

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.306/04

Friday, this the *15th* day of December 2006

C O R A M :

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.Krishna Kumar,
S/o.N.Krishnan Thampi,
Head Train Clerk,
Quilon Railway Station, Quilon.
Residing at Pushpa, TC 29/1534,
Perunthanni, Trivandrum – 695 008.

...Applicant

(By Advocate Mr.K.Ramakumar)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Head Quarters Office, Chennai.
2. The Chief Operation Manager,
Southern Railway, Chennai.
3. The Additional Divisional Railway Manager,
Southern Railway, Thiruvananthapuram.
4. The Senior Divisional Operation Manager,
Southern Railway, Thiruvananthapuram.
5. The Station Superintendent,
Southern Railway, Kochuveli, Trivandrum. ...Respondents

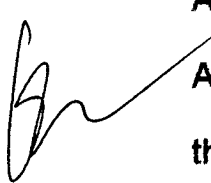
(By Advocate Mr.P.Haridas)

This application having been heard on 5th December 2006 the Tribunal on *15th December*, 2006 delivered the following :-

ORDER

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant is aggrieved by the imposition of a penalty of withholding of annual increment for a period of 12 months (NR) vide Annexure A7 order dated 8.8.2000 and rejection of his appeal by Annexure A9 order dated 18.12.2000 as well as dismissal of his Revision Petition by the Revisional Authority vide Annexure A12 order dated 28.1.2004.



2. The brief facts of the case are that the applicant, a Head Train Clerk, Kochuveli, was issued with a charge sheet dated 25.5.2000 which is as follows :-

Charges. "Shri.K.Krishna Kumar, while working as Head Train Clerk/KCVL has shown serious dereliction to duty in that he had committed the following irregularities..

On 30.4.2000 he did not turn up for Census duty even though instructed well in time. This has resulted in sending other staff from TVC for Census duty at KCVL. The act of Shri.K.Krishna Kumar, Hd.TNC/KCVL is indifferent and irresponsible. Thus he has violated rule 3.1(ii) and (iii) of Rly. Service Conduct Rules 1966".


3. The applicant gave his explanation vide representation dated 7.7.2000. The representation referred to an earlier order dated 9.10.1998¹⁹⁹⁸ and 26.10.1988¹⁹⁹⁸ (Annexure A-1) wherein the Station Superintendent and Sr.DOM respectively stated that the applicant need not work over time unless ordered/without specific orders. The applicant had further stated that as 30th April, 2000 happened to be a rest day for him, he required specific written order for performing the census job on 30th April, 2000 and clearly pointed out the same vide his representation dated 11.4.2000 (Annexure A-3) and 28.4.2000 (Annexure A-4). The Disciplinary Authority has held that the applicant had shown lack of devotion to duty and insubordination to lawful orders by the competent authority and thus violated GR 2.06 and 2.07 and imposed the penalty mentioned in Para 1 above.

4. The applicant filed an appeal against the aforesaid penalty order vide appeal dated 12.9.2000 (Annexure A-8). This has been rejected by the Appellate Authority stating that the earlier instructions issued on

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26.10.1988 (Annexure A-1) by Sr.DOM was with reference to regular job while the census is not a regular work and hence explanation for not carrying out the instructions is not acceptable.

5. The applicant filed a Revision Petition on 4.4.2001 (Annexure A-10) and before it could be disposed of he had moved this Tribunal in O.A.670/01 which was disposed of by an order dated 18.11.2003 (Annexure A-11) with a direction to the respondents to dispose of the Revision Petition in accordance with the rules by a speaking order, calendering a period of two months for the same. In pursuance of the aforesaid order of this Tribunal the Revisional Authority considered the Revision Petition but rejected the same vide Annexure A-12 impugned order.

6. The respondents resisted the O.A. They have contended that it is imperative that as and when the employee rostered for a particular shift, is unable to take up the duty as on the prescribed roster, some other employee has to perform the duty. Otherwise, public interest, financial wealth of the Railway, customers need and Railways image as a public utility organisation, all will suffer severely. There are occasions where the employee was asked to continue beyond the rostered hours for which compensatory measures are stipulated. It was further submitted that the applicant is not entitled to over time allowance if compensatory rest is granted. The respondents have also stated that the applicant was not assigned any regular work on 30.4.2000 but he was required for a work which occurred once a year and for its accuracy his service was required.

 The actions of the applicant in asking for specific orders to perform a lawful instruction issued by his superiors, assistance for more staff than required

and disobeying the orders of his superiors is against law, organisational principle and established cannons of dutiful employee's conduct. The procedure of census being well established, being followed all over Indian Railways uniformly, there cannot be a deviation from the said procedure and the applicant claimed special privilege in getting unwarranted assistance plus specific orders in writing from his superiors.

7. The applicant in his M.A had filed a copy of the guidelines for conducting wagon census which inter-alia provided the following :-

" Numbers on both sides of a wagon must be examined and carefully recorded in the Tally forms, direct from the vehicles and NOT copied from Vehicle Registers and Vehicle Way-Bills, etc. At large stations, workshops, etc. two men must be appointed for each Block to enumerate wagons and both men should proceed to record numbers one on each side; one of them will call out the name of the Owning Railway, Code initials, the painted number on his side, etc. and the other will verify and if found correct, record the particulars in his Tally Sheet. Any discrepancy or eligible numbers must be noted in the Remarks column.

For recording correct particulars regarding Mechanical codes, Circle Inspectors should ask Mechanical Department for assistance in educating the Operating Staff;


Instruct them in their duties and satisfy yourself that they thoroughly understand what is required of them;

The Sr.DOM/DOM/MAS, PGT, TVC, SBC, MYS, MDU and TPJ are appointed as the Divisional Census Officer and they must personally satisfy themselves that the instructions issued for the effective taking of the census have been clearly and thoroughly understood by staff concerned and especially by the staff at inter-change Junctions. They are requested to furnish this office the next day after the census has been taken, detailed particulars of Running trains on each section of their Divisions before the mid-day of the census to enable the Special Census staff to check that the wagons on the Running trains are duly enumerated."

8. The counsel for the applicant argued that the applicant was initially informed in specific terms that for working over time, he should have specific orders. It was on this sole ground that when by a mere verbal

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order he was asked to perform the census duty on 30.4.2000, which happened to be a rest day for him, he had with all his humility under his command, submitted to the Sr.DOM, by inviting the earlier order dated 26.10.1998¹⁹⁹⁸✓, to pass specific orders. When the applicant was directed to appear in the office of Sr.DOM there again he had requested for issue of specific orders but the same was flatly refused by the Sr.DOM. This had compelled the applicant to move a representation dated 28.4.2000 (Annexure A-4) wherein he had clearly specified that in the absence of mechanical staff for assistance in case of any mistake he would be held responsible and that in the absence of any written orders he might be deprived of his over time allowance or compensatory off and it was only due to such difficulties that the applicant expressed his reservation to undertake the census job on 30.4.2000. In the said representation he had also submitted that subject to payment of legitimate dues of over time and provisions of mechanical staff to record the mechanical data he was willing to take up the census duty on 30.4.2000. Despite the above submissive representation the respondents had not cared to pass written orders. Instead when the applicant did not turn up for the specific job without specific written orders on a rest day (30.4.2000), the respondents initiated proceedings against the applicant vide charge sheet dated 5.5.2000. His response to the charge sheet has not been appreciated and the Disciplinary Authority passed the impugned order dated 8.8.2000 imposing penalty of withholding of an increment for one year. According to the applicant, as the said penalty order did not consider the representation dated 7.7.2000 in proper conspectus, the penalty order is vitiated. According to the counsel, when specific written orders are to be given for attending a particular job, non performance of the job on the ground of non availability of written orders cannot constitute a misconduct.



9. The counsel for the respondents submitted that ~~a~~ specific orders need not be necessarily in writing, verbal orders can always be passed depending upon the contingencies. As such the applicant cannot claim that he could obey the orders only when there was a written communication. Through the correspondence of the applicant himself it could be observed that the applicant was aware of the orders of the respondents directing the applicant to perform the census job on 30.4.2000 (~~the~~ representation dated 11.4.2000 refers). He has again referred to the same in subsequent communication and all these would suffice to evidence that the higher authority has passed orders to the applicant to perform census duty on 30.4.2000. As such, according to the counsel for the respondents the applicant's claim for over time etc. would not have been rejected in the absence of specific written orders as sufficient proof is available to confirm that his performance of duty on 30.4.2000 (had he so performed) were only with the specific orders. The counsel for the respondents further submitted that in so far as disciplinary proceedings are concerned the Tribunal has comparatively a limited role to play. Judicial review has to confine itself to any legal lacunae in the decision making process and in the entire O.A no ground attacking the decision making process has been levelled. As such, according to the counsel for the respondents, the O.A is liable to be dismissed.

10. Arguments were heard and documents perused. True, as early as in October, 1998 in a particular context the applicant was informed that he need not do over time work unless specifically ordered so. But the said order was mistaken by the applicant that specific order would mean specific written order. That is not the case at all. Contingency may

warrant orders to be passed either in writing or orally also. Generally, when oral orders are passed there are concrete evidences to confirm the same and as a last resort such an oral order would very well be confirmed in writing at a later stage. The applicant's insistence upon a written order is certainly an indication of his disinclination to perform duties on 30.4.2000. Though the census guidelines provided for the assistance of mechanical staff, it was for the authorities to make available and in the absence of any assistance, for any mistake it is only the authorities who would have been blamed and not the applicant as his job was only to perform the job assigned to him and does not include the duties of mechanical staff. Thus contention of non availability of mechanical staff's assistance is again an additional excuse to justify the absence of the applicant on 30.4.2000.

11. In service discipline is the spine of the entire organisation. The Disciplinary Authority has every right to take/initiate action against the erring individuals with a view to maintaining discipline in the organisation. In a recent case of Union of India Vs. K.G.Sony {2006 (6) SCC 794}, the Apex Court has referred to the decision in the case of B.C.Chaturvedi Vs. Union of India {1995 (6) SCC 749} in which it was observed "A review of the above legal position would establish that the Disciplinary Authority and on appeal, the Appellate Authority, being fact finding authorities, have exclusive powers to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude and gravity of the misconduct. The High Courts/Tribunals while exercising the power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty."

12. The above would show that the act of Disciplinary Authority is to ensure discipline. In the instant case the misconduct is lack of devotion to duty and act unbecoming of a Railway servant. Non compliance of oral order certainly amounts to violation of Conduct Rules which specify that every Railway servant shall at all times maintain devotion to duty and do nothing which is unbecoming of a Railway Government servant.

13. The penalty imposed also does not appear to be shockingly disproportionate. The penalty imposed is only of withholding of one year increment without cumulative effect. The applicant has not, in any way, attacked the decision making process. Considering all these, we find that the applicant could not make out a case and as such the O.A being devoid of merits, merits only dismissal of the O.A. We, accordingly, order so. No costs.

(Dated the ...15th... day of December 2006)


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER


K.B.S.RAJAN
JUDICIAL MEMBER

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