

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.246/2002.

Friday this the 6th day of August 2004.

CORAM:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

P.D.John, working as Traffic Inspector,
Special Works, Quilon, residing at:
Railway Quarters, 197/B, Quilon P.O. Applicant

(By Advocate Shri M.P.Varkey)

Vs.

1. Union of India, represented by
The General Manager,
Southern Railway, Chennai-600003.
2. Chief Passenger Transportation
Manager, Southern Railway,
Chennai-600003.
3. Additional Divisional Railway Manager,
Southern Railway, Trivandrum-695014.
4. Senior Divisional Operations Manager,
Southern Railway,
Trivandrum-695014. Respondents

(By Advocate Mrs.Sumathi Dandapani)

The application having been heard on 6.8.2004, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

26/8/04

The applicant while working as Station Manager, Ernakulam
Town in 1996, developed a kidney failure and was under treatment
in the Government Medical College Hospital, Trivandrum as an
in-patient from 13.3.96 to 29.4.1996 and had to attend periodical
check up. Thereafter he had to have his check up on 19.9.97
onwards.. He applied for three days leave from 19.7.97 on
15.9.1997 through Railway tapal under Free Service Way Bill No.16
of 15.9.97 under clear acknowledgement from the Guard of 6526

Express. He also sent a telephonic message to the 4th respondent/OTC(Overtime Controller) at 10.00 hours on 15.9.97 in compliance with the instructions in vogue regarding grant of leave to Station Masters in the Division. He ascertained that his leave would be sanctioned from the OTC Mr.Surendran. Therefore, before the formal communication of grant of leave, the applicant proceeded to Trivandrum for check up. While so, on 19.9.97 the 4th respondent visited the Ernakulam Town Railway station and found the applicant not present and he on 26.9.97 issued the impugned order (A1) stating that the applicant was unauthorisedly absent, that his leave has not been sanctioned for three days from 19.9.97 to 21.9.97 that the period be treated as absence from duty and that salary for three days be deducted. The applicant was also served with A-2 Memorandum of Charges for minor penalty wherein it was alleged that he was while functioning as Station Manager had committed dereliction of duty and that he unauthorisedly absented from duty from 19.9.97 to 21.9.97 for three days without proper sanction of leave from the competent authority and had thus violated Rules 3.1(ii) and 3.1(iii) of Railway Service (Conduct) Rules of 1966. The applicant immediately submitted A-3 reply wherein he categorically stated that he had applied for leave in writing as also on telephone that before proceeding on leave he got the message that leave would be sanctioned that he had availed leave for medical treatment and that he has not committed any dereliction of duty warranting action against him. He also inter-alia stated that if the matter was to be further proceeded with, an enquiry should held in which he would be able to establish his innocence.

(Signature)

2. The 4th respondent rejected the applicant's explanation and issued A-4 order dated 24.11.97 holding the applicant guilty of the charges and imposed on him a minor penalty of withholding of one set of Privilege Pass for the year 1998.

3. The applicant submitted A-5 Appeal dated 23.1.98 raising several grounds. The Appellate Authority by A-6 order disposed of the Appeal upholding the penalty. Aggrieved by that the applicant submitted a Revision Petition (A7) dated 26.10.98 which was also turned down by A-8 revisional order dated 18.6.01 confirming the penalty. Aggrieved by that the applicant has filed this application seeking the following reliefs:

- a) Call for the records leading to the issue of Annexures A-1, A-4, A-6 and A-8 and quash the same.
- b) Declare that Annexures A-1, A-4, A-6 and A-8 orders are illegal, unconstitutional and without jurisdiction.
- c) Direct the respondents to regularise the period of absence of the applicant from 19.9.97 to 21.9.97 with all attendant benefits and to release the one set of withheld free pass in favour of the applicant.
- d) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

The applicant has stated that while the applicant applied for leave in advance, he had taken care to ascertain whether the leave would be granted or not and only after confirming that the leave would be granted, he proceeded on leave for check up by the Nephrologist. Therefore, the action on the part of the 4th respondent in treating the period of leave as absence by A-1 order and holding the applicant guilty of the charges for unauthorised absence without giving an opportunity to establish his innocence by holding an enquiry, despite a request in that behalf, is wholly unjustified as also the Appellate and Revisional authorities also did not advert to the valid grounds

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raised by the applicant in the Appeal as also in the Revision Petition. The impugned orders therefore, are wholly unjustified and are liable to be set aside, states the applicant.

4. The respondents contend that the applicant should have informed the authorities before he proceeded on leave, that the sending of leave application through Railway Tapal was not proper, that the contention that the applicant ascertained that leave was granted was not true, that there was no obligation to hold an enquiry as the proceedings was only for a minor penalty and that there was no infirmity with any of the impugned orders.

5. We have with meticulous care gone through the pleadings and all the documents that have been placed on record and have heard Shri M.P.Varkey, learned counsel appearing for the applicant and Mrs.Sumathi Dandapani appearing for the respondents. The orders under challenge in this Original Application are Annexure A-1 order by which the period between 19.9.99 to 21.9.99, has been treated as absence from duty, and deduction of pay for that period and imposition of minor penalty on the applicant of withholding of one set of privilege pass by A-4 order, the order(A6) by which the Appellate Authority upheld the imposition of minor penalty and A-8 order of the Revisional Authority confirming the punishment imposed. The only point that arises for consideration is whether the decision contained in the impugned orders that the applicant absented unauthorisedly and was therefore guilty of misconduct is sustainable?

6. It is not disputed that the applicant had made his application for leave for three days on 15.9.97. The respondents contended that he was not expected to send the leave application through FSWB. It had not been made clear either in the memorandum of charge or even in the pleadings that there exists

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any rule or instruction which forbid a leave application being sent by that method. Even if it is assumed that in the Division no one had sent the leave application through FSWB, as the leave application had been sent and had reached the competent authority, it is too technical for the respondents to contend that the method by which leave application has been sent was not proper and therefore his absence was unauthorized. Paragraph 2(ii) of Rule 512 of the Indian Railway Establishment Code Vol (I) reads as follows:

"Where a Railway servant is proceeding on leave before the date of issue of the consolidate leave order, the fact whether the leave applied for by him has been sanctioned or not may informally be ascertained from administration section by the individual concerned. The general principle should, however, be that after the leave has been recommended by the Railway servant's immediate controlling authority, the leave may be deemed to have been sanctioned unless he is given an intimation to the contrary."

It is evident from the above note that, before receipt of formal communication of sanction of leave, the Railway servant should ascertain from the immediate superior about sanction of leave and then proceed on leave. The applicant has averred in his explanation that he proceeded on leave only after confirming that the leave had been recommended and would be granted. The applicant had stated that if the matter was to be further proceeded an enquiry might be held and that he would establish his innocence. The Disciplinary authority refused to hold an enquiry demanded by the applicant. After considering the explanation the Disciplinary authority issued A-4 order imposing the penalty for the following reasons:

"Reasons. I have gone through the explanation submitted by the charged employee in detail. He has stated that he has sent the leave application through FSWB. Nobody sends the leave application through FSWB in this division as an OT Cell controlled by Hqrs.TI/II Sri.Surendran daily takes the messages before noon over



Control phone. The FSWB book is with the SS Sri. P.D.John and he has first written the name of Shri A.P.Radhakrishnan Menon as the SM who despatched the same and later altered as his name probably because A.P.Radhakrishnan Menon might not have agreed to fudge records. Hence the same is not taken seriously. As regards the telephoning of the message on 15.6.97 TI/II Sri.Surendran has taken leave application messages from PNG, MTMC, PUK, IPL and TVC stations in the Section and recorded the same and the reply was given promptly and there is no reason why ERN's message was not recorded if the same was offered. Hence, the SS's contention that he has given message through Control phone can not be accepted. As far as the application has not been received the leave was not sanctioned and the plea of the employee that he was availing a sanctioned leave cannot be accepted. Regarding the request of the employee that an enquiry may be conducted in this case, the employee mean only a DAR enquiry and the same is not mandatory in this as this is a SF 11 case. Otherwise I made enquiries and came to the conclusion that the employee has only unauthorisedly absented without applying for leave. Regarding his present request for granting him leave I am constrained to state that the employee has not followed the procedure laid down in getting the leave sanctioned and he is not setting a good example to his subordinate and co-workers and hence the absence is not being regularised as leave. He is imposed with a penalty of withholding ONE SET OF FREE - Pass eligible for him in the year 1998, as a penalty."

It is evident from what is quoted above that the applicant had sent his leave application through FSWB. It was not taken seriously as no one, according to the disciplinary authority, used to send leave application through FSWB. No rule or instruction has been quoted in the order to establish that there is any prohibition against sending leave application through FSWB. Why such an application should not be considered is not stated even by the counsel of the respondent. The applicant's contention that he had also telephonically applied for leave also has been turned down on presumption. The applicant had categorically stated that he had applied for leave through FSWB, had also telephoned, that he was informed that leave had been recommended, that he was not guilty of unauthorised absence and that if the explanation is not accepted an enquiry might be held. The disciplinary authority refused to hold an enquiry and thereby denied the applicant an opportunity of establishing that he was

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innocent. This amounts to denial of natural justice to him. Further more the disciplinary authority has committed a great error, in coming to a conclusion that the applicant was guilty on the basis of some enquiry allegedly held by him behind the back of the applicant. It is stated in the A-4 order "Otherwise I made enquiries and came to the conclusion that the employee has only unauthorisedly absented without applying for leave." Further leave was not granted because according to the disciplinary authority the applicant did not follow the right procedure in applying for leave. We are constrained to state that the reasoning is untenable and perverse. In O.K.Bhardwaj Vs. Union of India reported in 2002 SCC (L&S) 188 the Apex Court has held that:

"Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with."

Since the dispute whether the applicant had applied for leave, that he confirmed before availing leave that the leave was recommended and would be granted being factual, the disciplinary authority went wrong in denying the applicant an opportunity to establish that he was innocent, the dictum of the above ruling applies squarely to the fact of the case. From the material on record it is evident that the applicant had sent leave application through FSWB well in advance. The disciplinary authority, the appellate authority and the revisional authority unfortunately did not consider the issue in the right perspective. It is significant to note that there is no dispute that the applicant availed leave for having medical check up. The Annexure A-1 order treating the period as absence and the A-4, A-6 and A-8 orders are therefore, unjust and illegal.



7. In the light of what is stated above, we set aside the impugned orders with consequential benefits to the applicant. The parties are left to bear their costs.

Dated the 6th day of August, 2004.

H. P. DAS
ADMINISTRATIVE MEMBER

A. V. HARIDASAN
VICE CHAIRMAN

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