

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 291 / 2008

Friday, this the 11th day of December, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

K.Harichandran,
Senior Section Engineer (Traction Distribution),
Divisional Office, Southern Railway,
Thycaud, Trivandrum.Applicant

(By Advocate Mr S Radhakrishnan)

v.

1. The General Manager,
Southern Railway, Chennai.
2. The Chief Electrical Engineer,
Electrical Department,
Southern Railway, Chennai.
3. The Divisional Railway Manager,
Southern Railway, Palakkad.
4. Shri T.C.Johnson,
Divisional Electrical Engineer (Traction Distribution),
Divisional Office,
Southern Railway, Salem, Tamil Nadu.
5. Shri Neeraj Kumar Varma,
Senior Divisional Electrical Engineer (Car Shed),
Southern Railway, Tambaram,
Kanchipuram District,
Tamil Nadu-600 045.Respondents

(By Advocate Mr K.M.Anthru)

This application having been finally heard on 30.11.2009, the Tribunal on 11.12.2009 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Applicant's grievance is against the following adverse remarks recorded



in his ACR for the period ended 31.3.2006 as communicated to him vide the Annexure A-1 letter dated 10.11.2006 and the rejection of his representation against the aforesaid remarks as communicated to him vide Annexure A-8 letter dated 22.7.2007:

2. Brief facts: The applicant commenced his service as an Apprentice Electrical Chargeman with the Southern Railway with effect from 11.4.1980. He was promoted as Assistant Traction Foreman with effect from 12.5.1985 and as Traction Foreman with effect from April 1990 and as Senior Section Engineer on 19.5.1997. He had the opportunity to work in two different Railway Zones under the supervision and control of more than 60 officials and had received commendation certificate in appreciation of his dedicated, perfect and trustworthy discharge of his official functions. A few of them are as follows:

1	General Managers Award	1997 for saving Rs.40 lakhs
2	Chief Electrical Engineers Award	1998-1999
3	Chief Electrical Engineers Award	2000-2001
4	Divisional Managers Award	2002
5	Divisional Managers Award	2008
6	Divisional Electrical Engineers Award	1994

He had also performed dual charge of the post of SSE (Remote Control) and SSE (Traction Power Control) from 18.6.2001 to 22.10.2002 on the directions issued by the higher authorities. For all the 28 years of his service upto the year 2005 except for the period from 1.4.2005 to 31.3.2006, there was not even a single official had made any adverse comments or adverse remarks recorded in his ACRs. For the aforesaid one year, the 4th respondent, namely, the



Assistant Divisional Electrical Engineer (Traction Distribution) (ADEE/TRD for short) who was his reporting officer recorded the following adverse remarks in his ACR.

1	Physical fitness for strenuous work:	<i>Not physically fit for strenuous work</i>
2	Has his work been satisfactory? If not, in what respect he has failed	Not satisfactory. He was in the habit of shirking responsibility and avoided taking over of stores on flimsy reasons
3	Willingness to shoulder higher responsibility	Below Average

The 5th respondent, the Senior Divisional Electrical Engineer (Traction Distribution)(Sr DEE/TRD for short) who was the Reviewing Authority has agreed with the said remarks.

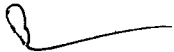
3. According to the applicant, the aforesaid observations were made in his ACR to wreck vengeance on him. They were actuated by malafide and had no semblance of reality. He has also submitted that the 4th and 5th respondents have made the aforesaid adverse remarks (i) in violation of the prescribed procedure, (ii) without taking into consideration of any factual basis and (iii) ignoring the 'Outstanding' reports for the previous years. On receipt of the Annexure A-1 adverse remarks, he submitted a detailed Annexure A-7 appeal dated 29.12.2006. By the Annexure A-8 letter dated 22.5.2007 the Senior DEE/TRD/PGT informed him that his aforesaid Annexure A-7 representation was considered carefully by the competent authority and according to the orders passed by him, the adverse remarks recorded in his ACR for the period ending 31.3.2006 "Stands Good".



4. The applicant was working as a Senior Section Engineer/Traction Power Control, Palakkad from 23.10.2002 onwards. From there he was transferred as Senior Section Engineer, Traction Distribution (SSE/TD for short), Palakkad on 7.7.2005. The 3rd and 4th respondents, then working as ADEE/TRD/PGT, had directed him to prepare and sign Measurement Book (M Book for short) of a work which was executed by some other person for the electrification of siding work for the Food Corporation of India at Palakkad. Applicant refused to sign the M Book because the aforesaid direction of the 3rd and 4th respondents was not as per the prescribed norms. According to him, entries in the M Book should have been recored by the person in charge of the work on personal verification, then and there. There is no question of an ex post facto preparation of M Book which is the basic document on the basis of which bills of contractors are to be passed. When he had joined on 7.7.2005, the work was already over and the person who was authorised and who had executed the work has intentionally kept away because of certain malpractices and foul play. When the applicant expressed his inability to sign M Book, the 4th and 5th respondents threatened him that he would be transferred from Palakkad. They have also directed him to take over the stores of OHE/PGT on 5.10.2005 vide Annexure A-2 letter dated 29.9.2005 purposely to entangle him in some disciplinary proceedings. When the applicant made personal verification of the Depot he found that it was not properly maintained and there was no safety or security there. He, therefore informed the respondents accordingly vide his Annexure A-3 letter dated 6.10.2005. According to him, there was a post of SSE/OHE/PGT and he was asked to take over charge of the store without posting him there. Moreover, he, as SSE/TRD/PGT, had no connection with the stores or maintenance that post. He has, therefore, informed the respondents that he was willing to take over the stores if he is actually posted to OHE only. He has also requested the



authorities to take proper measures to keep the materials safely in the store. As he felt that he was being harassed by the 4th and 5th respondents, he decided to quit the Railway service itself and submitted the Annexure A-4 request for voluntary retirement dated 14.2.2006 in which he had narrated the whole incidents. He had also stated that there was a threat from 4th and 5th respondents that in case he was not conceding to their illegal directions to sign the M Book, they would spoil his ACR. However, his request for voluntary retirement was turned down by the Senior DPO, Palakkad on 2.3.2006 stating that the request for voluntary retirement should be unconditional. Again he had re-submitted his application for voluntary retirement on 2.3.2006 requesting the 5th respondent to accept the same. But the said application was also not accepted by the 5th respondent. The respondents have also not made any reply to the aforesaid Annexure A-3 letter of the applicant. Thereafter, he was transferred to Bommidi in Tamil Nadu as SSE/TRD/BQI and he was relieved from his earlier post on 2.3.2006. Again, he was transferred as SSE at Remote Control Centre, Trivandrum vide office order dated 12.5.2006 but he was relieved there only on 12.6.2006. According to him, in violation of the existing instructions regarding transfer of personal records immediately to the new place of posting, the 4th and 5th respondents purposely retained them for a long time in order to prepare the adverse remarks against him. He has also submitted that as against the existing instructions to record the ACR within one month after the expiry of the reporting period, his report was recorded only on 16.8.2006 though he was relieved from Palghat on 12.6.2006. According to the Annexure A-5 letter dated 12.2.2007 obtained by him under the Right to Information Act, the Reporting Officer submitted the ACR only on 16.8.2006 and the review was completed only on 25.10.2006. Again under the rules, adverse remarks recorded in the ACR were to be communicated within a period of one month of



the record but he got the intimation only on 2.12.2006. He was also not supplied with the copy of the memorandum of service. The reviewing authority did not call for any remarks nor offered any personal hearing as required as per Railway Board's letter No.E(NG)/ii/75/CR/I dated 6.1.2007.

5. Apart from the above procedural violation, the adverse remarks had no connection with the reality. Even though the first adverse remarks against him was that he was not physically fit for strenuous work and he has was medically fit in category A-3. He has also produced the Annexure A-6 medical certificate dated on 10.4.2007 to prove that he was medically fit. While the 2nd adverse remark was that he was in the habit of shirking responsibilities and he avoided taking over of stores on flimsy reasons, he submitted that he had sought only the minimum requirement for safeguarding the Government property. As regards the 3rd adverse remark that he was below average to shoulder higher responsibility, he has submitted that he had performed dual charge of the post between 2001 and 2002 as per the direction of higher authorities for which he was eligible for allowance of Rs.14,080/-. Immediately after the said adverse remarks, he was also posted as SSE at Remote Control Centre at Trivandrum the post which requires high grade of skill and experience. If the applicant actually was below average in shouldering higher responsibilities, he would not have been awarded G.M Award, Chief Electrical Engineers Award and DRM Award etc prior to and subsequent to the period in question. Therefore, he has submitted that the observations by the 4th and 5th respondents in his ACR have no connection whatsoever with the reality and they were clearly actuated by malice and ulterior motive.

6. Respondents 1 to 3 in their reply have denied all the contentions of the

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applicant. They have denied that there was any malice or ill will against the applicant by the Reporting Officer or the Reviewing Officer. They have also submitted that prior to the issuance of Annexure A-1 letter dated 10.11.2006 communicating the adverse remarks against him and the receipt of the Annexure A-4(A) letter of the applicant dated 2.3.2006 seeking voluntary retirement, he was issued with Annexure R-3(8) displeasure note as early as on 17.12.2005. According to the said note, the LAP from 14.11.2005 to 19.11.2005 applied by him was not sanctioned by the Senior DEE/PGT as the applicant had already gone on paternity leave. He was also informed about the position over phone on 12.11.2005 and advised him to postpone the leave and to avail the same only from 16.11.2005. However, he did not report for duty on 14.11.2005 to 19.11.2005. Even after resuming duty, he reported sick from 21.11.2005 and returned to duty only on 13.12.2005. Being a senior officer he should have been aware that leave cannot be availed without prior sanction. Otherwise it would be treated as absence. On 16.12.2005 till 15.00 hours he was not available in the office and he also did not sign in the muster roll. At 10.00 hours on 17.12.2005 when he was present in the office and asked about his manner of behaviour, he just left the office and did not return till 17.00 hours. He was, therefore, asked to explain why he should not have been imposed with pay cut on those days he had not actually performed his duty though he had signed in the muster roll. Being a senior officer responsible for enforcing discipline among the staff under his control, he himself was behaving in an indisciplined manner. He was also informed that after assuming charge of SSE/TRD/PGT on 7.7.2005 he had availed himself of 9 days leave and 64 days sick leave and his performance was far below the prescribed target. During two meetings of the supervisors convened to discuss various issues, he did not attend them on the ground that he was on leave/sick. The applicant was often avoiding duties by frequently



availing of leave and repeatedly reporting sick. During the assessment period, he was on Leave on Average Pay (LAP for short) and sick leave for several days and the details were as under:

20.4.2005 to 26.4.2005	7 days LAP
23.5.2005 to 24.5.2005	2 days LAP
8.6.2005 to 10.6.2005	3 days LAP
20.7.2005 to 23.8.2005	35 days sick
19.9.2005 to 24.9.2005	6 days LAP
24.10.2005 to 31.10.2005	8 days sick
14.11.2005 to 19.11.2005	6 days sick
22.11.2005 to 30.11.2005	9 days sick
1.12.2005 to 12.12.2005	12 days sick
17.12.2005 to 31.12.2005	15 days sick
1.1.2006 to 1.3.2006	60 days sick
Total	163 days.

Apart from the above, he had availed of 18 days weekly rest besides 8 days Casual Leave. He had often availed leave without prior permission. The 4th respondent had repeatedly expressed his displeasure over the absence of the applicant. The service of the applicant was not available to the administration for around 6 months during the assessment period. The absence of the applicant from duty had also caused serious dislocation of work. Those instances were considered as lack of commitment towards his duty.

7. As regards the submission of the applicant regarding preparation of M. Book was concerned, the respondents have submitted that the work of electrification of Food Corporation of India siding at Palghat was executed on contract with the direct supervision of Junior Engineer/TRD/PGT under the



guidance of one Senior Section Engineer, Remote Control/TRD/PGT. As the FCI siding electrification work was about to reach the final stage of completion the post of SSE/RC/TRD/PGT was transferred and designated as Senior Section Engineer, Traction Distribution, Palghat for looking after Over Head Equipment Depot, PGT and Traction Sub Station, Kanjikode and Siding Electrification Works coming under the jurisdiction of the OHE Depot, Palghat. As the post of Section Engineer/Remote Control/PGT was transferred to OHE/Depot/PGT the duty list of Senior Section Engineer, Traction Power Control, PGT was revised duly including the earlier duties pertaining to SSE/RC/PGT. The applicant was instructed to verify and certify the electrification work and record the work done in the M Book. The nature of work for which he was instructed to verify and certify was externally visible and therefore the same could have been inspected even after execution of work. He was duty bound to inspect the work and give his remarks. The preparation of M-Book cannot be termed as "Post Facto Entry" as contended by him. Whenever a supervisor is transferred the new supervisor of the jurisdiction normally writes the pending M-Book. It is the post which is important with reference to recording M-Book and not the person specific. However, the applicant refused to prepare and sign M-Book on flimsy reasons. They have also denied that the 4th and 5th respondents threatened him with transfer. They have also denied his contention that he joined the post of SSE/TRD/PGT after completion of work. According to them, the work was completed only on 17.9.2005 i.e. only after the applicant joined the post of SSE/TRD/PGT on 7.7.2005. The applicant who was in charge of FCI electrification work has not so far brought to the notice of the administration about any specific deficiency/malpractice in the above electrification work. The refusal of the applicant to record M-Book, therefore, amounts to shirking of responsibilities.



8. They have also submitted that the SSE/TRD/PGT is in-charge of OHE/PGT Depot and a separate supervisor was not required to be posted in that place for taking over the charge of Stores. In a working arrangement SE/OHE/PGT was posted as SE in Traction Power Control Office/PGT and the administration has instructed SSE to take over the charge of Stores. Taking charge of the stores by SSE was not uncommon in the system and no separate orders from Senior DPO was required. There was no such practice prevailing also. The Executive Officer is the authority to issue instructions regarding technical matters and all other internal arrangements. They have, therefore submitted that action of the 4th respondent in issuing the Annexure A-2 direction to the applicant to take over the charge of OHE/PGT was perfectly justified.

9. They have therefore, submitted that the refusal of the applicant to prepare the M-Book, his refusal to take charge of the Stores and his frequent absence from duty perfectly justified the adverse remarks contained in the Annexure A-1.

10. The respondents 4 & 5 have also filed separate reply affidavits denying the charges levelled against them by the applicant. According to the 4th respondent the remarks contained in Annexure A-1 and they were based on the comparative assessment of the quality of work of the applicant during the material period. He has also submitted that the applicant was transferred to Bommidi as the work there was less strenuous than the work at Palghat. He has also submitted that the physical fitness as recorded in the ACR is different from the medical fitness. Medical fitness can be certified by a Medical Officer whereas physical fitness can be assessed by Executive Officers based on the willingness and fitness of the employee to perform strenuous work. The




Executive Officers have no other means to assess the physical fitness of the employee other than the one based on their willingness to perform strenuous work. According to the 4th respondent, he bonafidely believed that the applicant was not fit for strenuous work and accordingly he answered the query in the format of ACR. He has also submitted that though the applicant was duty bound to inspect the work and give his remarks in the M-Book, he had refused to prepare the M-Book which was a serious dereliction of duty on his part. The refusal on his part to take charge of the Depot Stores of OHEPGT was also another instance of dereliction of duty. The 5th respondent has also pointed out that the applicant was not available for duty for around six months during the period under report. He was on medical leave for 145 days and availed LAP for 18 days in addition to the casual leave and weekly rest. He has also stated that he was not physically fit for strenuous work as he has not shown any willingness to do so. According to him also, the refusal of the applicant to prepare M-Book was to be treated as dereliction of duty. He has also submitted that during his entire 10 years service, he had written and reviewed ACRs of several employees and so far no employee has made any allegations against him. According to him, the applicant was indulging in mud slinging. The slight delay caused in reviewing the remarks was only due to his heavy pressure of work and not because of any prejudice against the applicant.

11. I have heard Shri S Radhakrishnan, learned counsel for the applicant and Shri K.M.Anthru, learned counsel for respondents. It is true that the applicant had a long period of service and he has earned a several certificates of merits and commendation from higher officers. Every Government servant is expected to be efficient in discharging the duties assigned to him throughout his career. He cannot afford to be indifferent, insubordinate or indisciplined during any part



of his service. The ACR of a particular period is based on the performance of that period and the past years' performance has not much relevance. Mere fact that past records were clean is not a ground for striking down the present adverse entries which are found based on specific instances. It is quite clear from the facts that emerged from the submissions of the parties that the Applicant was not co-operating with his superiors in completing the tasks assigned to him. He was not obeying the lawful order of his superiors. He remained on sick leave and other kinds of leave during the major part of the reporting year thereby shirked the responsibility entrusted to him. Moreover, the allegations of bias or prejudice against the reporting/reviewing officer has not been any established by cogent material. The Applicant has not given a single reason as to why the Respondents 4 & 5 were inimical to him or they had any ill will towards him. Rather, the adverse remarks have been recorded on the basis of specific instances and on objective assessment by the Report Officer.

12. Resultantly, I do not find any merit in this O.A. Accordingly the same is dismissed. There shall be no order as to costs.


GEORGE PARACKEN
JUDICIAL MEMBER

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