10 hours form only 5 per cent of the total.

13. In the additional counter affidavit the respondents have stated that it is the duty of the Diesel Assistant to work the train upto their designed destination rather than leaving at a mid-station on the mere completion of 10 hours of duty according to their own calculations. Meticulous care is taken to provide the running staff at crew changing stations with comfortable sleeping arrangements, food at subsidised rates etc.

14. In the additional rejoinder the applicant has stated that Annexure A.6 virtually repeals the fruits of the RLT (Railway Labour Tribunal) Award as enunciated at Annexure A.5. In accordance with the RLT award, notice is required to be given by the respondents before running duty beyond 10 hours can be asked for. According to the applicant immediately on arrival at Sankaridurg he informed that he requires rest. He worked for two more hours but when no relieving crew arrived he signed off. He has argued that the call book at Jolarpettai was not produced by the respondents to prove that he was called to work the train upto Erode. He concedes that though he did not mention his fatigue in reply to the charge-memorandum, he mentioned it in his appeal. He has stated that no overtime is payable for exceeding 10 hours at a stretch. Overtime is payable when employee exceeds 104 hours in a two weekly period only.

15. In the written argument, the learned counsel for the respondents has given a historical survey of the various provisions relating to the hours of work of the Railway servants. They have argued that having regard to the gigantic task of movement of passenger and goods trains and complexities involved, it is virtually impossible to have a rule that running staff can be assigned only prescribed duty hours from 'signing on to signing off'. This will mean that they will be entitled to stopping the train running late where their duty hours come to an end and walk off from the trains. To solve this problem the crew changing stations have been established keeping in view running time by Express trains being approximately 4 hours between them and by goods train about 7 to 9 hours. The running staff know where the crew changing stations are and relief will be available. They have already been on running duty for the prescribed minimum period. Disciplinary action was taken because the staff claimed rest and refused to continue on duty within short distances of pre-determined station where they knew that relief had been arranged. They have quoted Section 71-F of the Indian Railway Act which

reads as follows:

> " Nothing in this Chapter or the Rules made thereunder shall authorise a Railway Servant to leave his duty where due provision has been made for his relief, until he has been relieved".

They have referred to instructions 17(iii) prescribing running duty at a stretch and not to exceed 10 hours and computing the duty from time of actual departure of the train. The order dated 15.7.68 of the Railway Board clarified that hour of duty at a stretch of running staff would start from the time of 'signing on' should not exceed 14 hours and they can claim relief after 14 hours provided they have given two hours notice for relief to the Controller. They have conceded that the Miabhoy Award (RLT Award 1969) was accepted in principle in which it was recommended that maximum hours of duty from signing on to signing off was not to exceed 14 hours for the running staff and the limit will be reduced to 12 hours at the end of 8 years from the date of report. After the nation-wide strike in May, 1974 by the running staff, orders were issued on 31.8.78 (Annexure A.5) restricting the hours of employment of the running staff at a stretch from signing on to signing off to 10 hours and providing with relief thereafter. The respondents have interpreted it to say that this postulates employment from the actual departure of the train even though para 17(iii) of the Subsidiary Instructions of the HER have been superseded. They have argued that the Railway can insist on longer hours of duty being warranted by exceptional circumstances and unavoidable operational exigencies. They have referred to Annexure R.7 dated 4.7.81 which states that non-running duties will be excluded for the purpose of reckoning duty at a stretch. Annexure A.5 is only a directive to the Railway administration to take measure to restrict the hours of employment at a stretch to 10 hours and the periods spent on non-running duties are liable to be excluded under Annexure R.6. Under para 17(iii) the running duty at a stretch could work upto 12 hours and even to 14 hours. "Annexure A.6 gives certain guidelines regarding the manner in which the Annexure A.5 should be implemented". Under these guidelines engine attendance time taken from starting station to the crew changing station intermediate detentions will count for duty while period from bahar line to station at the starting point, pre-departure detention and travelling pilor will not count for the 10 hour duty. "The applicable orders therefore may

be understood as Annexure A.5 read with Annex.R7 and also as modified by Annexure A.6 dated 3.4.1981".

16. The respondents have stated that Section 71-E of the Railway Act and Rule 157 of the Railway Establishment Code confer power on the Railway Board to frame rules on several matters including conditions of service. Rule 157 of the Railway Establishment Code confers similar powers on the Railway Board.(AIR 1969 SC 118; AIR 1978 SC 284). They have also cited a number of rulings of the Supreme Court to establish that executive orders can be issued on matters where rules are silent (AIR 1979 SC 1060). They have also cited the decision in 1973(1) SLR 928 to support the view that administrative instructions can be changed by subsequent administrative instructions. They have referred to 1990(6) SLR 374 where enhancement of hours of work from 6 1/2 hours to 8 hours,by administrative orders was upheld. They have mentioned that by the Railway Board's letter of 30.5.64 running duty at a stretch was restricted to 14 hours and where no notice was given, the running duty could have been more. It was in 1968 that an additional limitation of 14 hours from signing on to signing off was laid down in Railway Board's letter dated 15.7.68. Annexure A.5 superseded the previous letter of the Board dated 15.7.68 because the duty period from signing on to signing off was stated to be 10 hours. "When the clarifications at Exbt.R.7 and Annexure A.6 were issued the necessity of bringing back the 14 hours period between signing on and signing off may have gone unnoticed". This may be a lacuna but it cannot be presumed that the Railway administration will abuse their power and insist on unreasonable hours of work. The written argument of the respondents goes on to state as follows:-

> " However, having regard to the apprehensions expressed in the course of hearing and in deference to the view expressed by the Hon'ble Tribunal, the matter has been taken up with the Ministry of Railways and the Railway Board. The expression of apprehension voiced by the applicants that inhumane hours of work may be imposed on the Loco Running staff on being communicated to the Government, the instructions has been issued as per E(LL)91/HER/1-11 dated 20.9.1991 limiting the total hours of duty from signing on to signing off to 14 hours except

in exceptional circumstances such as accidents, floods, agitations, emergencies, failure of Railway equipments etc. This clarification has been issued to allay all such apprehensions. This is Enclosure X4. It may kindly be recalled that an undertaking was given in the course of the hearing that the Central Government have no objection in having such a submission being recorded by the Tribunal and incorporated in the order".

17. The respondents have stated that constitutional validity of a provision cannot be challenged on the ground that it can be abused. According to them, the limiting of total hours of duty from 'signing on' to 'signing off' to 10 hours is totally impracticable and unrealistic. This was omitted to be taken note of when Annexure A.5 was issued. When it was realised the clarification was issued at Annexure R.7. If the pre-departure delays are added to the running duty the motivation will also be to delay the departure. Annexure A.6 cannot be said to be arbitrary because high placed officers will not allow Annexure A.6 to be abused to insist on inhumane hours of work from the running staff. Discretionary powers is not necessarily discriminatory. They have stated that the objective of limiting the duty hours from wheel movement to wheel stop to 10 hours has been achieved in Southern Railways in more than 90 percent of the cases. Overtime allowances and bonus payment are made to compensate for additional hardship caused by overwork. It is in exceptional cases the total duty hours are allowed to exceed 14 hours. Annexure A.5, Annex.R.7, Annexure A.6 have been issued by the same authority and have been published in the same manner. In the shed order book the members of staff attached to the loco shed have to sign in token of having seen the same. General rules 2.03 of the General Rules, 1986 issued under Section 47 of the Indian Railways Act reads as follows:-

> "2.03: Every Railway servant shall be conversant with the Rules relating to his duties whether supplied or not with a copy of the rules relating to his duties and the Railway Administration shall ensure that he does so."

Rule 2.06 provides thus:-

> "Obedience to Rules and orders --
> Every Railway servant shall promptly observe all rules

and special instructions and all lawful orders given by his superiors".

The respondents have further argued as follows:-

" It has also to be pointed out that administrative orders can never be categorised as nullities in the eye of law. Please see para 23 of 1990(1) SCC 234 at 236-247. ALL employees have to obey such instructions or guidelines of general applications so long as they are in force. No employee is entitled to take upon himself the responsibility of making up of his mind that a Rule or administrative instruction is unconstitutional and decide to disobey it. If such a right is recognised in employees, the administrative machinery not only in Railway but in all departments will necessarily break down."

18. The applicant has chosen to disobey the order at Annexure A.6 resorting to stabling of trains and refusing to perform the duties within short distance of crew changing station and deliberately refused to work ignoring the mandate of Section 71-F of the Railways Act. They have been let off with only minor penalties. Their refusal to work even more than 12 hours on the basis of the 10 hour rule at Annexure A.5 is punishable. If Annex.A.6 is void then Annexure A.5 also cannot be upheld. Administrative instructions can be amended or modified by further administrative instructions. It has been further argued that Section 9(A) of the I.D. Act about giving notice before changing condition of service is not applicable since the employees governed by the Indian Railway Establishment Code are outside the purview of this provision of the I.D. Act.

19. In reply to the written arguments of the respondents, the counsel for the applicant submitted written arguments as follows. It has been argued that Annexure A.6 order has to be construed with reference to the language used thereon and not otherwise (vide AIR 1952 SC 16) . No ground except that of economy by the abolition of posts (Annexure A.12) created for implementing the 10 hour rule has been brought out to justify the Annexure A.6 order. In the Railway Board's letter dated 13.6.74 based on the RLT Award of 1969 it is made clear

that "the existing practice of treating the whole period from signing on to signing off as period of duty for running staff will continue" even though as continuous category staff, the running staff are entitled to get daily duty hours limited to 8 hours. The applicants are merely opposing the daily duty hours beyond 10 hours at a stretch or the daily duty hours at a stretch without limitation. The observations of the Railway Labour Tribunal (RLT) Report 1969 in para 6.187 have been referred to in which it was stated that the running duty demands continued attention alertness and exertion in its performance and any exaction have far reaching repercussions of safety of public, person and property. Stabling of rolling stock is a regular phenomena in Railway working and the stabling of goods trains enroute is inevitable. Operational necessity may not be the direct result of crew claiming rest but a direct inevitable result of not arranging relief to the crew who have completed their working hours. Reference has been made to the observations made in the counter affidavit by the respondents that where two crew changing stations lie within a short distance relief can be arranged at an intermittent station if the train cannot reach the next crew changing station lying further ahead instead of changing the crew within the short period of time betweenthe two closely adjoining crew changing stations. Thus there can be no difficulty in arranging crew change at any station enroute when the crew completes the duty hours and claims rest. Whenever a train leaves the station the correct time at which the crew signed on is phoned to the Station Controller when a definite path is also worked out for the journey. The Controller therefore, can estimate the time and place where the crew will complete the duty hours and arrange relief crew even by crew movement jeeps provided by at all depots. Annexure A.5 specifically mention 10 hours between signing on and signing off and in exceptional circumstances in which this limit can be exceeded. The exceptions indicated in Annexure A.5 are relevant only to the provision of relief i.e. when reliefs cannot be made available due to the accident etc. and not for any other reason. For stationary staff the period

of duty is only 8 hours and duty at a stretch beyond 10 hours in exceptional circumstances is not permitted. The pre-departure detention for running staff commences only after the crew takes over the engine and attaches the engine to the formation. After its vacuum is created and brake power certificate issued, the crew has to attend to the engine for 45 minutes before the departure from the engine shed is allowed and the engine is driven from the shed to the formation. These periods are active periods and not an inactive period or for relaxation. If a Station Master or other travelling staff remains inactivefor some period that is not taken into account for extending their daily limit of duty hours. Section 71(C) (4) of the Railway Act does not say that 54 hours a week can be restricted in one stretch. If that were so, there was no purpose in prescribing rest of 30 hours including night in bed. No worker is expected to work all the 24 hours. The concept of 54 hours in a week on an average of month is now supplemented by the award of RLT 1969. It is now 8 hours a day or 48 hours a week. Annexure A.6 is capable of putting workmen to unreasonable working hours as a normal feature without any reason. According to Annexure A.6 crew change stations are not the terminee because according to the respondents themselves relief need not be arranged at the crew changing stations only. The measure of rest and crew changing is always the time and not the distance. Reference has been made to O.A. 908/90 in which the applicant therein signed on at 1 p.m. at Quilon. He was ordered to pass through Kottayam, the next crew changing station and directed to proceed to Palghat without crew changing at Ernakulam which was his headquarters. He signed on at 1 p.m. and claimed rest at 1050 pm. Relief was not provided at Trichur. According to the applicant Section 71-F has no application to a case where no provision has been made for relief. Section 71-F applies where relief is arranged in advance and not otherwise. The decision that running staff would not be required to work for more than 10 hours at a stretch from signing on to signing off came into effect by Annexure A.5 from

1.10.78. The Railways can insist on longer hours if they cannot provide relief due to unavoidable operational exigencies like floods etc. and not for lack of staff. The item of non-running duties indicated in R.7 like travelling spare on duty, waiting at station for returning to HQ being not connected with movement of train are excluded. There was no need to issue Annexure A.6 after R.7 but para 2 of Annexure A.6 excludes running duties also. When the engine is taken from Bahar line to the formation and the staff remain on the engine the duties are directly indicated with the movement of train and cannot be excluded. Annexure A.6 was issued to economise on staff by increasing working hours beyond the 10 hour rule. This is evident from Annexure A.12. With Annexure A.5 the concept of wheel movement and running duty has vanished and running duty cannot be interpreted to mean the duty from the time the wheel moves. It has been stated that in accordance with the definition Rule 2 of the Railway Service (Hours of Employment) Rules, 1961 Government means the Central Government in the Ministry of Labour and Employment and not the Railway Board. Under the Railway Board's Act 1905 the Central Government may by notification vest Railway Board with all or any other powers of the Central Government under the Indian Railways Act 1890. Under the Railway Act, the Central Government has no rule making powers in respect of the conditions of the service of Railway servants. An earlier order conferring vested rights cannot be altered to the disadvantage by subsequent order except for undoing an injustice or correct a mistake. Annexure A.5 merged in the rule and became a part of the conditions of service. The provisions of Indian Railways Act and the HER were silent about the daily duty hours at a stretch and therefore Annexure A.5 purported to fill up the gap. Annexure A.5 having merged into service conditions, it cannot be altered except by statute or statutory rules (AIR 1967 SC 1889). Annexure A.5 is a statutory rule whereas Annexure A.6 is administrative instructions. The limit of 10 hour of overall duty has been indirectly taken away by Annexure A.6 by excluding certain period of duty. Having done that there was

no need to limit the hours to 14 hours. Already drivers and diesel assistants are subjected to 10 hours of running duty as against the 8 hours for others. Over and above that they can be over burdened by two hours without any additional benefit. Putting the workers to longer inhuman working hours and at times paying them high overtime allowances and then reducing the number of posts and thus employment opportunities for others cannot be held to be in public interest. Annexure A.6 is not a clarificatory order to Annexure A.5. It specifically excludes the period which are included in Annexure A.5 . The theory that highly placed persons will act responsibily and not arbitrarily or capriciously has not been accepted by the Supreme Court in Delhi Transport Corporation vs. Workmen (AIR 1991 SC 101). Accordingly Annexure A.6 can be abused and workers exploited. The Adjudicator's award of 1947, the 1968 order and the RLT award of 1969 and Annexure A.5 consistently put a limit to daily duty hours at a stretch for the running staff. The outcome of all these has been taken away at a stroke by Annexure A.6 order without any limit to duty hours. Before the RLT Award of 1969 the Railway's main contention was that on dieselisation they will be able to reduce the working hours and give a fair treatment to the running staff. It is on this submission that RLT award of 1969 provided for 1/2 hour reduction every year and reaching the 12 hour limit of overall daily duty at the end of 8 years i.e., by 1980. No employer can dictate what is the reasonable hours of duty. Annexure A.6 of 1981 was notified to the staff concerned only on 27.3.88, therefore, the applicants are not bound by the same. Rules are binding only when they are published (AIR 1951 SC 467; AIR 1960 SC 430 and AIR 1960 SC 395).

20. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The main question in this application is the validity of the impugned order at Annexure A.6 issued by the Railway Board dated 3.4.1981 and of the validity of the punishment order at Annexure A.9 in which the punishment was imposed for violation of the order at Annexure A.6. The punishment order and the appellate order at Annexure A.9 have been challenged

on other grounds also. We take up the validity of the Railway Board order dated 3.4.81 at Annexure A.6 first.

21. In order to examine the validity of the impugned order at Annexure A.6 it will be necessary to recapitulate the historical and administrative backdrop against which the order was issued. The main issue involved is the question of hours of work and employment of the loco staff of the Railways. It is admitted that loco staff is a sub category of the category of running staff who are classified as working on a 'continuous' basis. The hours of work of the Railway staff are statutorily prescribed by categorising them as "Continuous workers", "Intensive workers", "Essentially intermittent" or "Excluded" workers. For each category, different limits of hours of work are provided for in what is known as "the Hours of Employment Regulations"(hereinafter referred to as HER). In accordance with the preamble to the HER, Chapter VI-A of the Indian Railways Act, 1890(as amended in the Indian Railways (Amendment) Act, 1956), the rules made thereunder as well as the Subsidiary Instructions issued by the Railway Board are referred to as the Hours of Employment Regulations. The Indian Railways Act of 1890 and the rules framed under Section 71-E of the Act and known as the Railway Servants (Hours of Employment) Rules,1961 have statutory force. After the country attained independence the question of balancing the hours of work of the running staff and the optimum utilisation of the available facilities and providing the essential service of Railway transport to its citizens have been matters of concern to the powers that be. Chapter VI-A was incorporated in the Indian Railways Act in 1956 providing for categorisation of the Railway staff as "Continuous", "Essentially intermittent", "Intensive" and "Excluded" and specifying the upper limits of hours of work for each category as also quantifying the grant of periodical rest. It also gave the Central Government powers to make rules on such matters. While Section 71-F of that Chapter prohibited the Railway servants from leaving his duty "where due provision has been made for his relief until he has been relieved", Section 71-H of the same Chapter penalised any person under whose authority any Railway servant is employed in contravention of any of the provisions of that Chapter.

22. The HER were introduced in 1931 keeping in view the relevant provisions of the International Labour Organisation Convention No.1 of 1919 relating to hours of work and Convention No.3 of 1921 relating to periodical rest of industrial workers. The running staff, however, were not brought within the scope of these regulations. In 1946 the HER were referred for adjudication by the Ministry of Labour to Mr.Justice Rajadhyaksha and based on the Award given by Mr.Justice Rajadhyaksha in May 1947, the HER were revised in April, 1951 when for the first time the running staff including the loco staff were brought within the purview of the revised HER.

23. In regard to the duty hours the Rajadhyaksha Award recommended as follows:-

> "Their running duty at a stretch should not ordinarily exceed 10 hours and they should be entitled to claim relief after 12 hours, provided they have given 2 hours' notice for relief to the Controller. For the purpose of computing duty at a stretch, time should be calculated from the actual departure of the train".

24. Based on the above and other recommendations and the Railway Board's letter dated 15th July 1968, paras 17(iii) and (iv) of Special Instructions in the HER regarding loco and traffic staff read as follows:-

> (iii) Their running duty at a stretch should not ordinarily exceed ten hours and they should be entitled to claim relief after twelve hours, provided they have given two hours' notice for relief to the Controller. For the purpose of computing duty at a stretch the time should be calculated from the actual departure of the train.
>
> (iv) The allowance for engine and train attendance will be as under -
>
> (a) Engine attendance- Forty-five minutes before the departure from the engine shed and fifteen minutes after arrival in the engine shed except for garret and other special type engines for which the Railway Administrations themselves may legislate.

> In addition to these provisions, the overall duty at a stretch of running staff from the time of 'signing off'should not exceed 14 hours and they should be entitled to claim relief after 14 hours, provided they have given two hours notice for relief to the Controller".(emphasis added)

From the above it is clear that for the loco staff a clear distinction was being made right from 1947 between the 'running duty at a stretch' and 'overall duty at a stretch' and two separate upper limits were prescribed. The running duty at a stretch was limited to 10 hours extendable to 12 hours after two hours' notice by the staff. The overall duty of the running staff at a stretch from the time of 'signing on' to the time of 'signing off' was limited to 14 hours after which they could claim relief after giving two hours notice. Running duty at a stretch for loco and traffic running staff was laid down in para 6 of general instructions in Section VI of the HER by the Board's confidential letter of 2 /30th May 1964 as follows:-

> "In the case of Loco and Traffic Running staff, running duty at a stretch should not ordinarily exceed 10 hours and they should be entitled to claim relief after 12 hours provided they have given two hours notice for relief to the Controller. For the purpose of computing "Running duty" at a stretch, time shall be calculated from the actual departure of the train from the starting station. At any rate the maximum running duty at a stretch for Drivers should not exceed 14 hours except in unforeseen circumstances like accidents, breaches, etc. No Driver must be permitted to work beyond this limit irrespective of whether he has claimed relief or not." (emphasis added)

The duty hours of loco running staff was defined in para 19 of general instructions in Section V of the HER handbook as follows:-

> "19.Duty hours -(i) Loco and Traffic Running staff - Duty should count from 'Signing of' to 'Signing off'".

The definition of 'signing on' and 'signing off' was given in the note below para 4 of Section VII of the HER handbook as follows:-

"Note-"Signing on" is the time at which the Running staff are required to report for duty; "Signing off" is the time at which Running staff are required to break off duty at the end of a tour of duty".

It will, thus, be clear that for the loco running staff till 1968 the normal limit of running duty hours at a stretch from the time of actual departure of the train was 10 hours extendable to 12 hours and the limit of total duty hours at a stretch from 'signing on' to 'signing off' for the loco staff was 14 hours.

25. In 1969 the Government appointed Hon'ble Mr.Justice Miabhoy to adjudicate upon the various conditions of service including the question of duty at a stretch of the running staff. He submitted his Award which was accepted in toto by the Government vide para 412 of "Indian Railway Administration and Finance - An Introduction". This Award is known as the Railway Labour Tribunal Award of 1969 (RLT Award of 1969). The Tribunal clearly stated that there should be an upper limit of running duty at a stretch because the 2 hours notice(vide Rajadhyaksha Award and 1964 and 1968 letters cited above) to be given by the staff for limiting the running duty to 12 hours for being relieved is not always possible as the notice was difficult to be communicated to the Controller. It also stated that exaction of continuous work in any one day beyond a certain limit is inhuman. We can do no better than to bring out the observations and finding of the RLT Award of 1969 by quoting in extenso para 6.187 of the RLT 1969 Report as follows:-

"6.187. I am not in agreement with the view that status quo should be maintained because of the prospective improvements which are expected to reduce the size of the problem , one must bear two factors in mind. The first factor is that the period between signing-on and actual departure of a train is comparatively a period of light work and that such work is not likely, beyond consuming time of staff, to cause any strain on its physique. The second factor is that, if detention of a train takes place at a place of departure, nature of work will be equally light. The process of fatigue which can affect human physique will start only after a certain time elapses from commencement of running duty. Therefore, in my opinion, what is required to be done is to set an upper limit on running duty. Under the present rules, in substance, no such limit has been prescribed because of the rule which requires that 2 hours' notice must be given if the concerned staff requires to be relieved after completion of 12 hours' duty. Now, there is evidence to the effect that this proviso is difficult to comply with in a large majority of cases. The concerned staff is not often able to foreseen that the journey will take 14 hours. Even if it foresees the same, it may

not be possible to communicate notice to Controller or, in any case, journey may have to be continued further in spite of the notice because the relieving staff may not be able to come for relief for various reasons. In my opinion, there is no reason why such a burden should be thrown on the members of the staff. If once the upper limit is determined on some rational basis, it should be adhered to. Of course, to meet the above difficulties a latitude may be given to administrations to demand additional hours of duty by giving timely notice to the concerned staff. Having regard to the above factors, in my opinion, the problem for consideration is whether 12 hours' running duty, at present prescribed, is or is not such as should be required to be reduced on humanitarian and health considerations. It will be useful to consider the problem in the context of a few broad facts which have a bearing on it. As a general rule, running staff is called upon to perform both preliminary and complementary duties. The existing rules on the subject are that a driver is required to attend duty 45 minutes before scheduled time for departure of train on which he is to work and to remain on duty for 15 minutes after his train arrived at its destination, and a guard is required to attend duties 30 minutes before scheduled time for departure of the train which he is to conduct and to remain on duty 30 minutes after its arrival at destination. Running staff will be governed by hours of duty fixed for Continuous workers. Therefore,broadly speaking, running staff can be expected to render 9 hours' duty continuously. The weekly hours of Continuous workers are to be fixed on an average of two weeks. Therefore, unless running staff is called upon to render duty by an order passed by the appropriate authority under section 71-C of the Act, such staff cannot, under HER, be called upon to perform duty for more than 108 hours on an average in two weeks. Exaction of duty for such a bi-weekly period must be considered to be reasonable. Moreover, this does not offend against any health and humanitarian considerations. The problem concerns the maximum period for which duty can be exacted from such staff at a stretch. From the Wanchoo Committee's Report, 1968, it appears that about 14.2 per cent of C grade drivers was required to perform such duty at a stretch for more than 12 hours in 1967-68 of which .6 per cent was required to perform duty for more than 20 hours.(Vide paragraph 266 Table 57 Part 1). The Report shows that, on 5 railways, the percentage of such C grades drivers which was required to work for more than 12 years was 15 to 20 and that, on Southern Railway, the percentage was as high as 34.3. Both international Conventions and national legislation on industries recognise the need for fixing an upper limit not only for weekly hours of work , but, also daily hours of work including rest. In fact , under the Factories Act, daily overtime beyond a certain limit is not permissible at all. This is done on the footing that exaction of work beyond a certain limit on any one day is or can be also injurious to health of a worker. Exaction of continuous work on any one day beyond a certain limit may be inhuman too. I have already referred to the fact that HER do not impose any daily limit of work for any railway emplo-ee. This is not done because it is assumed that more work will not be taken from railway workers except when it is necessary under the circumstances mentioned

in section 71-C of the Act or except for meeting contingencies beyond the control of administrations. In any case, it is assumed that exaction of daily overtime will not be made from railway workers as a regular feature. There is no complaint on this score of any railway staff other than running staff being exploited in any such manner by being required to work at a stretch more than it can bear. However, having regard to the figures quoted by me above and the observations made by the two high-powered Committees and evidence adduced before me, I have reasonable grounds for believing that, because of latitude which HER gives to administrations, duty is exacted from running staff, specially from C grade crew, not by way of an exception, but, on a scale which must be regarded to be abnormal. In answering the problem, one must bear in mind that even in case of Essentially Intermittent workers, I have thought it fit to fix only 12 hours' rostered duty as reasonable. Though running duty is not of an Intensive character, it is duty which demands continued attentioin, alertness and exertioin in its performance. Any over-exaction 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 cases 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. As far as possible, exaction of work for more than such number of hours at a stretch should be avoided unless there are other over-riding considerations. Having regard to the fact that running staff has, as a general rule, to perform preliminary and complementary duties of approximately one hour per trip, it follows that overall duty of such staff will normally be of 11 hours at a stretch per trip. However, some allowance must be made for the fact that, specially in the case of goods trains, pre-departure detentions and detentions enroute, take place which detentions cannot be easily prevented for reasons beyond control of administrations. Acceptance of the demand of the Federation will leave a margin of about one hour to railway administrations to cover such detentions. Therefore, the present demand to restrict overall hours of duty at a stretch to 12 hours must be regarded to be reasonable. Such an overall maximum limit is in accordance with international trends. The Report of the Inland Transport Committee, Seventh Session, Geneva, 1961, on General Conditions of Work of Railwaymen, gives information on this subject at Table X printed on page 66 thereof. From this Table it appears that, except in Switzerland, United States and Federal Republic of Germany, standard daily working hours of travelling staff vary from 10 to 12. In Switzerland, though the average daily working hours of 7 hours 40 minutes may be increased to 8 hours 40 minutes , in some exceptional cases they may be increased to 13 hours and even 15. In Federal Republic of Germany, the ordinary period is also 12 hours but this can be extended upto 18 hours if a turn of duty includes "a deadheading journey or falls during the day and between two periods of night rest spent at home with a break of at least four hours at home". United States restricts by law the maximum time of duty for operating and running staff and the same is restricted to 16 hours. But, it is not quite clear when and under what circumstances duty for maximum period is exacted. From the above summary it appears

that, even Federal Republic of Germany and Switzerland, the normal standard actual daily working hours are 12 or less. Under the circumstances, in my opinion, the demand of the Federation that total hours of duty at a stretch should be fixed at 12 is reasonable and accords with international trends. However, before reaching a final conclusion it is but proper that the difficulties pointed out by Swaminathan and the effect which the fixation of the number of hours of duty at a stretch will have on the movements of traffic and especially goods traffic, must be borne in mind. The effect of Swaminathan's evidence is that railway administrations must be given some time to achieve the objective of the present demand. Mr.Mahadevan also makes an impassioned plea to the same effect. I have given my anxious consideration to this aspect of the matter as well. On the whole, I have come to the conclusion that, in order to protect the interests of running staff and for health and humanitarian considerations, even whilst allowing some latitude to railway administrations on the grounds mentioned by Swaminathan, an upper limit for total number of hours of duty at a stretch must be fixed with immediate effect and, what is more important, such upper limit must be adhered to. With the same end in view, it is necessary that a time schedule should be fixed for reaching the above objective within a reasonable period of time, beyond which railway administrations should not be allowed to exact duty hours at a stretch. Therefore, my decision is as follows: Running duty at a stretch of running staff should not ordinarily exceed 10 hours but such duty may extend to a maximum period of 12 hours, provided the concerned administration gives at least to hours' notice before the expiration of 10 hours 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 will be progressively reduced by half an hour every two years from the date of this Report till the target of 12 hours is reached, i.e, at the end of eight 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.'

From the above it is clear that the Tribunal after detailed deliberations, expert advice and surveying the international position came to the following definite conclusions:-

a) There must be an upper limit of running duty at a stretch, as excessive duty was being exacted from C-grade crew on an abnormal scale .

b) Running duty involves conditions which set in fatigue earlier than in case of non-running staff. Keeping in view the safety of public, person and property , the normal limit should be 10 hrs which may extend to 12 hrs. after on 2 hrs. notice to be given by the administration. No notice by the staff is necessary.

c) Since running staff has to perform some preliminary and complementary duties before and after running duty and because of unforeseen detentions, another limit of overall duty at a stretch must be fixed with immediate effect and the demand for this limit being 12 hrs. is reasonable (ten hrs. running plus one hour margin for complementary duty plus one hour margin for detentions).

d) Because of the difficulties which the administration may have, the 12 hr. limit may be reached in a phased manner. The limit of duty hours from signing on to signing off be fixed at 14 hrs. to be reduced to 12 hrs. at the end of 8 years from the date of the Report.

The RLT of 1969, therefore, kept the normal limit of running duty at a stretch of the running staff at 10 hours which could be extendable upto a maximum period of 12 hours only if the Administration gives at least two hours notice before the expiration of 10 hours to the staff. Similarly the maximum limit of overall duty of running staff from signing-on to signing-off was fixed at 14 hours to be reduced to 12 hours progressively in the course of next eight years, i.e, by 1980. The limit of 14/12 hour included overtime allowances for preliminary and complementary non-running duties and pre-departure detentions. In the year 1973 there was a nation-wide strike of loco running staff demanding limiting the overall duty at a stretch of running staff from signing-on to signing-off to 10 hours. The strike was called off on an agreement signed on 13.8.73 which was placed before the Parliament on 14.8.73. Point 8 of the agreement so signed read as follows:-

> "Members of the Loco Running Staff will not be required to work for more than ten hours at a stretch from signing on to signing off.
>
> Details and the mode and manner of the implementation of 10 hours of work will be discussed and finalised by the Committee to be appointed and held between the representatives of the Loco Running Staff and the Government within six weeks from the withdrawal of this agitation".

A copy of the Agreement is at Annexure A-2. A Statement was made by the then Minister of Railways before Parliament immediately thereafter. The following extracts from the Statement will be relevant:-

> "The N.E.I.R and A.I.R.F. two recognised Unions, had for many years in the Permanent Negotiating Machinery and else where demanded the review of the hours of work. This question of hours of work was referred to the Miabhoy Tribunal which gave its recommendation in August '72. After examining International standards and practices and conditions prevailing in this country, the Tribunal had accepted in principle that there was a case for reduction of hours of work (duly at a stretch) for the running staff, namely locomen,(guards and brakesmen). I accept this position. During the period of the last ten days, I had a number of meetings with leaders of the two recognised federations N.F.I.R and A.I.R.F also and I have had the benefit of their views on this complicated matter.
>
> After giving considerable thought to this question and in response to the demand of the workers, I have agreed to a revision which is defined in precise terms as under:-
>
> "Members of the Loco Running Staff will not be required to work for more than ten hours a stretch from signing on to signing off.
>
> Details and mode and manner of the implementation of ten hours of work will be discussed and finalised by the committee to be appointed and held between the representatives the loco running staff and the Government within six weeks from the withdrawal of this agitation."
> (emphasis added)

In the reply on 29.11.1977 to Lok Sabha Unstarred Question No.1773 about implementation of the aforesaid Agreement, the relevant part of the question and answer are extracted below:-

"7.Members of the loco running staff will not be required to work for more than ten hours at a stretch from 'signing on' to 'signing off'. Details and mode and manner of the implementation of ten hours of work will be discussed and finalised by the Qureshi Committee within six weeks of the withdrawal of the August agitation.	The implementation began on 1.12.73. By the end of 1974, all Mail, Express and Passenger trains were covered The coverage in respect of goods train is about Bg. Steps are in hand to complete the remaining portion also."

The entire gamut of appointment of Miabhoy Tribunal, study, discussions, strike, agreement and assurance ranging in a decade between 1969 and 1978 culminated in the issue of Government of India , Ministry of Railways letter dated 31.8.78(Annexure A-5) which for its importance and relevance is quoted in full as follows:-

"Government of India, Ministry of Railways
(Railway Board)

No.E(LL)77/HER/29. New Delhi, dated 31.8.78

The General Managers
All Indian Railways

Sub: Duty at a stretch of Running Staff.

Reference Railway Board's letter No.E(LL)68/HER/56 dated 15th July 1968 on the above subject. In para 17(iii) of the subsidiary instructions, it is laid down that running duty at a stretch (from the actual departure of a train till its arrival at destination) should not ordinarily exceed 10 hours provided the Running Staff have given 2 hours notice for relief to the controller. In addition to the above provisions of the Subsidiary Instructions, it was laid down in the Railway Board's letter of 15.7.68 referred to above, that the overall duty at a stretch of running staff from the time of 'signing on' should not exceed 14 hours and that such staff should be entitled to claim relief after 14 hours, provided they have given two hour's notice for relief to the Controller. In other words, if the Running Staff give notice at the end of 12 hours from the time they 'sign on' irrespective of whether they had done running duty of 12 hours or less, they would be entitled to relief at the end of 14 hours from the time of 'signing on'.

In August, 1973, the Ministry of Railways decided that the running staff would not be required to work for more than 10 hours at a stretch from the time of 'signing on' till the time of 'signing off' and this decision would be implemented in a phased manner. Accordingly, in supersession of the provisions of Para 17(iii) of the subsidiary instructions and the decision communicated in Board's letter No.E(LMA)68/HER/56 dated 15.7.1968, referred to above, the Ministry of Railways have decided that the Railway Administrations should take measures to restrict the hours of employment at a stretch of the running staff from the time of signing on to the time of 'signing off' to 10 hours and provide them with relief thereafter, save in exceptional circumstances

of unavoidable operational exigencies or of accidents, floods, emergencies etc. This will come into effect from 1.10.1978.

Please acknowledge receipt.

(A.K.Sinha)
Jt.Director,Estt.(LL)
Railway Board

(emphasis added)

The position as it existed after 31.8.78 was therefore that the Railway Administration had decided to restrict 'the hours of employment' at a stretch of the running staff from the time of 'signing on' to the time of 'signing off' to 10 hours and provide them with reliefs save in exceptional circumstances of natural calamities or unavoidable operational exigencies. Consequently the limit of total overall hours of employment of the running staff which used to be 14 hours was brought down to 10 hours which was also the maximum limit of running duty at a stretch. It may be noted that the Miabhoy Tribunal having fixed an upper limit of 10 hours for 'running duty at a stretch' recommended an irreducible upper limit of 12 hours for 'overall duty at a stretch' to allow for a margin of one hour for unavoidable non-running preparatory and complementary duties and one hour's allowance for unforeseen pre-departure detention of the train. The ten hour limit of overall hours of employment was therefore more liberal to the staff than what Miabhoy Tribunal thought to be possible or acceptable keeping all considerations in view. The Railway Administration understandably faced considerable difficulty in restricting the overall hours of employment at a stretch to 10 hours without reducing the running duty hours at a stretch considerably. For instance after the loco staff starts his duty by 'signing on', considerable time is taken for preparation of the engine, bringing it from the shed to the formation and the unforeseen pre-departure detentions consumed considerable time (average of 2 hrs. as visualised by the Miabhoy Tribunal) as in the case before us where the Palghat Jumbo goods train which was scheduled to start at 12.30 a.m. for which the applicant was asked to report to duty at 12 midnight actually started at 2.50 a.m. Since the overall duty hours have to be restricted to 10 hours the actual running duty hours of the loco staff get reduced

by 3 to 4 hours after which the staff has to be given relief and 'signed off'. Such a situation would entail the Administration's obligation to provide relief after only 4 to 5 hours of running even though the running loco staff was comparatively idle or waiting during the remaining period of the duty hours. Perhaps to meet such difficulties and avoid provision for huge relief staff and rest rooms all over and make the position more practical, they issued the impugned order dated 3.4.81 at Annexure A-6 the full text of which is quoted below:-

"No.E(LL)77/HER/29 New Delhi
3.4.1981

The General Managers,
All Indian Railways.

Sub:- Duty at a stretch of running staff.

References the Ministry of Railways letters No.E(LL)77/HER/29 dated 31.8.78, No.E(LL)/78/HER/76 dated 23.10.78 and E(LL)77/HER/29 dated 28.3.79 on the above subject.

A number of references 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

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-hour 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 hours 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 duties such as travelling spare on duty or waiting at a station for returning

to head quarters, 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. The orders mentioned above will come into force with immediate effect.

Sd/-
(A.K.Sinha)
Joint Director, Establishment,
Railway Board"

(emphasis added)

The aforesaid order principally excludes from the 10 hour limit the time taken to bring the engine from the shed to the station at the starting point, pre-departure detentions and travelling pilot even though these duties are performed after the staff signs-on. The time spent by the running staff after 'signing on', on non-running duties such as travelling spare on duty or waiting at a station for returning to head-quarters was also excluded from the computation of 10 hour between 'signing on' and 'signing off'. The order also prohibited the staff from claiming relief within 10 hours of their duty even though they were passing by their headquarters. They were also prohibited from resorting to leaving the trains short of destination even on completion of 10 hours duty at a stretch even in accordance with the revised method on computation of 10 hours . The outcome of this order is that after the staff signs on and joins duty he has not only to give ten hours of running duty but also has to be in attendance during non-running duties and pre-departure detentions for an unspecified number of hours which may extend to any limit and even then they cannot leave the train short of destination which may be any number of running hours away.

26. We are, therefore, faced with two extremes. The order of the Railways dated 31.8.78 at Annexure A5 is one extreme of overliberalised limit of ten hours of 'overall duty at a stretch' taking us to the Twenty

first century as it were, liberal beyond the 14/12 hour limits recommended by the Miabhoy Commttee. The impugned order at Annexure A6 gives the other extreme of being overly reminiscent of the Dickensonian era and prescribing unlimited hours of overall duty at a stretch taking us back to pre-1947 situation when there was no limit of hours of employment for the running staff!

27. The applicant has challenged the impugned circular order dated 3.4.1981 at Annexure A.6 on a number of grounds. The main contention of the applicant is that the order as it stands at Annexure A.6 can be abused by unscrupulous authorities to inhuman and absurd limits. For instance after the loco staff returns to duty and signs on and there is pre-departure detentioin of the train for which there is no limit in the Annexure A-6 order for being excluded from the 10 hour period, the loco running staff may have to be on duty continuously for 18 to 20 hours (depending upon how long the detention is) without being provided with any relief. Even after he has completed 18 hours of duty after signing on, he cannot get down at his headquarters for relief and rest if he has not completed 10 hours of running duty after the departure of the train from the starting station. Further still, para 4 of the impugned order at A-6 compels the staff to take the train to the destination even though he has completed 20 hours of overall duty and 10 hours of actual running duty, till he takes the train to its destination which may be a number of running hours away from the place where he completed 20 hours of over all duty and 10 hours of actual running duty at a stretch. According to the applicant, the impugned circular is inhuman because it does not take into account the limit of fatigue to which human body is susceptible and the order is also irresponsible as it allows the overstrained loco staff to continue on duty beyond their physical tolerance limits thus endangering the life and property of the user public who are subjected to extraordinary risk of accident in such trains as are run by such over exhausted loco running staff.The order is also discri-

minatory in the sence that no limit of excluded non-running duty hours has been prescribed irrespective of the actual period of running, because whether the train is actually running or not the running staff has to be on duty away from their home whereas in case of other staff whether in office, in factories or mines and by the international convention an upper limit of 8 or 9 hours of overall duty including the idle or inactive period has been prescribed. The incompetence of the Railway Board to issue unilaterally such an order adversely affecting the condition of service of the running staff which had been prescribed at Annexure A5 after protracted study by the RLT, agitation and agreement has also been questioned.

28. The applicant has argued that since the circular order at Annexure A.6 is illegal, unconstitutional, arbitrary and inhuman, its violation by him as referred to in the punishment order at Annexure A.9 cannot make him liable to any penalty and to that extent the punishment order is baseless. So is the appellate order which confirms the punishment order without valid reasons.

29. The respondents have justified issuing the impugned circular at Annexure A.6 on the ground of impracticability of following the 10 hour rule from 'signing on' to 'signing off' without allowing for non-running duties and unforeseen inactive periods like train detentions. They have however argued that the order at Annexure A.5 has not been cancelled or superseded but stands qualified by the impugned circular at Annexure A.6 which gives certain clarificatory guidelines for implementation of the 10 hour rule. They have argued that responsible Railway Officers at the helm of affairs will not allow the latitude given in Annexure A.6 to be abused to extract any inhuman and unreasonable hours of duty from the running staff. During the pendency of the application however the respondents realising the absurdity in the A-6 order on 20.9.91 issued a further clarificatory letter to the impugned circular order dated 3.4.81 prescribing a limit of 14 hours from signing on to signing off. This order was attached with the written arguments as enclosure X-4,a copy of

which has been made available to the learned counsel for the applicant who replied by their own written arguments. Annexure X-4 reads as follows:-

"No.E(LL)91 HER/1-11. New Delhi dt. 20.9.91

To

The General Managers

All Indian Railways.

Sub:- Implementation of 10 hours duty rules for running staff from 'signing on' to 'signing off'.
Ministry of Railways (Railway Board)
letter No.E(LL)77/HER/29 dt. 3.4.81.

The Ministry of Railways, from time to time have emphasised the need to restrict the duty hours of running staff from signing on to signing off to 10 hrs. The Ministry had also issued suitable guidelines for achieving this objective and it is presumed that Railways are taking measures to achieve the same.

While generally such rules have been introduced, it is noticed that there are still some cases where the staff perform excessive duties.The Ministry of Railways desire that there should be no further delay in achieving all objective of 10 hrs. working and, in any case, pending the reaching of the objective, no staff should perform their duties more than 14 hrs. from signing on to signing off except in exceptional circumstances such as accidents, floods, agitations, emergencies, failure of Railway equipments etc.

Please acknowledge the receipt of this letter.

Sd/-
Balbir Singh
Joint Director, Estt(L)."

Though by prescribing an upper limit of 14 hours of duty hours between signing on and signing off, the respondents have to some extent conceded the built in lacuna in the order at A6 which may be abused to absurd limits , the unreasonableness per se has not been exterminated even by the second clarificatory letter. If 14 hours is the limit of duty between 'signing on' and 'signing off' and pre-departure detention etc. have still to be excluded in accordance with the impugned circular dt.3.4.81 between 'signing on' and 'signing off' than even this 14 hour limit can be exceeded to any extent depending upon the pre-departure detention. The fallacy in Annexure 6 lies in qualifying and reducing for computation, duty period which necessarily lies between 'signing on' and 'signing off' by excluding certain unlimited periods of duty between these two time markers. Unless therefore, it is further clarified by an even 3rd clarificatory letter

that while for the purposes of 10 hour rule period in Annexure A.6 the non-running duties like pre-detention period will be excluded between the signing on and signing off but these will be included for the purpose of 14 hour rule!. However, for the purpose of this application we cannot take congnizance of the clarificatory letter at Annexure X-4 which was issued during the pendency of the application obviously to remove certain absurdities in the open ended and unlimited hours of overall duty of the running staff, apparent on the face of the impugned order at Annexure A.6 . Annexure A.6 as it stands keeps the hours of employment of the running staff as distinguished from the running hours unlimited. It goes without saying that administrative orders meant to be enforced the violation of which is likely to be visited with punishment has to be clear and unambiguous and possible to be obeyed without risk to those members of the public whom the Government servants coming under that order have to serve. By keeping the limit of continuous employment at a stretch unlimited without reference to the biological limits of fatigue and tolerance of the human body in respect of the loco running staff to whom are the lives of the passengers and property in the goods train are entrusted, the impugned order at Annexure A.6 falls far short of the minimum standards of clarity, practicability and reasonableness warranted in such orders and circulars. The following extracts from the report of the RLT Award of 1969 are very pertinent and self-explanatory:-

> " This is done on the footing that exaction of work beyond a certain limit on any one day is or can be also injurious to the health of a workman. Exaction of continuous work on any one day beyond a certain limit may be inhuman too. I have already referred to the fact that HER do not impose any daily limit of work for any railway employee. This is not done because that it is assumed that more work will not be taken from daily workers except when it is necessary under the circumstances mentioned in S.71 C of the Act or except for meeting contingencies beyond the control of the administration. However having regard to the figures quoted by me above and the observations made by the two high powered committees and evidence adduced before me, I have reasonable grounds for believing that because of the

> latitude which the HER gives to the Administration, duty is exacted from running staff specially from C grade crew not by way of an exception but on a scale which must be regarded to be abnormal.
>
> "Though running duty is not of an intensive character it is duty which demands continued attention, alertness and exertion in its performance. Any over exaction 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 cases of staff working indoors or at stations and depots."(emphasis added)

Annexure A-6 order virtually goes back on the same position from which Miabhoy Tribunal Award started. To undo the decisions at Annex A5 order arrived at after thorough examination by the Tribunal on the basis of the observations made by the two high powered committees and the evidence adduced before the Tribunal and after having entered into an Agreement with the Action Committee of the Loco Running staff in 1973, and having given assurance to Parliament that the members of the loco running staff will not be required to work more than 10 hours at a stretch from signing on to signing off, it may appear to be unethical, against public interest and destructive of the credibility of the Government if by the order at Annexure A.6 the limit of 10 hours of work at a stretch from signing on and signing off is discarded by introducing unspecified number of hours of non-running and inactive duties not reckonable for this limit between signing on and signing off. Annexure A.6 is also against the international norms. The confusion in the impugned circular of 1981 has arisen because of the fact that in the earlier circular at Annexure A.5 while a distinction was made between the limit of 14 hours on over all duty at a stretch of the running staff from the time of signing on to the time of signing off and the upper limit of 10 hours of running duty at a stretch from the actual departure of the train till its arrival at a destination and it was decided that the upper limit of 14 hours for over all duty at a stretch from signing on to signing off would be brought down to 12 hours in a phased manner, in the impugned circular of 1981 a new term of "10 hour rule" was coined without mentioning whether the 10 hour

rule is applicable to the running duty at a stretch or over all duty from signing on to the signing off. Though in para 3 of that circular it was mentioned that measures have have taken "to restrict the duty hours at a stretch from the time of signing on to the time of signing off to 10 hours ..." non-running duty and pre-departure detention etc. were excluded from the so called 10 hour rule even though such periods like pre-departure detention etc. squarely lie within the period falling between the signing on and signing off. This meant that the limit of 10 hour will be in addition to the period which the running staff has necessarily to spend on non-running duty after signing on. What is worse is, that no upper limit of such non-running and inactive duty hours after signing on was fixed. This meant that in accordance with the 1981 circular apart from putting in 10 hours of running duty at a stretch between departure of the train from the station where the staff takes over the train to the time of its arrival at its destination, the staff after signing on duty was obliged to be available for unlimited time during the pre-departure detention period howsoever prolonged it may be and for other non-running duties. It meant, therefore, that if the pre-departure detention of a train is 8 to 10 hours which is not an abnormal detention these days, the running staff is obliged to put in 18 to 20 hours of over all duty between signing on and signing off without any relief or rest. Now this is obviously against the universally accepted principle of limiting duty at a stretch. A clerk or a peon or an officer 'signs on' or reports for duty at 9.00 a.m. in the morning and signs off or breaks off his duty at 5.30 p.m. in the evening irrespective of whether he has been inactive for whatever length of time during this time frame. Signing on is the beginning of the time frame of duty hours at a stretch and signing off is the end of that time frame. Once this time frame of duty hours is distorted by taking out inactive period(after one signs on and joins duty) within the time frame and expecting the staff to put in additional duty hours after signing on in lieu of the inactive period or wait indefinitely for active duty is violative of the universally accepted norms of employ-

ment. The concept of duty hours covers not only the period during which the employee contributes his physical , intellectual or professional work but also the period during the duty hours when he may be visibly inactive but nonetheless available for work and his movement is restricted to his official place of work. He cannot for instance go to sleep when there is no work or go home to enjoy his family life during the duty hours. Whether he is a Doctor on duty or a Clerk or an Engineer , the period after he reports to work, when he is not seeing any patient or not handling any file or not supervising any works cannot be excluded from his duty hours to ~~exact~~ extend the ~~his~~ period of this total daily duty hours at a stretch. Just ~~like~~ as a guest in a hotel has to pay for the whole period between the time he checks in to the time he checks out and he cannot say that for the period he was out of the hotel after checking in he cannot be charged, a non-casual employee also cannot be denied salary and wages on the ground that for certain periods he had no work to do even though he was on duty and available for work. It is perhaps in this context that it was specifically mentioned in para 3 of Section 1 of the HER Handbook that the hours of employment "includes the effective or continuous work and period of inaction when the worker must be present on duty, although not exercising physical activity or sustained attention". It does not however include "the intervals when the employee is free to leave his place of work". Under heading "Limitation of Hours of Work" in the tabular statement at Section VI-A of the same Handbook it is mentioned that the limitation of hours of work which is the same as the statutory limit for the hours of employment in the case of loco and traffic running staff should count from signing on to the signing off. Annexure A.6 circular therefore, by excluding certain unspecified and hence unlimited periods after the staff signs on, from the limit of 10 hours of duty at a stretch, has gone against the very grain of the concept of limiting duty hours at a stretch and thrown the running staff in a vortex of uncertainity of unlimited hours of duty at a stretch. The first three paragraphs of this impugned circular at A-6 therefore, as quoted earlier in para 25 suffers from the infirmity of introducing a newly fangled term of "10 hour rule" without defining whether it applies to running duty at a stretch

as defined in para 6 of Section VI of the HER Manual as quoted earlier, i.e., from the actual departure of the train from the starting station or it applies to hours of employment/work as defined in para 3 of Section I read with column 3 in item 2 in the tabular statement at Section VI-A. By excluding certain inactive periods even after one joins duty and signs on, for computation of 10 hour of duty, the circular has imposed an unspecified and hence inhuman, impracticable and irrational load of duty hours unknown to and in violation of nationally and internationally accepted norms as adopted by the International Labour Organisation in its general conference held at Washington in October 1919. Articles 2 and 5 of Convention No.1 to which India is also a party, read as follows:-

> "Article 2: The working hours of persons employed in any public or private industrial undertaking or in any branch thereof, other than an undertaking in which only members of the same family are employed, shall not exceed eight in the day and forty-eight in the week , with the exceptions hereinafter provide for.
>
> Article 5: In exceptional cases where it is recognised that the provisions of Article 2 cannot be applied, but only in such cases, agreements between workers' and employers' organisations concerning the daily limit of work over a longer period of time may be given the force of regulations, if the Government, to which these agreements shall be submitted so decides.
>
> Article 6(2):(page 250) These regulations shall be made only after consultation with the organisations of employers and workers concerned, if any such organisations exist. These regulations shall fix the maximum of additional hours in each instance, and the rate of pay for overtime shall not be less than one and one-quarter times the regular rate."
> (emphasis added)

Since the Railways are also an industrial undertaking the norms of working hours of 8 hours per day and 48 hours in the week subject to exceptions have to be followed and departures must be in agreement between the workers and the employers and in consultation with their organisations. The impugned circular at Annexure A-6 not only violates the norm by removing the upper limit of total working hours from 'signing on' to 'signing off' through the exclusion of non-running duties performed after signing on without any limit, but also was formulated when the

earlier order dated 31.8.78 at Annexure A-5 was issued in agreement with the representatives of the loco staff and after thorough enquiry and study by the Railway Labour Tribunal. Further, the "Hours of Employment" has been defined in para 3 of Section 1 of HER as follows:-

> "3. Hours of Employment - The term refers to the time during which an employee is rostered for duty. It includes effective or continuous work and periods of inaction when the worker must be present on duty, although not exercising physical activity or sustained attention. It does not include "intervals" when the employee is free to leave his place of work. Certain staff are given quarters near their place of work so that they can be "on call" in case of necessity, but being "on call" does not constitute "employment" in this context. Time taken in going between an employee's residence and his place of work does not constitute hours of employment."(emphasis added)

From the above it is clear that periods of inaction when the worker must be present on duty although he may not be engaged in any physical activity, is included in the hours of employment. Annexure A-6, however, after the employee signs on and joins daily duty excludes the hours of non-running duty like pre-departure detention from the computation of hours of employment. By this the hours of employment after the applicant has joined duty and has not signed off can go upto any limit contrary to the limit of 14 hours, as recommended by the Miabhoy Tribunal as far back as in 1972. The hours of employment(after signing on including inactive period) was recommended to be brought down from 14 hours in 1972 to 12 hours by 1980. The circular of the Railway Board at Annexure A-5 dated 31.8.1978 however went a step further and indicated that measures should be taken to restrict the hours of employment at a stretch of the running staff from the time of 'signing on' to the time of 'signing off' to 10 hours (instead of 12 hrs. as recommended by the RLT to be reached by 1980!) and provide them with relief thereafter. Annexure A-6 order, however, by excluding non-running hours like pre-departure detention indirectly extended the hours of employment from 'signing on' to 'signing off' to an unlimited degree depending upon the duration of non-running duties and other excluded periods like the pre-

departure detentions.

30. It was perhaps forgotten at the time of issuing the impugned order that from the moment the loco staff signs on and commences his duty, his biological clock does not stop functioning during the inactive period and even if he does not exert physically or mentally, by simply remaining on duty at the beck and call of the employer at a pre-determined place or places other than his home there is continuous exhaustion and fatigue which cannot be made up by monetary allowances except by rest and relaxation. It is because of this that in the tabular statement at Section 6 A of the HER handbook under the heading "Limitation of Hours of Work" for the running staff, the following has been mentioned "The statutory limit for the Hours of Employment of Running staff classified as continuous should be fixed at 54 a week on the average in any month". The above will show that hours of employment has been taken to be the same as hours of work without any exclusion of inactive or non-running duties. In the same tabular statement it has further been mentioned as follows:-

> "In the case of Loco and Traffic Running staff duty hours should count from signing 'on' to signing 'off'".

The note below para 4 of Section VII of the H.E.R.handbook, defines as earlier stated, the 'signing on' and 'signing off' as the time when the staff is required to report for duty and the time when they are required to break up duty at the end of tour of duty. Accordingly by no stretch of imagination can non-running duties performed or inactive period after signing on and before signing off can be excluded from the limitation of hours of work as has been done by the impugned circular at Annexure A-6. If the factory works, clerks, plantation labour and transport workers etc. have been allowed statutorily to break off duty after 8 or 9 hours of duty including inactive period, Annexure A-6 order by excluding non-running duties after the running staff signs on and without clamping any upper limit to the total duty hours, active and inactive, appears to be discriminatory. The Miabhoy Committee

of 1971 (not 1969) in another context of effect of long hours of work on health, made the following pertinent observations:-

> "2.101. The most outstanding hardship which is brought out in evidence is regarding long hours of duty which some railway employees are called upon to perform at a stretch. The Federation has examined S.N.Chakraborty, S.N.Sengupta and R.N.Tyagi to prove that from 27.8.1972 to 15.12.1972, 27.8.1972 to 16.12.1972 and 28.8.1972 and 28.8.1972 to 16.12.1972 respectively they were required to work on goods trains on several occasions for a continuous period of fourteen hours and, on some occasions, as many as 22 to 26 hours at a stretch. These witnesses have submitted statistics in support of their evidence and the same have not been challenged. It is true that there is no evidence to show that such long spells of continuous duty cause or have caused any industrial disease or have been a cause of decategorisation. But the important point to note in regard to this complaint is that, if an employee is made to undergo such long spells of continuous duty, there is probability of fatigue intervening in course of performance of duty, and apart from the fact that such duty may lead to muscular fatigue which can cause an acute painful phenomenon localised in muscles, it can also cause general fatigue either of physic or nervous order. Fatigue is a salutary sensation provided one heeds it and lies down and rests. According to the Health Encyclopaedia, Vo.1 page 514, if one disregards this nature's warning and forces oneself to continue working, feeling of fatigue increases until it becomes distressing and finally overwhelming.At such a stage ,a worker is bound to be put in a hazardous condition because his efficiency is likely to suffer during the period of that fatigue until it becomes overwhelming and an accident can take place at the hands of such an employee. Wanchoo Accidents Committee has pointed out this danger prominently and has taken note of cases where no rest was given. According to the Health Enyclopaedia , physical fatigue, may also disturb digestive functions. In my opinion, therefore, it is necessary that immediate measures should be undertaken to see that the recommendation made by several high powered commissions, that in any case continuous running duty should not be exacted for more than 14 hours is implemented scrupulously,

> so that risk of decategorisation arising out of an accident committed during the period of fatigue is avoided."(emphasis added)

Annexure A-6 by keeping the upper limit of hours of duty after signing on unlimited, has not only been unfair to the employees but also to those who use the Railways for transportation of person and property. We cannot disagree with the applicant before us when he says that Annex. A.6 order deprives him of his personal liberty after he has crossed the limit of fatigue and exhaustion and is thus violative of Article 21 of the Constitution as also Art. 23 since his unlimited detention amounts to forced labour also. In People's Union for Democractic Rights and Others vs. Union of India and others,(1982)3 SCC 235, forced labour in the contest of Article 23 of the Constitution and begar was defined as work which is rendered not willingly but as a result of force or compulsion and may not necessarily cover only that labour which is exacted without payment of remuneration and held that forced labour would not cease to be so on the mere payment of remuneration.

31. In A.L.Kalra vs. Project and Equipment Corporation of India Ltd, 1984(3) SCC 316 the Supreme Court held as follows:-

> "Article 14 strikes at arbitrariness in State Action, whether it be of the Legislature or of the executive or of an 'authority ' under Article 12, because any action that is arbitrary must necessarily involve the negation of equality and if it affects any matter relating to public employment it is also violative of Article 16. One need not confine the denial of equality to a comparative evaluation between two persons to arrive at a conclusion of discriminatory treatment. An action per se arbitrary itself denies equal protection by law.
>
> Wisdom of the legislative policy may not be open to judicial review but when the wisdom takes the concrete form of law, the same must stand the test of being in tune with the fundamental rights, it is void as ordained by Article 13. If the law is void being in violation of Part III of the Constitution, it cannot be shielded on the ground that it enacts a legislative policy."

The above will show that even policy decisions can be subject to judicial review if it is arbitrary or violative of Fundamental Rights. In Central

Inland Water Transport Corporation Ltd. and another vs. Brojo Nath Ganguly and another, AIR 1986 SC 1571, it was held as follows:-

> As new concepts take the place of old, transactions which were once considered against public policy are now being upheld by the Courts and similarly where there has been a well-recognised head of public policy, the Courts have not shirked from extending it to new transactions and changed circumstances and have at times not even flinched from inventing a new head of public policy. Practices which were considered perfectly normal at one time have today become obnoxious and oppressive to public conscience. If there is no head of public policy which covers a case, then the Court must in consonance with public conscience and keeping with public good and public interest declare such practice to be opposed to public policy. Above all, in deciding any case which may not be covered by authority Courts have before them the beacon light of the Preamble to the Constitution. Lacking precedent, the Court can always be guided by that light and the principles underlying the Fundamental Rights and the Directive Principles enshrined in the Constitution."

A Full Bench of the Kerala High Court in Geetha Timbers vs. State of Kerala, 1990(1)KLT 402 held that if a Governmental policy or action even in contractual matters fails to satisfy the test of reasonableness it would be unconstitutional. An unreasonable administrative decision is violative of Article 14 of the Constitution in accordance with the ruling of the Supreme Court in Maneka Gandhi vs. Union of India, AIR 1978 SC 597.

32. We, therefore, hold that the impugned order at Annexure A-6 with unlimited hours of employment is inhuman, biologically impossible to be given effect to, against national and international norms, in violation of the agreement with the loco workers, as also of the assurance given by the Govt. to Parliament and the findings and recommendations of the Railway Labour Tribunal, 1969 which had been accepted by the Govt. in toto, and being arbitrary, discriminatory and empowering the authorities to exact unwilling work beyond the normal biological limits is likely to it violate Articles 14, 16

21 and 23 of the Constitution.

33. In the above circumstances we find that the impugned circular at Annexure A.6 being violative of the norms of reasonableness, sanctity of agreements and commitments by the Government as also the norms of human labour nationally and internationally recognised, is arbitrary and unreasonable and is likely to fail in judicial scrutiny of its constitutionality.

34. We are, however, not prepared to accept the argument of the applicant that the Railway Board had no authority to pass the order relating to the conditions of service of the loco running staff. In the Railway Board and others vs. P.R.Subramaniayam and others, AIR 1978 SC 284, the Supreme Court held as follows:-

> " In the Indian Railway Establishment Code, Volume I are the Rules framed by the President of India under Art.309 of the Constitution. Contained in the said Code is the well-known R.157 which authorises the Railway Board as permissible under Art.309 to have "full powers to make rules of general application to non-gazetted railway servants under their control". The Railway Board have been framing rules in exercise of this power from time to time. No special procedure or method is prescribed for the making of such rules by the Railway Board. But they have been treated as rules having the force of rules framed under Art.309 pursuant to the delegated power to the Railway Board if they are of general application to non-gazetted railway servants or to a class of them."

Further, if the applicant as he does, swears by the Railway Board's order at Annexure A-5 he cannot challenge Railway Board's competence to pass the further order at Annexure A-6 on the same subject. Since the statutory limits of hours of employment given on a weekly basis did not contain limits of daily hours of work, the Railway Board could fill up the gap by administrative instructions like Annexures A-5 and A-6 (AIR 1980 SC 1246). Once it is recognised that the Railway Board can issue orders relating to daily hours of work as at Annexure A-5, as administrative authorities, their power to amend, clarify or modify the same by subsequent orders (AIR 1958 SC 1018; AIR 1980 SC 1461) cannot

be doubted much less challenged.

35. However, apart from being liable to be declared unconstitutional Annexure A-6 order has a number of other infirmities also. The punishment order of the applicant at Annexure-A9 specifically states that the action of the applicant is in violation of Railway Board's letter No.E(LL)77/HER 29 dated 3.4.81 communicated to all depots vide letter No.J/Tp29/Pr.Rg/10 hr.rule dated 6.3.89. The applicant has argued that even though Annexure A-6 order is dated 3.4.81 it was communicated to all depots on 6.3.89. The respondents have argued that the letter dated 6.3.89 was only a reminder as at Ext R1(a). We have seen Ext. R1(a) dated 6.3.89 the opening para of which reads as follows:-

> "The duty hours of loco running staff are, by and large covered by HOER and instructions issued from time to time. Particular attention is drawn, in this connection to this office letter of even number dated 23.9.1988,communicating copy of Board's letter No.E(LL)/77/HER/25 of 3.4.1981..."
> (emphasis added)

The above may imply that even if Ext.R1(a) dated 6.3.89 is a reminder the impugned circular was communicated by the Divisional Office, Palghat only on 23.9.1988, i.e, long after the applicant had been recruited in service. Though, we cannot accept the applicant's plea that the circular having been communicated after his recruitment, he is not bound by the impugned circular of 3.4.1981, it surpasses our comprehension why the impugned circular of 1981 should have taken seven years to be communicated to the field units unless the authorities themselves were not sure about its validity or practicability. However, so long as the default of the applicant took place after the date of communication of the order, the date of applicant's recruitment is immaterial.

36. The impugned circular at Annexure A-6 leaves it to anybody's imagination whether it supersedes the previous order of 31.8.78 at Annex. A-5 which was issued in implementation of the Railway Labour Tribunal's Award and commitment given by the Government to Parliament. Though in the opening para of this circular, a reference has been made to

Annexure A-5 letter dated 31.8.78. The next para states that all previous orders on the subject are superseded. One may think that Annexure A-6 order superseded Annexure A-5 order also, but not so. The respondents have themselves averred that the Railway Board's earlier letter dated 31.8.78 at Annexure A-5 has to be read with the impugned circular dated 3.4.81 at Annexure A-6 and have gone on to defend Annexure A-6 by stating that it has not in any way diluted or taken away the 10 hour rule as projected by the applicant. Annexure A-6 was issued to avoid operational inconveniences and "that there is no contradiction between Annexure A-5 and Annexure A-6 and none of the rights under Annexure A-5 have been taken away by Annexure A-6 as stated and alleged by the applicant". They have further averred that Annexure A-6 order cannot be challenged on the ground that it is against the earlier order of the Railway Board at Annexure A-5 because "it is not in any way in conflict with Annexure A-5". The respondents have further argued that "applicable orders, therefore, may be understood as Annexure A-5 read with Annexure R7 as also as modified by Annexure A-6 dated 3.4.81". (vide para 22 of written arguments) From the above discussion, it is clear that the respondents have not cancelled or superseded the Railway Board's order at Annexure A-5 dated 31.8.78 which is based on the recommendations of the RLT Award of 1969, the Agreement reached with the Action Committee of the Loco Running Staff and sanctified by the commitment made to Parliament in 1973 and 1977. But to obviate certain operational difficulties and problems, the respondents had to issue the circular at Annex. A-6 clarifying certain points. But in the process of clarification they have completely done away with the upper limit of hours of overall duty at a stretch. They also took away the upper limit of 10 hours on running duty at a stretch by obliging the running loco staff to take the train to the destination without indicating that by destination whether they meant the destination of the crew or the destination of the train. The respondents made an effort to repair the Annexure A-6 order to some extent by issuing another order dated 20.9.91 fixing a limit of 14 hours between signing on and signing off but without clarifying

whether this 14 hour limit also will be exclusive of non-running duties and pre-departure detention. The respondents have not thought fit yet to repair the second lacuna in Annexure A-6 by fixing an upper limit of running duty at a stretch as defined in the HER.

37. Para 4 of the circular at Annex A6, in so far as it excludes such non-running duties as travelling spare on duty or waiting at stations for returning to the headquarters as fall before signing on or after signing off, seem to be admissible but if some of these non-running duties fall after one has signed on or before one has signed off, they cannot be excluded from duty hours. As regards sub-para (i) of para 4 prohibiting running staff from claiming "relief within 10 hours of their duty at a stretch while running through their headquarters" or from "stabling of trains short of destination on completion of 10 hours duty at a stretch" , these may have to be amplified further by clarifying whether the duty at a stretch refers to over all duty between signing on and signing off without any exclusion, or running duty and whether the term destination means a destination of the train which may be several hours away or destination of the crew for relief which should be specifically intimated to the employee at the time of the departure of the train. In order to avoid the staff refusing to work the train to the relief station which may be only a few minutes running distance away, a provision should perhaps be added that the staff cannot stable the train if the relief station is within less than an hour's run away or the relief is guaranteed within one hour of the expiry of the statutory limit of running or overall duty at a stretch.

38. We as a judicial forum are thus faced with a very difficult and imponderable task. The circular order dated 31.8.78 at Annexure A-5 is the culmination of an informed judicial and wholly accepted Award of the Railway Labour Tribunal of 1969, of a solemn Agreement between the Government and the Action Committee of the Loco Running Staff, of commitments made to Parliament followed by a Committee on implementation. The order at A5 was issued by the Government after protracted deliberations. It cannot be said that it was issued in a hurry or under pressure. It had the support of all concerned and it put a quietus

on the agitation of the loco staff which had exploded in the All India Railway Loco Strike of 1974. The Agreement was reached in 1973 and the formal orders were issued presumably after considerable deliberations, consultations etc. five years later in 1978. The order was put into practice for three years when the impugned circular was issued on 3.4.81 ostensibly in clarification of the earlier circular at Annexure A-5 but in substance completely taking away the beneficient limits of hours of employment and hours of running duty at a stretch. According to the applicant this was done to save money on the additional staff required for its implementation as is evident from Annexure A-12 which inter alia states that " special posts for 10 hours should be abolished rather than for any other reason. The respondents however say that Annexure A-6 was issued for removing certain operational difficulties. Be that as it may, the manner in which the impugned order dated 3.4.81 was issued practically wiping out the limits of hours of employment and hours of running duty at a stretch and offering a 'carte blanche' to the authorities to exact unspecified duty hours or running duty hours at a stretch from the loco staff on pain of disciplinary proceedings, leaves much to be desired. The Indian Railways is not only a State as contemplated under Article 12 of the Constitution, it is also one of the biggest employers in the world. It is not only the custodian of lives of millions of citizens who use their services but also of property worth hundreds of millions of rupees which it transports throughout the length and breadth of the country. Thus its responsibility towards its users is as massive as its responsibility towards the millions of people which it employs, not to speak of its responsibility to law and Constitution and of not only being a model employer but also a just and fair and paternal well-wisher of its employees. The impugned order at Annexure A-6 does not, to our mind, answer to the standards expected of the Railways vis-a-vis its employees, its users and the law and Constitution to which it is accountable. By ignoring the health and fatigue factors of the loco staff, by the exclusion of upper limits of hours of employment as also of the running duty at a stretch as so emphatically urged by the RLT 1969, the Railways

have fallen short of the high standards expected of a model judicious and humane employer. By taking away the beneficent effects of the earlier circular at Annexure A-5 arrived at through the deliberations of the Railway Labour Tribunal, Expert studies, deliberations of the Government at the highest level, Agreement reached with the representatives of the loco staff and the commitment made to Parliament, and by issuing the impugned circular in 1981 without effective consultation or deliberations with the workers (as contemplated in Article 6 of the ILO Convention No.1, quoted earlier), the Railways have not done much credit to themselves. If Annexure A-5 issued nine years after the RLT Award of 1969 and five years after the Agreement generated certain unforeseen problems, corrective measures could have been taken by getting the Hours of Employment Regulations reviewed as it was done in 1969. Taking away the substance of the earlier circular at Annexure A-5 unilaterally by a so called clarificatory letter at Annexure A-6, may not be an ideal manner of amending Hours of Employment Regulations.

39. In the facts and circumstances so far as the impugned letter at Annexure A-6 is concerned, we feel that in its present form it has to be struck down. It needs to be reviewed to include the following minimum desiderata:-

a) There should be a specific limit of hours of employment at a stretch between 'signing on' and 'signing off' inclusive of inactive period and non-running duties.

b) There should be a specific limit of running duty hours at a stretch as defined in the Hours of Employment Regulations.

c) A distinction has to be made between destination of the train and destination of the crew and these destinations should be made known to the crew and all concerned in the beginning of the duty hours of the running staff.

d) Provision for advance notice of two hours before the staff claims relief or the Railway Administration requires extension of duty beyond the normal limits should be made.

e) Provision should be made to prohibit the stabling of trains if relief is assured at the next relief station or anywhere within one hour of the elapse of the normal or extended

(after due notice as at (d) above) period of overall or running duty hours at a stretch.

f) If possible, in fixing the limits of running duty hours at a stretch, distinction may be made for the loco running staff between working a steam engine and working a diesel or electric locomotive.

40. During the interim period the respondents will be at liberty to operate on the basis of the order dated 31.8.78 at Annexure A-5 with such marginal unavoidable changes only, as are necessary but in accordance with the RLT award of 1969 in the interest of efficiency and without violating the basic thrusts in that order.

41. Now let us come to the impugned order of punishment dated 13.6.89 at Annexure A9 and the appellate order rejecting the appeal at Annexure A11. The punishment order at Annexure A11 dated 13.6.89 reads as follows:-

"Reference your explanation dated 17.4.89 in reply to the memorandum for minor penalty of even number dated 7.4.89 your increment from Rs.970/- to Rs.990/- in grade of Rs. 950-1500 which is normally due on 1.7.89 is withheld for a period of three months without the effect of postponing future increments.

Reasons : While you were functioning as DSL.Asst of train No.PGTJB on 6.4.89 ex JTJ-ED, claimed rest at SGE at 12.00 hour short of destination and refused to work further upto ED resulting in stabling of train enroute.

2(a) Relevant aspects considered while disposing the case in accordance with the rules satisfying the requirements of the rules. Prescribed procedure has been complied with.

2(b) Reasons by which the disciplinary authority has arrived at the particular conclusion. I have gone through the explanation submitted. Your explanation is not accepted. Your claiming rest short of destination truely causing stabling of train enroute is in violation of Rly.Board, letter No.E(LL)77/HER 29 dt. 3.4.81 , communicated to all depots vide their No.J/Tp29/ Pr.Rg/10 hr.rule dated 6.3.89. Though as per RLT award you have not exceeded the hours duty at a stretch. I therefore impose a penalty of withholding of increment to a period of 3 months.N/R.

3. The above penalty has been awarded by the undersigned and appellate authority is Sr.DME. Appeal hereon if any, is to be presented to the appellate authority within 45 days from the date of receipt of the advice."

The above order cannot be considered to be a speaking order and it does not in any manner cover the various points raised by the applicant in his reply to the chargesheet at Annexure A-8 which is extracted below:-

"In acknowledging the receipt of the subject memorandum of the charges it is respectfully submitted as follows:-

The charges are vague, cryptic according to the charges claiming rest at 12.00 hours short of destination and refussal to work further amounted to the alleged misconduct. This is not clear from the charges as to whether the claiming rest at 12.00 hours itself was wrong or claiming rest at short of destination was wrong. Further the allegation of refusal to work further upto Erode has no relevance because earlier allegation by itself a fact accompli.

In this connection I submit that I have signed 'ON' at 00.00 hours at Jolarpetai on 06.4.89 and signed 'off' at 12.20 hours at Sankaridurg. The total duty hours from signing 'on' to signing 'off' exceeded 12 hours. According to the RLT. award of 1969 accepted by the Railway Administration after 1977 the total maximum hours of duty at a stretch from signing 'on' to signing 'off' shall not exceed 12 hours. In any case I have claimed rest after the maximum limit of duty hours and therefore there is no violation of any of the condition in my terms of employment and the allegation of claiming rest at 12.00 hours does not therefore amount to a misconduct, actionable under the Railway Servants D & A Rules, 1968. In respect of the allegation of claiming rest short of destination I respectfully submit that when the claiming of rest itself was lawful, claiming of rest at short of destination or otherwise also lawful. The question of claiming rest is a question or an issue which arises only anywhere before the destination since there is no meaning in saying claiming rest at destination because the duty automatically ceases on arrival at destination. Therefore it is my submission that a right to claim rest is a right exercisable only before destination and not otherwise. The concept of claiming rest under the hours of employment Regulation as amended from time to time has no relevance what so ever to the place in which the rest is claimed and it has relevance to the time at which rest is claimed. The measure is, the time and not the place. Accordingly it is submitted that as long as the authority has no case that my claiming rest at 12.00 long way contrary to any of my terms of employment neither the act of

> claiming rest at short of destination, nor refusal to work further, amounts to the misconduct. For the reasons stated above it is respectfully submitted that I am not in any way guilty of the allegations and the allegations are not misconducts."

The first point raised by the applicant before us is that the charges are vague and cryptic. The charge against the applicant which was quoted earlier, reads as follows:-

> "Statement of allegation
> While the aforesaid was functioning as DSL.Asst of train No.PGT/JB on 6.4.89 ex JTJ -ED, claimed rest at SGE at 12.00 hours, short of destination and refused to work further upto ED, resulting in stabling of train enroute."

Even a cursory reading of the charge shows that the applicant is justified in assailing it as being vague and cryptic. It does not for one thing indicate what rules or instructions the applicant had violated in claiming rest at 1200 hours, short of destination, what was the destination and how the stabling of train enroute has violated any order or instruction and resulted in his misconduct or misbehaviour. The punishment order however springs a surprise on him by indicating for the first time that by claiming rest short of destination and thus causing stabling of train, the applicant has violated the Railway Board's letter of 3.4.1981 communicated to all depots vide their letter dated 6.3.89. It can justifiably be stated that had the applicant been told in the chargesheet itself that he had violated the Railway Board's letter of 3.4.1981 which is also the impugned order at Annexure A-6 in this application, he would have been better placed in putting up a defence by challenging that order on various grounds as he has done before us.The respondents have stated that "it is not the perfection of the language which matters in the charge memo like the one issued to the applicant. The question is whether the applicant has understood the charge levelled against him." They have argued that from his reply to the chargememo at Annexure A-8 it is clear that the applicant had understood the charge. We do not find it possible to accept this explanation. The total omission from the chargesheet of any mention of the violation of the Railway Board's letter at Annexure A-6 is not a mere imperfection of the language but a yawning gap . The reply to the charge memo at Annexure A-8 conse-

quentially does not refer to Annexure A-6, i.e, the circular dated 3.4.81 at all which has been held out to be the foundation of the punishment order at Annexure A-9. In Surath Chandra Chakravorty vs. State of West Bengal, AIR 1971 SC 752 it was held that if a person is not told clearly and definitely what the allegations are on which the charges preferred against him, are founded, he cannot possibly by projecting his own imaginaion, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him. In A.R. Mukherjee vs. Deputy Chief Mechanical Engineer, AIR 1961 Calcutta 40, the Calcutta High Court held that in departmental proceedings the charged employee has to be supplied with all necessary particulars and just to presume that the accused employee knew the charges, will not be sufficient. In Janak Sahu vs. Union of India and others, ATR 1987 (2) 390 , it was held by the Cuttack Bench of the Tribunal that the charged employee has no obligation to meet matters which emerge out of the evidence but not found in the charge and that since the disciplinary authority has based his findings on matters not based on the charge, the punishment order of removal has to be set aside. In A.L.Kalra vs. P&E Corporation of India, 1984 Lab.I.C. 161 it was held by the Supreme Court that where misconduct when proved entails penal consequences it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct. Since in the present case the charge of misconduct has been penalised with reference to the violation of the order at Annexure A-6 which was not at all mentioned in the chargesheet and the impugned order of punishment was passed without any further enquiry on the basis of the explanation given by the applicant on the chargesheet, we feel that the punishment order is vitiated by vagueness and lack of reference to the Railway Board's letter of 3.4.81 at Annexure A-6 referred to as the basis of the punishment.

42. The charge that the applicant claimed rest short of destination without clarification that the word "destination" refers to the destination of the crew and not the destination of the train puts further element of ambivalence in the charge. In the counter affidavit the

respondents have stated that even though the Power Controller and the Section Controller tried to persuade the applicant to assist the driver in working the train upto the crew changing destination, namely , Erode, he refused to do that and signed off at 12.20 in the noon. In that context the penalty order at Annexure A-9 that having signed on at the stroke of midnight he had not exceeded 12 hours of duty at a stretch before signing off at 12.20 p.m., is not correct. The chargesheet is to that extent again vague because it states that the applicant "claimed rest at SGE at 1200 hours short of destination" without mentioning that the applicant signed off not at 1200 hours but at 1220 hours after having been on duty continuously for more than 12 hours having 'signed on' the previous midnight at Jolarpettai station. The appellate order as quoted above at Annexure A-11 is also non-speaking as it does not touch the following pertinent points raised in the appeal at Annexure A-10:-

a) Claiming rest and refusal to work cannot stand together

b) He had completed 12.20 hours of duty from 'signing on' to 'signing off' in conformity with the recommendations of the RLT of 1969 when he was entitled to claim rest on completion of 12 hours continuous duty from signing on and signing off.

c) Claiming rest being his entitlement it cannot be construed to be a misconduct.

d) Rest is relief in respect of hours of work and not the place of work and thus destination has no meaning for claiming rest.

e) Claiming of rest short of destination will lead to absurd results(because)

f) For goods train there is no destination.

g) Para 4.1 of the circular dated 3.4.81 does not prevent running staff from claiming rest on completion of prescribed hours of duty as otherwise that will make the 10 hour rule redundant.

h) The circular of 3.4.81 merely expresses a desire of the Railway Board for achieving certain objectives of working hours. Its violation cannot be made punishable.

43. In Ramchander vs. Union of India and others, ATR 1986(2)SC 252 the Supreme Court while dealing with an appellate order passed under Rule 22(2) of the Railway Servants Discipline and Appeal Rules

as in case of the impugned order at Annexure A-11, held that duty to give reasons is an incident of the judicial process in which such orders are passed and relying upon an earlier decision, it held that the word 'consider' occurring in Rule 22(2) of the said Rule, implied due application of mind and a mere mechanical reporduction of the phraseology of Rule 22(2) of the said rules without any attempt on the part of the Railway Board either to marshal the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not, is not proper compliance of the statutory obligation cast on the appellate authority.

44. The contention of the respondents that a speaking order is not necessary for a minor penalty is not acceptable so long as the order results in a penalty of whatever character and a stigma. In Dr.P.K.Mittal vs. State of Punjab, 1982(3)SLR 222, it was held that an order withholding one increment without disclosing the reasons why the reply of the petitioner had been rejected is not sustainable. So long as an order may be subjected to appeal or revision or tested in writ jurisdiction of the Court, it has to be a speaking order. In G.Srinivasan vs. Government of Tamil Nadu, 1984 Lab.I.C. 392 the Madras High Court held that statutory appeals must be decided after consider the various matters mentioned in the rule and it is not sufficient to say that the appellate authority sees no reason to interfere with the original order.

45. We however do accept the argument of the learned counsel for the respondents that as a Railway servant the applicant was duty-bound and statutorily obliged to obey the lawful orders of the Railway Board and his superiors so long as they are not declared to be illegal. However as we have found the order at Annexure A6 to be bad in law, the punishment based primarily on the disobedience of that order cannot be sustained. Further, so long as such disobediences are not referred to in the chargesheet with particulars of the statutory orders or instructions disobeyed, any order of punishment for such disobedience even otherwise will be against the principles of natural justice. Accordingly the impugned orders at Annexures A9 and A11 have to be struck down.

46. In the facts and circumstances we allow this application OA 215/90 to the extent and on the lines as indicated below:-

(i) The impugned order at Annexure A-6 dated 3.4.81 is set aside.

If for the effective functioning of the loco running system any change in Annexure A5 is found necessary, the respondents may issue a proper order or instruction in accordance with law , keeping in view the following desiderata:-

a) There should be a specific upper limit of 'hours of employment at a stretch' as defined in para 3 of Section 1 of the HER Handbook for the loco running staff, between 'signing on' and 'signing off' including periods of inaction and non-running duties.

b) There should be another specific limit of 'running duty hours at a stretch' as defined in the Hours of Employment Regulations.

c) A distinction has to be made between destination of the train and destination of the crew and these destinations should be made known to the crew and all concerned in the beginning of the duty hours of the running staff.

d) Provision for advance notice of two hours before the staff claims relief or as the case may be, the Railway Administration requires extension of duty beyond the normal limits should be made.

e) Provision should be made to prohibit the stabling of trains only if relief is assured, at the next relief station or anywhere, within one hour of the lapse of the normal or extended (after due notice as at (d) above) period of overall or running duty hours at a stretch.

f) If possible, in fixing the limits of running duty hours at a stretch distinction may be made for the loco running staff between working a steam engine and working a diesel or electric locomotive.

(ii) Till such an order or instruction is issued, the respondents are at liberty to operate the order at Annexure A-5 dated 31.8.78 as an interim measure with such marginal modifications as are absolutely necessary in the public interest of efficient operation of the Railways, keeping in view

their obligations to the loco running staff in the historical and legal perspective brought out in this judgment with particular reference to the need to have reasonable upper limits of running duty hours and overall duty hours at a stretch as enunciated in the R.L.T award of 1969.

(iii) The impugned punishment order at Annexure A9 and the appellate order at Annexure A-11 are set aside with all consequential benefits to the applicant.

47. Based on the aforesaid findings, the other applications are disposed of as follows.

O.A.188/90

48. The applicant in this case was called to duty on 3.4.89 at Jolarpettai station at about 7 p.m. to work in a goods train. He signed on at 8 p.m. and claimed rest after a full night's run at 800 hours in the morning next day at Bommidi station where he signed off at 8.20 hours. On 7.4.89 he was chargesheeted for misconduct and misbehaviour as follows:-

> "Statement of allegation
> While the aforesaid was functioning as DSL Asst of train in MDKI Spl ex JTJ-ED on 4.4.89 claimed rest at BQI at 8.00 hr. short of destination, and refused to work further, resulting stabling of train enroute."

By the impugned order dated 14.6.89 at Annexure A-9 which is more or less similar to the one passed in O.A. 215/90 his increment due on 1.7.89 was postponed for a period of three months without postponing future increments. The reasons given by the disciplinary authority are as follows:-

> "2.(b) Reasons by which the disciplinary authority has arrived at the particular conclusion: I have gone through the explanation submitted. Your explanation is not accepted. Your claiming rest short of destination, thereby causing stabling of train enroute is in violation of Rly Board's letter No.E(LL)77/HER/29 dt. 3.4.81 communicated to all depots vide letter No.J/TP28/PrRg/10 hr rule dt. 6.3.89 through as per RLT award you have not exceeded 10 hours duty at a stretch. I therefore impose a period of 3 months NR."

His appeal dated 27.7.89 was dismissed giving the following bland reasons:-

> "I have gone through the appeal. You have established a wrong notion that the RLT 1969 has specified continuous running duty means deviation from signing on to signing off. This is not correct Continuous duty stipulated is from wheel movement to wheel movement. Secondly no stipulation about claiming the rest is mentioned in your employment terms and conditions. This clearly specifies that the appeal made by you is without your involvement with the help of aide which lacks in knowledge and hence it is not acceptable. Penalty stands good."

He has challenged the Railway Board's order dated 3.4.81 at Annexure A-6 as also the punishment order at Annexure A-9 and the appellate order at Annexure A-11.

49. Having gone through the records of this case, we find that the circumstances, facts and law being similar to those in O.A.215/90 our directions in O.A. 215/90 will 'mutatis mutandis' be applicable to this case also. The punishment and appellate orders are quashed with all consequential benefits.

O.A.191/90

50. In this case the applicant while working as Diesel Assistant, Erode was called and 'signed on' at 6 a.m. on 13.3.89 to work a goods train. Having completed 14 hours duty he claimed rest at 2020 hours on the same day at Tirupathur station. On 22.3.1989 he was served with a chargeshee for misconduct or misbehaviour as follows:-

> "Statement of allegation
> While the aforesaid was functioning as DSL Asst. of train No. CPJB Ex.ED-JTJ on 13.3.89 claimed rest at TPT at 20.20 hrs. short of destination, and refused to work further upto JTJ, resulting in stabling of train enroute."

On the basis of the explanation given by him, the punishment of withholding increment for three months was imposed on him for the following reasons:-

> "2(b) Reasons by which the disciplinary authority has arrived at the particular conclusion: Your explanation is not accepted your claiming rest short of destination (one station) and further refusal to work till destination has resulted in stabling of train short of destination which is violation of para 4.1 of Rly Board letter No.E(LL)77/HER 29 dated 3.4.81, though the relevant portion

of the above letter have already been communicated to all the depots through this office letter No.J/TP/Rg. 10 hrs.rule dated 6.4.89 you have not exceded 10 hrs. duty at a stretch. I therefore impose a penalty of withholding of 3 months increment NR."

His appeal dt. 25.6.89 was rejected with the following reasons:-

"Explanation is not acceptable. Party has not gone through the stipulation of RLT 1969 and also terms and conditions of his employment with the Railway thoroughly. From each sentence of appeal reflects his incensity to the administration. The present penalty is high, inadequate and hence same, but considering his innocence no change in the existing penalty is considered."

He has challenged the Railway Board's order dated 3.4.81 at Annexure A-6 as also the punishment order at Annexure A-9 and the appellate order at Annexure-A.11.

51. Having gone through the records of this case, we find that the circumstances, facts and law being similar to those in O.A.215/90 our directions in O.A.215/90 will 'mutatis mutandis' be applicable to this case also. The punishment and appellate orders are quashed with all consequential benefits.

O.A.209/90

52. While working as Diesel Assistant, Erode, the applicant was called to work a goods train at Jolarpettai where he signed on duty at 2245 hrs on 19.3.89 and claimed rest and signed off at Kaveri station at 1135 hrs on 20.3.89 after completion of more than 12 hours of duty at a stretch.

On 22.3.89 he was served with a chargesheet for misconduct or misbehaviour as follows:-

"Statement of allegation

While the aforesaid was functioning as DSl Asst of train No. plmD spl.goods Ex.JTJ - ED on 20.3.89 claimed rest at CV at 1100 hrs. short of destination and refused to work further upto ED, resulting in stabling of train enroute."

By the order dated 11/24.4.89 at Annexure A-9 his increment was stopped for 6 months for the following reasons:-

"2(b) Reasons by which the disciplinary authority has arrived at the particular conclusion: Your explanation is not accepted.

> Your claiming rest short of destination(One station) and further refusal to work till destination has resulted in stabling of train short of destination, which is a violation of para 4.1 of Rly Board letter No.E(LL)77/HER/29 dated 3.4.81 though the relevant portion of the above letter have already been communicated to all the depots through this office letter No.J/TP/Pr.Rg/10 hrs rule dt. 6.3.89 , you have not exceeded the 10 hrs duty of 6 months increment NR."

His appeal was disposed of for the following bland reason:-

> " Party has not fully understood the RLT award of 1969 and also terms and conditions of his employment with railway administration. Explanation is not acceptable and hence appeal is rejected."

He has challenged the Railway Board's order at Annexure A6 dated 3.4.81 as also the punishment order at Annexure A9 and the appellate order at Annexure A11.

53. Having gone through the records of this case, we find that the circumstances, facts and law being similar to those in O.A 215/90 our directions in O.A.215/90 'mutatis mutandis' will be applicable to this case also. The punishment and appellate orders are quashed with all consequential benefits.

O.A.214/90

54. In this case the applicant who was working as a Diesel Assistant was called to duty for working the Mettoor Dam Special goods train and he signed on at 2100 hours on 7.4.89 at Salem. After a strenuous night duty, according to him he claimed rest at 945 hours and signed off at 1005 hours on 8.4.89 after completing duty for 1305 hours. On 11.4.89 he was served with a memorandum of charge at Annexure A.7 for misconduct and misbehaviour, the relevant part of allegation reads as follows:-

> "While the aforesaid was functioning as DSL Asstt. of train No.MTDM Spl. ex. SA-MTDM-SA on 8.4.89, claimed rest at MCRD, at 8.30 hour, short of destination and refused to work further, resulting in stabling of train enroute".

55. He replied as at Annexure A.8 dated 29.4.89 and the impugned punishment order dated 13.6.89 at Annexure A.9 was passed by the disciplinary authority withholding increment for three months without postponing the future increments giving the following grounds:-

> "2.(b) Reasons by which the disciplinary authority has arrived at the particular conclusion: I have gone through the expla-

> nation submitted. Your explanation is not accepted. Your claiming rest short of destination thereby causing stabling of train enroute is in violation of Rly.Board's letter No. E(LL)77/HER 29 dated 3.4.81 communicated to all depots vide letter No.J/Tp28/PrRg/10hr rule dated 6.3.89. Though as per RLT Award you have not even exceeded 10 hours duty at a stretch. I therefore impose a penalty of withholding of increment of a period of 3 months NR."

As has been discussed in O.A 246/90 below the disciplinary authority has misinterpreted the R.L.T. Award which specifically prohibits total duty hours from signing on to signing off from exceeding 12 hrs, after 1980, for the loco running staff. His appeal dated 25.7.89 was rejected by the appellate authority giving the reasons as follows:-

> "Appellant has specified in his appeal that there is no destination to goods trains. This clearly proves his poor knowledge about his own organisation. Immaterial of destination of train, the crew are taken only from one crew changing point to the next crew changing point and not from Kanyakumari to Kashmir. I do not find any sincerity or devotion to duty in his appeal and hence regretted. Existing punishment is minimum and hence stands good."

56. Since the facts and circumstances of this case is more or less similar to O.A 215/90 , having heard the learned counsel for both the parties and gone through the documents carefully we dispose of this application on the same lines as O.A 215/90 directing that the same orders mutatis mutandis as in that case will govern this case also. The punishment and appellate orders are quashed with all consequential benefits.

O.A 222/90

57. In this case also the applicant while working as a Diesel Assistant was called to duty on 20.6.89 to work the Cauvery special from Salem junction where he signed on at 1300 hours on that day. The train arrived at its destination Cavery according to the applicant at 2315 hours after which his services were utilised for shunting operations for merely two hours. Feeling exhausted he claimed rest at 1.20 hours after completing 12 hours 20 minutes of duty at a stretch. On 23.7.89 he was chargesheeted (Annexure A.7) for misconduct or misbehaviour on the following allegation:-

> "While the aforesaid was functioning DSL Asstt. of train No.CV Spl. ex SA-LCR-ED on 20/21.6.89, claimed rest at

> 1.00 hr short of destination, resulting in stabling of train enroute."

He submitted his explanation on 3.8.89 on which the impugned order of punishment dated 9/24.8.89 at Annexure A.9 was passed giving only the following reasons:-

> "Your explanation is not acceptable. The destination of the train is ED as shown in SF.11. Your annual increment is withheld for a period of 6 months (NR)."

His appeal dated 23.10.89 was rejected by the appellate authority by which the impugned order dated 10.1.90 at Annexure A.11 on the following grounds:-

> "Appeal is not satisfactory. Instructions to be followed for claiming rest was clearly stipulated in working time table No.73. Charged employee has failed to obey the instructions, may be with malafied intentions."

58. Since the facts and circumstance of this case are similar to those in O.A 215/90, the same orders mutatis mutandis will apply to this case also. The punishment and appellate orders are quashed with all consequential benefits.

O.A.246/90

59. The applicant here also who was working as a Diesel Assistant while at Jolarpettai was called upon to work in goods train carrying food at 2.30 a.m. at Jolarpettai. He claimed rest at Magudanchavadi station at 3.45 p.m on that day after completing 12.15 hours duty at a stretch and signed off. He was served with a chargesheet dated 22.3.89 (Annexure A7) for misconduct and misbehaviour on the following allegation

> "While the aforesaid was functioning as DSL Asstt. of train NO.JPGT goods ex.JTJ-ED on 19.3.89 claimed rest at DC at 15.45 hrs. short of destination and refused to work further upto ED. resulting in stabling of train enroute."

He gave his explanation on 3.4.89 at Annexure A.8 on which the impugned order of punishment dated 12/21.4.89 was passed stopping his next increment for a period of three months without the effect of postponing future increments. The only reason given in the impugned penalty order (Annexure A9) is as follows:-

> ""2(b). Reasons by which the disciplinary authority has arrived at the particular conclusion: I have gone through the expla-

nation of the employee. His explanation is not accepted. Your claiming rest short of destination and further refusal to work the train has resulted in stabling of train short of destination. Thus, you have violated para 4.1 of Rly Board letter No.E(LL)77/HER 29 dated 3.4.81. In spite of the relevant portion of the above letter already communicated to all the depots vide Sr.DME letter No.J/TP28/PrRg/10 hrs rule dated 6.3.89. I therefore impose a penalty of withholding of increment to a period of 3 months NR."

His appeal dated 5.7.89 was rejected (Annexure A11) inter alia on the following grounds:-

"1. The appeal submitted by you is full of judicial jargon and does not appear to be a brain child of the appellant.

2. Your explanation that the allegation of 'claiming rest and refusal to work further cannot stand together is totally incorrect. Claiming rest, while on board, short of destination is complementary to the refusal of working the train to nominated crew destination and hence this cannot be dispensed.

3. Even though you have quoted recommendations of the RLT 1969, your understanding about recommendation is very poor. As per recommendation,

i) You can claim rest only after completion of 12 hours duty at a stretch which is computed from the time of actual departure of the train and not from signing on to signing off.

ii) While claiming such rest, you have to give two hours advance notice through controller.

4. In this case, you have neither completed 12 hours running duty nor you have given two hours advance notice through controller, but claimed rest on your own which is a serfous misconduct.

5. Your knowledge about terms and conditions of your employment with Railway is also poor. You may once again refresh your knowledge.

6. There is no goods train without a destination. You have to improve your knowledge about the destination codes used while moving goods trains."

60. Apart from the fact that the impguned orders at Annexure A.9 and Annexure A.11 in this case suffer from the same infirmities as those in O.A. 215/90 , the reason given by the appellate authority

also is not factually correct. The appellate authority has stated that in accordance with RLT 1969 the applicant could claim rest only after completion of 12 hours of duty at a stretch which is computed from the time of actual departure of the train. This is not correct. We quote below the operative part of the R.L.T.Report 1969:-

> "Running duty at a stretch of running staff should not ordinarily exceed 10 hours but such duty may extend to a maximum period of 12 hours, provided the concerned administration gives at least two hours' notice before the expiration of 10 hours to the staff that it will be required to perform running duty of 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 will be progressively reduced by half an hour every two years from the date of this Report till the target of 12 hours is reached, i.e. at the end of eight 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."

From the above it is clear that the 12 hours of duty at a stretch starts from the point of signing on and ends at the point of time of signing off. The RLT 1969 specifically distinguished the over all hours of duty from the running hours of duty. The running hours of duty was recommended to be 10 hours to be computed from the time of actual departure of the train and that could be extended to 12 hours only if the administration gave advance notice of two hours. The limit of over all hours of duty which was to start from signing on and end at signing off was kept at 1400 hours to be reduced to 12 hours after 8 years of the report ,i.e, by 1980. The appellate authority has completely mixed up the limit of hours of duty with the limit of running hours of duty. The appellate authority apparently forgot that the RLT 1969 specifically indicated that the running staff cannot be expected to give two hours notice before claiming rest and did away and replaced the earlier provision of the staff giving advance notice, by the provision of the administration giving two hours notice before calling upon the running staff to put

in extra hours of running duty at a stretch. The Railway Labour Tribunal 1969, adverting to the notice to be given by the staff observed that "staff is not often able to foresee that the journey will take 14 hours. Even if it foresees the same, it may not be possible to communicate notice to the Controller or, in any case journey may have to be continued further in spite of notice because the relieving staff may not be able to come for relief for various reasons. In my opinion there is no reason why such a burden should be drawn on the members of the staff. If once upper limit is determined on some rational basis, it should be adhered to". Accordingly the impugned orders at Annexures 6,9 and 11 in this application also have to be governed mutatis mutandis by the same order as O.A 215/90. The punishment and appellate orders are quashed with all consequential benefits.

O.A 253/90

61. In this case also the applicant who has been working as a Diesel Assistant on 30.3.89 was called to work a goods train, Palghat special and he signed on 2100 hours at Erode. After whole night's work when he felt utterly exhausted he claimed rest according to him at 0900 hours. According to the respondents he claimed rest at 0840 hours. The goods train carried foodgrains. On 4.4.89 he was served with a charge-sheet for misconduct or misbehaviour on the following allegation:-

> "While the aforesaid was functioning as DSL.Asstt. of train No.PGT .Spl ex ED-PGT on 31.3.89, claimed rest at PTJ at 8.40 hours short of destination and refused to work further, resulting in stabling of train enroute."

He submitted his explanation stating that he had signed off at 900 hours after putting in 12 hours of duty and in accordance with RLT 1969 award he was entitled to claim rest. After the explanation,the impugned order (Annex.A9) dated 18/19.6.89 was passed by the disciplinary authority imposing a penalty of withholding of his increment for a period of three months without postponing future increments for the following reasons:-

> "2(b): Reasons by which the disciplinary authority has arrived at particular conclusion: I have gone through the explanation submitted. Your explanation is not accepted. Your claiming rest short of destination thereby causing stabling of train

> is in violation of Rly.Board's letter No.E(LL)77/HER 29 dated 3.4.81 communicated to all depots vide letter No. J/TP29/P.Rg/10 hr.rule dated 6.3.89. Even as per RLT award you have not exceeded 10 hrs duty at a stretch. I therefore impose a penalty of withholding of increment for a period of 3 months N.R."

The appeal dated 2.8.89 was summarily disposed of by the impugned order at Annexure A.11 with the following grounds:-

> "I do not find any sincerity and devotion to duty in his appeal. Moreover RLT Award is misinterpreted. His appeal is nothing but a judicial camouflage and not acceptable. The penalty stands good."

62. Again in this case we find that the punishment order suffers from an error of interpretation of RLT Award of 1969 as in O.A 246/90 discussed earlier. Though it is admitted by the respondents that the applicant signed on at 2100 hours and signed off the following day at 840 hours with a total over all duty of 1140 hours they allowed him duty hours of less than 10 hours computing from the time of wheel movement started. Wheel movement is relevant for running duty and not for over all duty. For running duty hours at a stretch the upper limit by the RLT award is 10 hours while for over all duty it was to be 12 hours after 1980. Even though the applicant may not have completed 10 hours of running duty by 840 a.m. on the following day, since his over all duty hours commenced from 2100 hours the previous night he was entitled to claim rest from 900 hours the following day . He claimed it twenty minutes earlier as per R.L.T Award. In any case the infirmities in the impugned orders at A6,A9 and A11 in this case being the same as in O.A 215/90, xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx we direct that the same orders as in O.A 215/90 will apply mutatis mutandis to this case also. The punishment and appellate orders are quashed with all consequential benefits.

O.A. 310/90

63. Like the applicant in O.A 215/90 the applicant herein while working as Diesel Assistant was called for duty at Palghat on 27.3.89 at 2300 hours to work a goods train and he signed on duty at midnight between 27th and 28th of March, 1989. After whole night's work he

claimed rest at 1255 hours at Coimbatore, after completing more than 12 hours of duty at a stretch. On 3.4.89 he was served with a memorandum (Annexure A7) charge-sheeting him for misconduct and misbehaviour on the allegation as follows:-

> "While the aforesaid was functioning as DSL Asstt. of train No.ICIBE/LE with loco No.18486 ex.PGT-PLMD-CBE-PTJ on 28.3.89 claimed rest at 12.55 hrs at CBE and went away from loco and refused to work up to PTJ, where relief crew was available, resulting in stabling of train enroute."

He submitted his explanation on 16.4.89 stating that in accordance with the RLT Award of 1969, he was entitled to claim rest after 12 hours of duty at a stretch from signing on to signing off but the explanation was not accepted and the punishment of stoppage of increment for 3 months without future effect was awarded to him vide the impugned order dated 10.6.89 at Annexure A.9 giving the following reasons:-

> " Reasons by which the disciplinary authority has arrived at the is submitted. Your explanation is not accepted. Your claiming rest short of destination thereby causing stabling of train enroute is in violation of Rly.Board's letter No. E(LL)77/HER/29 dt. 3.4.81 communicated to all depots vide letter No.J/TP28/Pr.Rg/10hr.rule dt. 6.3.89. Even as per RLT award you have not even exceeded 10 hrs duty at a stretch. I therefore, impose a penalty of withholding of increment for a period of 3 months NR."

His appeal dated 29.7.89 was rejected summarily (Annex.A11) giving the following reasons:-

> "Appeal is full of judicial jargons. RLT award is wrongly interpreted. I don't find any sincerity and devotion to duty in the wordings of appeal. Hence it is not acceptable. The punishment is minimal and stands good."

64. Since the impugned orders at Annexures 6,9 and 11 in this case suffers from the same infirmities as those in O.A 215/90 and O.A 246/90 , we direct that this application also be governed mutatis mutandis by the same order as in O.A.215/90 disposed of above. The punishment and appellate orders are quashed with all consequential benefits.

O.A. 317/90

65. In this case also the applicant while working as a Diesel Assistant at Palghat was called to work a goods train and signed on duty at 0145 hours in the morning of 20.4.89 and after a full night's

running without any rest or relaxation he claimed rest at 1415 hours and signed off at 1435 hours when the train reached at Tirupur station. On 12.5.89 he was chargesheeted (Annexure A.7) for misconduct or misbehaviour on the following allegation:-

> "While the aforesaid was functioning as DSL Asstt. of train No. ERJD goods ex PGT-ED on 20.4.89, claimed rest at TUP at 1415 hours short of destination and refused to work further upto ED, resulting in stabling of train enroute."

He gave his explanation on 30.5.89 at Annexure A.8 relying upon the RLT award of 1969 which entitled him to claim rest after 12 hours overall duty at a stretch and explaining that he had claimed rest after more than 12 hours of duty. His explanation was not accepted and the order of punishment was passed at Annexure A.9 dated 7/24.8.89 withholding his increment for 6 months without future effect giving the following reason:-

> "2(b) Reasons by which the disciplinary authority has arrived at the particular conclusion: Your explanation is not acceptable. Your annual increment is withheld for a period of 6 months (NR)."

66. Since the impugned orders in this case suffer from the same infirmities as those in O.A. 215/90 our orders in that case will apply mutatis mutandis to this case also. The orders of punishment and appellate order are set aside with all consequential benefits.

O.A.386/90

67. Like the applicant in O.A.215/90 the applicant in this case also while working as a Diesel Assistant was called to duty at Erode

for working a goods train special and signed on at 1300 hours on 27.3.89. After completion of 12 hours of continuous duty and feeling exhausted according to him, he claimed rest at 1.30 hours after midnight of 28.3.89 and signed off at 1.50 hours at Pasur. On the same day on 28.3.89 he was served with a chargehseet(Annex.A7) for misconduct or misbehaviour on the following allegation:-

> "While the aforesaid was functioning as DSL.Asst. of train No.P GR Spl Goods ex ED.PGR-ED on 27/28.3.89, claimed rest at PAS at 1.30 hours, short of destination and went away from loco, refusing to work further upto ED, resulting in stabling of train enroute."

His submitted his explanation on 15.4.89 relying upon the RLT Award of 1969 and stating that after putting in an overall duty of more than 12 hours at a stretch he was entitled to claim rest and cannot be charged for misconduct. He also indicated that there is no meaning in claiming rest at destination because the duty in any case automatically ceases on arrival at destination and therefore the right to claim rest being a factor of time can be claimed before the destination also.

68. The explanation was not accepted and the impugned order of punisment dated 13.6.89(Annex.A9) was passed stopping his increment for three months without future effect giving the following reasons:-

> "Reasons by which the disciplinary authority has arrived at the particular conclusion: I have gone through the explanation submitted. Your explanation is not accepted. Your claiming rest short of destination thereby causing stabling of train enroute is in violation of Rly.Board's letter No. E(LL)/77/HER 29 dt. 3.4.81 communicated to all depots vide letter No.J/Tp28/Pr.Rg/10 hr dt. 6.3.89. Even as per RLT award you have not exceeded 10 hrs duty at a stretch. I therefore, impose a penalty of withholding of increment for a period of 3 months NR."

69. His appeal dated 4.8.89 was also disposed of summarily by the following peremptory orders at Annexure A.11 dated 31.10.89:-

> "I have gone through the appeal. It is not explanatory but RLT award has been wrongly interpreted. I don't find any

sincerity and devotion to duty in the appeal but Administration is being abused by using judicial jargon. Hence appeal is not acceptable. Penalty stands good."

70. Since the circumstances and law of this case are identical with O.A. 215/90 , this application also will be governed mutatis mutandis by the same directions as in that case so far as the impugned orders at Annexures 6,9 and 11 are concerned. The punishment and appellate orders are quashed with all consequential benefits.

O.A 402/90

71. Like the applicant in O.A 215/90, the applicant in this case while working as a Diesel Assistant at Erode was called to work on a special goods train from Erode and he signed on duty at 1630 hours on 30.3.89 at Erode. After 12 hours of continuous work particularly covering a night, according to him, he felt utterly exhausted physically and mentally and claimed rest at 445 a.m after putting in 12 hours and 15 minutes of work at a stretch. On 4.4.89 he was chargesheeted for misconduct and misbehaviour at Annexure A.7 on the following allegation:-

> "While the aforesaid was functioning as DSL.Asst. of train No.KUL/TLY Spl goods ex ED-PGT on 31.3.89, claimed rest at KJKD at 4.45 hours short of destination and refused to work further upto PGT, resulting in stabling of train enroute."

He submitted his explanation dated 18.4.89 at Annexure A.8 on the lines of the applicant in O.A. 386/90 stating also that he did not desert the loco. His explanation was not accepted and the impugned order of punishment was passed on 14.6.89 at Annexure A.9 withholding his increment for 4 months without future effect on the following grounds:-

> " Reasons by which the disciplinary authority has arrived at the particular conclusion: I have gone through the explanation submitted. Your explanation is not accepted. Your claiming rest short of destination thereby causing stabling of train enroute is in violation of Rly.Board's letter No. E(LL)/77/HER/29 dated 3.4.81 communicated to all depots vide letter No.J/TP28/Pr.Rg/10hr.rule dt. 6.3.89. Even as per RLT award you have not even exceeded 10 hrs duty at a stretch. This is the second time you are committing

the same. I therefore, impose a penalty of withholding of increment for a period of 4 months NR."

His appeal dated 18th January, 1990 was disposed of by the impugned order at A-11 with the following reason:-

" As stated in his application he had completed 12 hours of duty. 12 hrs of duty is certainly strenuous for running staff and case is considered leniently. The penalty imposed by AME is considered adequate and the proposal of enhancing the punishment has been dropped."

72. Since the infirmities in the impugned orders at Annexures 6, 9 and 11 in this case are similar to those in O.A. 215/90 and O.A. 246/90 as discussed earlier and since the appellate authority itself admits that the 12 hours duty put in by the applicant in this case has been strenuous for running staff, we allow this application also mutatis mutandis to the extent and on the lines indicated in O.A. 215/90 .The punishment and appellate orders are quashed with all consequential benefits.

O.A 444/90

73. Like the applicant in O.A. 215/90 and earlier cases discussed above, the applicant in this case while working as a Diesel Assistant at Palghat was called to work a goods train on 10.5.89 at Palghat where he signed on duty at 1045 hours. After completion of 12 hours of continuous duty at a stretch he claimed rest at 2230 hours and signed off at 2245 hours. He was chargesheeted on 17.5.89 for misconduct and misbehaviour at Annexure A.7 on the following allegation:-

"While the aforesaid was functioning as DSL.Asstt. of train No.IMS on 10.5.1989 ex PGT-ED, claimed rest at PTJ at 2245 hours, short of destination and refused to work further resulting in stabling of train enroute."

He submitted his explanation on 1.6.89 at Annexure A.8 on the same lines as in O.A 386/90(discussed earlier) which was not accepted and the impugned order of punishment withholding his increment for a period of 6 months without future effect was passed by the impugned order at Annexure A.9 dated 18.8.89 with the following bland reason:-

"Reasons by which the disciplinary authority has arrived at the particular conclusion: Your explanation is not accept-

able. Your annual increment is withheld for a period of six months (NR)."

His appeal dated 5.9.89 was rejected vide impugned order dated 29.3.90 at Annexure A11 on the following ground:-

" I have gone through the appeal. Railway is a public organisation engaged in essential services, you are also part of it. Railway Board's desire is the Railway rules and timing a Rly employee you have to obey the Railway rules. Even though you have completed 12 hrs. of total duty this during emergent situations it was not possible for the administration to give you relief before your destination. Further while claiming rest you have not observed the stipulations given in WTT. All the rules and stipulation made by the Railway administration are mandatory for the Railway employees and hence your appeal is not accepted. The punishment is adequate and stands."

74. From the punishment order at Annexure A.9 and the appellate order at Annexure.11 it is seen that like the charge sheet these orders are also cryptic in the sense that while violation of various rules and orders has been mentioned, which rules and orders have been violated have not been mentioned anywhere. In any case the impugned orders in this application are similar to those in O.A. 215/90 and like in earlier cases suffer from the same infirmities, as discussed in O.A.215/90. Accordingly we allow this application to the extent and on the lines we have allowed O.A. 215/90 and we direct that our orders therein will mutatis mutandis govern this application also. The punishment and appellate orders are quashed with all consequential benefits.

O.A.463/90

75. In this application the applicant while working as a Driver and undergoing rest at Erode on 10.8.89 was called on duty to take the goods train to Karoor. He signed on duty at 1545 hours and arrived at Karoor at 1730 hours. On completion of more than 12 hours 30 minutes of duty at a stretch including a full night and having felt completely exhausted physically and mentally according to him, he claimed relief and rest at 415 hours the following day and signed off after admittedly putting in duty of 1320 hours. On 22.8.89 he was charge-sheeted (A-7) for misconduct and misbehaviour with the following allegation.

> " While the aforesaid was functioning as driver of 2 MT ex KRR-LP-KRR on 10/11.8.89 claimed rest at LP at 4.10 hrs and refused to work further LE up to KRR, resulting in heavy detention to PSL Loco at LP."

He submitted his explanation on 14.10.89 at Annex.A.8 indicating that is running duty hours exceeded 10 hours and instead of several notices and messages claiming rest when he was not provided with relief and he was physically tired, to keep safety norms, he signed off. Without discussing the grounds given by the applicant in his explanation the impugned order of punishment was passed on 6.11.89 at Annexure A.9 withholding his increment for 6 months without future effect. The only reason given for rejecting his explanation is as follows:-

> "The explanation of the driver of LM 16 holder is not acceptable. His annual increment is withheld for a period of 6 months(NR)."

His appeal dated 23.12.89 was rejected by the impugned order at Annex. A-11 dated 19.3.90 on the following ground:-

> "I have gone through your appeal. You have worked only for 9-15 hours from wheel movement to wheel stop and total duty performed was 10 hrs 15 mts as against 12 1/2 hrs stipulated in your appeal. You had malafide intention to misuse RLT 10 hrs rule and hence adequate and hence confirmed."

76. Both the impugned orders at Annexure A.9 and A.11 being cryptic and non-speaking (apart from misinterpreting R.L.T Award) and the charge being vague, the disciplinary proceedings and the impugned orders suffer from the same infirmities as in O.A. 215/90 and earlier cases discussed above. Accordingly we allow this application to the extent and on the lines followed in O.A 215/90 and direct that this application be disposed of mutatis mutandis on the same basis and directions as in O.A 215/90 so far as the impugned orders at Annexures 6,9 and 11 are concerned. The punishment and appellate orders are quashed with all consequential benefits.

O.A. 477/90

77. Like the applicant in O.A. 215/90 the applicant in this case also has challenged the Railway Board circular dated 3.4.81 at Annexure A.6 and the order of punishment dated 18.8.89 by which his increment

was withheld for six months without future effect and the appellate order dated 30.4.90 at Annexure A.11 rejecting his appeal. The facts are also more or less similar to the aforesaid case. While the applicant was working as a Diesel Assistant, on 27.4.1989 he was alerted for joining duty to work a goods train from Erode to Jolarpettai. He signed on at 4.30 a.m. on 27.4.89 at Erode and after detention at various intermediate stations the train reached Karipur station at 1145 a.m and was engaged in shunting work there till 2.55 p.m. In the middle of shunting the applicant claimed rest at 2.30 p.m and signed off. According to the applicant he claimed rest and signed off when he was feeling completely exhausted physically and mentally and thought that further continuance on duty was dangerous not only to himself but to the running train also. On 12.5.89 he was chargesheeted for misconduct or misbehaviour on the following allegation:-

> "While the aforesaid was functioning as DSL Asst. of train No.EXV/ECG/SGJD ex.ED-JTJ on 27.4.89, claimed rest at KPPR at 14.30 hours, short of destination and refused to work further, resulting in stabling of train enroute."

He have his explanation on 27.5.89 denying the charge and stating that he had neither claimed rest nor refused to work(Annexure A.8). On this the impugned order of punishment was passed on 18.8.89 at Annexure A.9 giving the following bland reason:

> "Reasons by which the disciplinary authority has arrived at the particular conclusion: Your explanation is not acceptable. Your annual increment is withheld for a period of six months (NR)."

His appeal dated 3.10.89 was rejected on the following ground:-

> "Even though you have denied the charges there is message issued from your end existing in control office to prove that you have demanded rest on arrival at KPPR while working SGTD goods on 27.4.89. The punishment is quite adequate and does not warrant any change."

78. Since neither in the charge nor in the punishment order nor the appellate order has any reference been made to the applicant's violating the Railway Board circular dated 3.4.81 at Annexure A.6

he has no locus standi so far as challenging the vires of Annexure A.6 is concerned. However, for the reasons indicated in O.A 215/90 above, the charge being vague and the punishment and appellate orders being not speaking, we allow this application to the extent of setting aside the impugned orders at Annexure A.9 and Annexure A.11 with all consequential benefits.

O.A.664/90

79. Like the applicant in O.A. 215/90 the applicant in this case while he was working as Diesel Assistant at Erode was called to duty to work a goods train where he signed on at 12.30 p.m on 28.3.89. He claimed rest at 1 a.m. and signed off at 1.20 a.m. at Danishpet station on 29.3.89 after more than 12 hours of duty and took rest.He was chargesheeted on 20.4.89 (Annexure A.7) for misconduct and misbehaviour with the following allegation:-

> "While the aforesaid was functioning as DSL.Asst. of train No.STMD,Ex E.D-JTJ on 28.3.89 claimed rest at ISPT at 1.00 hours, short of destination and refused to work further, resulting in stabling of train enroute."

He submitted his explanation on 2.6.89 and indicated that for want of passage the Controller advised him and the Driver to shut down the loco and take rest at 100 hrs on 29.3.89. Hence the Driver shut down the loco and both of them took rest there. Without discussing his explanation the punishment order dated 18.8.89 at Annexure A.9 was passed withholding his increment for six months without future effect. The reason given is as follows:-

> "2(b). Reasons by which the disciplinary authority has arrived at the particular conclusion: Your explanation is not acceptable. Your annual increment is withheld for a period of 6 moinths (NR)."

His appeal dated 9.11.89 was rejected by the impugned order at Annexure A.11 dated 20.2.1990 on the following ground:-

> "It is true that you have been advised through power message to take rest but the Control was forced to do so to avoid further detention to the loco which you had already caused by refusing to work further, after completion of only 6 hrs. and 15 mts. running duty.
> You have also disobeyed the instructions stipulated in WTT. The punishment is adequate and have stands good."

80. The punishment order to say the least is not only non-speaking but does not indicate application of mind whatsoever. The above order refers to the running time being 6 hours 15 minutes without mentioning that the total hours of employment at a stretch in his case had exceeded 12 hours which is the upper limit laid down in the R.L.T award. The appellate order also imposed a fresh charge that he had disobeyed the instructions stipulated in WTT which was not mentioned in the original charge-sheet.

81. In the circumstances, the impugned orders in this case suffer from the same infirmities as in O.A. 215/90 and we allow this application mutatis mutandis on the lines and with the same directions as we have given in O.A. 215/90. The punishment and appellate orders are quashed with all consequential benefits.

O.A. 685/90

82. Like the applicant in O.A. 215/90 the applicant in this case while working as Diesel Assistant at Erode Rly station was called on duty to work a goods train and accordingly he signed on duty at 1545 hours on 10.8.89. Admittedly he claimed rest at Lalapet station at 0415 hrs on 11.8.89 after 12.30 hours of duty at a stretch including the night hours. He was charge-sheeted on 22.8.89 for misconduct or misbehaviour with the following allegation:-

> "The aforesaid, while functioning as DSL.Assistant of train No.2MT ex KRR-LP-KRR on 10/11.8.89 claimed rest at LP at 4.10 hrs and refused to work further LE upto KRR, resulting in heavy detention to DSL Loco at LP."

He gave his explanation on 12.10.89 invoking the RLT award of 1969 according to which he was entitled to claim rest after putting in 12 of duty after signing on. Since he had claimed rest and signed off after 12 hrs according to him there was no misconduct on his part. According to him the measure of claiming rest is time and not the place. His explanation was not accepted and the impugned order of punishment dated 13.11.89 at Annexure A.9 was passed withholding his increment for a period of 6 months without future effect with the following bland reasons:-

> "Reasons by which the disciplinary authority has arrived at the particular conclusion: Your explanation is found not acceptable. Your annual increment is withheld for a period of 6 months (NR)."

His appeal dated 13.12.89 was rejected by the appellate order at Annex. A-11 giving the following reason:-

> " I have gone through your appeal. You have neither worked for total 12 hrs nor completed 10 hrs. running duty i.e. from wheel movement to wheel stop. Hence your appeal is not acceptable. The punishment imposed is adequate and stands."

The reason given in the appellate order is obviously not correct . As has been discussed in O.A. 246/90 (supra) as the applicant had put in more than 12 hours of employment after signing on, he could claim rest. One can claim rest not only after 10 hours of running duty at a stretch but also after 12 hrs of over all duty at a stretch even though he may not have completed 10 hours of running duty at a stretch.

83. In the circumstances and conspectus of facts we find that the impugned orders as at Annexures A-6, A-9 and A-11 suffer from the same infirmities in this case as in O.A. 215/90. Accordingly we allow this application mutatis mutandis on the same lines and with the same directions as in O.A. 215/90. The punishment and appellate orders are quashed with all consequential benefits.

O.A. 908/90

84. The applicant in this case like the applicant in O.A. 215/90 was called to duty to work a goods train on 20.7.89 and accordingly he signed on at 1300 hrs on that day at Quilon. According to him on arrival at Ernakulam at 2125 hours he gave notice of rest after 10 hours of work as he was feeling tired. He was asked to work for two

hours more. At 2250 hours he expressed his inability to work the train upto Palghat involving a full night's duty. According to him he was asked to take rest and signed off at 1120 p.m in the night. He was charge-sheeted on 3.8.89. The imputation of charge was as follows:-

> "Shri C.K.Babu, DSL Asstt/EKM while working as DSL Asst. of CR Jumbo relucts left GCN at 1425 hrs on 20.7.89 claimed rest at 2130 hrs on arrival of the train at ERN whereas the total hrs. worked by him from wheel move to arrival was only 7.05 hrs in spite of request from Control to work further upto PGT. His total working hrs from sign 'on' at 1300 hrs to sign 'off' at 2250 hrs works out to only 9.50 hrs. Thus has resulted in the termination of the Stock in ERN and dislocation of train services.
>
> Thus he has violated 10 hrs rules, Instruction for Running Staff on Page No.55 of N.T.T.No.20 of TVC Division."

He gave his explanation on 19.8.89 indicating that the time between signing on and signing off exceeded 10 hours at a stretch. His explanation was not accepted on the basis of the 10 hour rule as per impugned order at Annexure A.6 dated 3.4.81 and without giving any reason a cyclostyled order of punishment dated 30.11.89 was passed at Annexure A.10 withholding his increment for a period of 6 months without future effect. His appeal was rejected by another cyclostyled order dated 28.6.90 at Annex. A.12 giving the following ground:-

> " I have gone through the appeal. The DAR proceedings have been followed correctly. The Dsl.Asst. in this case had not completed 10 hrs from signing on, when he was asked to work further. He has not given the notice as indicated in the WTT. Hence no grounds for reconsideration of the penalty imposed. Regret."

85. Since the impugned order of punishment at Annexure A.10 does not give any reason whatsoever for the punishment and the appellate order does not in any way discuss the points raised in the appeal, these suffer from the same infirmities as those at Annexure A.9 and A 11 in O.A.215/90. The charge, however, is not vague as in O.A.215/90. However, the infirmities in the impugned order at Annexure A.6 dated 3.4.81 which is also the same as Annexure A.6 in O.A. 215/90 and the extracts of working time table at Annexure A.7 based on Annexure A.6 in O.A. 215/90 has the same built-in irrationality on account of

which we set aside the order at Annexure A.6 .

86. In the circumstances we allow this application on the same lines as in O.A. 215/90 and set aside the orders at Annexure A.6 and Annexure A.7 and direct the respondents to review Annexure A.6 and Annexure A.7 accordingly. So far as the punishment and appellate orders at Annexure -10 and Annexure-12 are concerned, based as they are on orders at Annexures A6 and A7, we set them aside with all consequential benefits.

O.A.910/90

87. In this case also the applicant as in O.A. 215/90 while working as Diesel Assistant on 20.7.89 was called to work a goods train from Quilon. He signed on and joined duty at 1300 hours on that day and on arrival at Ernakulam North station at 2125 hrs. according to him he gave an advance notice that he would claim rest after 10 hours of duty since he was feeling tired. He was asked to work for two hours more but since there was no initiate to move the train and he was feeling exhausted and was unable to work upto Palghat he signed off at 2320 hrs. and was asked to take rest. He had thus been on duty for more than 10 hours. On 3.8.89 he was chargesheeted (Annexure A.8) which reads as follows:-

> "Shri C.K.Rajendra Kumar, DAT/ERN while working as the DSL.Asstt. of CPJ BAM on 20.7.89, which left QLN at 1425 claimed rest at 2130 hrs. on arrival of the train at ERN, in spite of request from Control to work for this upto PGT. His total working hrs. from sign 'ON' at 1300 hrs to sign off at 2250 hrs. works out to only 9.50 hrs and the wheel move to wheel stop works out to only 7.05 hrs. (Wheel move 1425:Arrival 2130 hrs).
>
> Thus he had violated 10 hour Rule/instructions for running staff" on page No.55 of W.T.T.No.20 of TVC Division."

He submitted his representation on 19.8.89(Annexure A.9) indicating that since he was thoroughly exhausted after working for 10 hours and it was not possible for him to take the train upto Palghat, he communicated the second message impressing his inability to work upto PGT on account of fatigue. He further explained that he had already put in more than 10 hours of work from signing on to signing

off.

88. On his explanation, the impugned order of punishment dated 24.11.87 on a cyclostyled form was issued withholding the next annual increment for a period of one year without any future effect. There was no reason given in the order of punishment except the following:-

> "Your explanation dated 19.8.89 in reply to this office memorandum of even number dated 3.8.89 has very carefully been considered by the undersigned but found to be unacceptable and you are held guilty of the charges."

His appeal dated 15.1.90 was also rejected with the following reasons:-

> " I have gone through the appeal. The DAR proceedings have been followed correctly. His expressing inability to work beyond ERN when he had gone only 7.05 hours duty from wheel move and 9.50 hours from signing on amounts to claiming relief. This is in violation of instructions in the WRR. Also the notice as indicated in the WTT was not given. As such no grounds for reconsidering the punishment. Regret."

Since the impugned order of punishment at Annexure A.10 does not give any reason whatsoever for the punishment and the appellate order does not in any way discuss the points raised in the appeal, these suffer from the same infirmities as those at Annexure A.9 and A.11 in O.A. 215/90. The charge, however, is not vague as in O.A. 215/90. Nonetheless, the infirmities in the impugned order at Annexure A.6 dated 3.4.81 which is also the same as Annexure A.6 in O.A. 215/90 and the extracts of working time table at Annexure A.7 based on Annexure A.6 in O.A. 215/90 has the same built-in illegality on account of which we set aside Annexure A.6 order in O.A.215/90.

89. In the circumstances we allow this application on the same lines as in O.A.215/90 so far as Annexure A.6 and Annexure

A.7 are concerned and direct the respondents to modify Annexure A.6 and Annexure A.7 accordingly. So far as the punishment and appellate orders at Annex.10 and Annex.12 are concerned, we set them aside with all consequential benefits.

O.A.915/90

90. Like the applicant in O.A. 215/90 the applicant herein while working as Diesel Assistant at Ernakulam was chargesheeted on 10.4.89 with the following charge:-

> "While working as DSL Asst. of EQD goods which left at 1.40 hrs on 1.4.89 claimed rest at 1010 hrs at KYJ on 1.4.89 and deserted the loco without being properly relieved. Even though the Controller had promised a through run to the train to QLN without any detention, he refused to work further from KYJ. As per the provisions of RLT award, he has to work upto 1200 hrs. He gave a memo to Control claiming rest for the crew signed by him and not by the driver.
>
> Finally when he was asked to work LE from KYJ he refused to work the LE also. Thus he exhibited profoundly his non-cooperative attitude and obstructive working with a sole intention to dislocate train services.
>
> Thus he has violated the provisions of RLT award 1969, para 4.1 of Railway Board letter No.E(LL)77/HER/29 of 3.4.81 and article 3.1(i)(ii)(iii) of Railway Service Conduct Rules of 1966."

On 3.5.89(Annexure A2) he requested the disciplinary authority to furnish copies of the RLT award and Railway Board letter dated 3.4.81 to enable him to submit an explanation to the charge. Without giving any information or reply to the applicant, the disciplinary authority passed the impugned order dated 29.11.89 at Annexure A.3 withholding his next increment for a period of six months without future effect. The reasons given in the punishment order is as follows:-

"Since your contention that you were not understood the charges is not sustainable. You have to be conversant with the Rules regarding your duties. Further since you were given memo at KTYM to PRC stating that you desire to take rest after completion of normal working hours". This shows clearly your knowledge of rules regarding the working rules of running staff. Your letter dated 3.5.89 is deemed as explanation and is not accepted as his action is in violation of the rules."

91. The applicant filed an appeal on 28.1.90 reiterating that without giving an opportunity to go through the provisions of RLT Award, 1969 and Railway Board's letter dated 3.4.81 and the provisions of the Conduct Rules mentioned in the charge he was straightaway punished wrongly assuming that he knew the Rules. The appellate authority rejected the appeal on the following ground:-

" The representation of the employee(appeal) has been considered and is not found acceptable for the following reasons. The charged employee is supposed to knew the rules governing his duty hours and also Railway Servant's Conduct Rules.

However, the fear that the charged employee has given a memo at KTYM indicating his intention of taking rest after completion of normal working hours, proves that he is aware of the rules governing his duty hours.

The representation of the employee has been considered by the disciplinary authority and orders have been passed after due consideration of the representation. I do not see any reason to modify the penalty imposed which must stand."

92. The respondents in the counter affidavit have stated that the applicant in this application dated 18.10.90 had suppressed the fact that he had earlier filed another O.A. 908/90 in which he had narrated the conditions of service prevalent from 1947. In that application he had produced the Railway Board's circular dated 3.4.81. The respondents have supported that circular on the same grounds as have been covered in O.A. 215/90. They have also mentioned that when the fact finding enquiry was conducted on 6.4.89 the applicant admitted that he had worked for 10 hours of duty from signing on and that as per RLT Award he has to work 10 hours from signing on and the maximum of 12 hours

when advance information was given from PRC. This shows that he was aware of the rules of the running staff. They have stated that the circular of 3.4.81 was circulated on 15.5.81 to be notified to all Railway staff.

93. We have heard the learned counsel for both the parties and gone through the documents carefully. It is true that the applicant in connection with another charge dated 3.8.89 has filed another application O.A. 908/90 dated 18.10.90 seeking similar reliefs. But this does not mean that the applicant had in his possession the text of the RLT Award and the Railway Board circular dated 3.4.81 when he was charge-sheeted on 10.4.89. We do not think that it was necessary for the applicant to mention about another application filed by him in connection with another disciplinary proceedings in this application. There is no column in the application form for mentioning such a fact. If that application had been in connection with the same cause of action, it was perhaps necessary for him to mention that and but not otherwise. The rules of natural justice required that before any action adverse to the applicant is taken he should be provided with all reasonable facilities to answer the charge levelled against him. Since he had specifically sought copy of the RLT Award 1969 and the Railway Board's letter dated 3.4.81 it was the obligation of the respondents to allow the applicant either to inspect these documents or to provide him with copies thereof. If these were not possible it was obligatory on the part of the respondents at least to reply to his letter dated 3.5.89 at Annexure A.2 rejecting his request for documents and giving him a further time to reply to the charge levelled against him. The punishment order at Annexure A.3 passed without acceding to or replying to the request made by the applicant on 3.5.89 is thus premature and violative of the principles of natural justice. The fact that he had earlier indicated his familiarity with the RLT Award does not disqualify him from getting more familiar to answer the charge levelled against him effectively. Familiarity with certain award or orders does not disentitle him to seek copies thereof to answer the charge. The appellate order at Annexure A.5 by not

meeting the basic requirements of natural justice also fails to fulfil the standards of a valid quasi-judicial order in disciplinary proceedings. It may be noted that even the appeal was filed on 28.1.90 long before the applicant approached the Tribunal in October, 1990 with O.A. 908/90 and this application. It cannot be presumed that even at the time of filing the appeal, he was adequately equipped with the basic documents necessary for meeting the charge.

94. In the facts and circumstances, we allow the application on the lines of our order in O.A 215/90 and set aside the impugned orders at Annexure A.3 and Annexure A.5 with all consequential benefits. There will be no order as to costs.

10/1/92

(A.V.HARIDASAN)
JUDICIAL MEMBER

10.1.92.

(S.P.MUKERJI)
VICE CHAIRMAN

n.j.j