

Central Administrative Tribunal
Ernakulam Bench

OA Nos. 31/2013, 368/2012, 360/2012 and 18/2013

Thursday the 21st day of January, 2016

CORAM

Hon'ble Mr.Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs.P.Gopinath, Administrative Member

OA No.31/2013

V.Aneesh, 34 years
S/o Viswambharan
Assistant Loco Pilot/Southern Railway/Shornur
Palakkad Division
R/o V.S.Mandiram, Karamcode P.O.
Kollam District.

Applicant

(By Advocate: Mr.T.C.Govindaswamy)

Versus

1. Union of India, represented by
the Secretary to the Govt of India
Ministry of Railways, Rail Bhavan
New Delhi-110 001.
2. The General Manager
Southern Railway, Headquarters Office
Park Town P.O., Chennai-600 003.
3. The Additional Divisional Railway Manager
Southern Railway, Palakkad Division
Palakkad - 678 002.
4. The Sr. Divisional Mechanical Engineer
Southern Railway, Palakkad Division
Palakkad-678 002.

Respondents

(By Advocate: Mr.P.Haridas)

OA No.368/2012

N.M.Raju, 48 years
S/o N.P.Monney
Loco Pilot/Goods/Southern Railway/Ernakulam Junction
R/o Nedumthallil House, Aimury P.O.

Koovappady, (Via) Perumbavoor
Ernakulam-District-683 544.

Applicant

(By Advocate: Mr.T.C.Govindaswamy)

Versus

1. Union of India, represented by
the Secretary to the Govt of India
Ministry of Railways, Rail Bhavan
New Delhi-110 001.
2. The General Manager
Southern Railway, Headquarters Office
Park Town P.O., Chennai-600 003.
3. The Additional Divisional Railway Manager
Southern Railway, Trivandrum Division
Trivandrum-695 014.
4. The Sr. Divisional Electrical Engineer/OP
Southern Railway, Trivandrum Division
Trivandrum-695 014.

Respondents

(By Advocate: Mr.Thomas Mathew Nellimoottil)

OA No.360/2012

K.P.Varghese, 41 years
S/o K.A.Papputty
Loco Pilot/Goods/Southern Railway/Ernakulam Junction
R/o No.114-D, Railway Quarters
Ernakulam Junction, Cochin-682 016.

Applicant

(By Advocate: Mr.T.C.Govindaswamy)

Versus

1. Union of India, represented by
the Secretary to the Govt of India
Ministry of Railways, Rail Bhavan
New Delhi-110 001.
2. The General Manager
Southern Railway, Headquarters Office
Park Town P.O., Chennai-600 003.

3. The Additional Divisional Railway Manager
Southern Railway, Trivandrum Division
Trivandrum - 695 014
4. The Sr. Divisional Electrical Engineer/OP
Southern Railway, Trivandrum Division
Trivandrum-695 014
5. The Sr. Divisional Operations Manager
Southern Railway, Trivandrum Division
Trivandrum-695 014.

Respondents

(By Advocate: Mrs.K.Girija)

OA No.18/2013

Biju Joseph, 36 years
S/o K.J.Joseph
Loco Pilot/Goods/Southern Railway
Mangalore Central Railway Station/Palakkad Division.
R/o Klluvelkunnel House
Vengeri Post,
Calicut District-673 010.

Applicant

(By Advocate: Mr.T.C.Govindaswamy)

Versus

1. Union of India, represented by
the Secretary to the Govt of India
Ministry of Railways, Rail Bhavan
New Delhi -110 001.
2. The General Manager
Southern Railway, Headquarters Office
Park Town P.O., Chennai-600 003.
3. The Additional Divisional Railway Manager
Southern Railway, Palakkad Division
Palakkad -678 002.
4. The Sr. Divisional Mechanical Engineer
Southern Railway, Palakkad Division
Palakkad-678 002.

Respondents

(By Advocate: Mr.Thomas Mathew Nellimoottil)

The Original Applications having been heard together on 14th December, 2015, this Tribunal delivered the following common order on 21st January 2016

ORDER

By P.Gopinath, Administrative Member

In this batch of cases, the applicants, Loco Pilots/Assistant Loco Pilots of Southern Railway, are aggrieved by the penalty of withholding annual increments for different periods ranging from 1 ½ years to 3 years, as confirmed/modified by the appellate authority. The penalty order marked as Annexure A1 in all the cases and Railway Board's letter dated 3.4.1992 are under challenge in this batch of cases.

2. The applicants have been working as Loco Pilot/Assistant Loco Pilot and are seeking relief under the Railway Servants (Hours of work and Period of Rest) Rules, 2005. The issue involves limit of ten hours of duty for running staff, the accounting of this ten hours if duty is not performed at a stretch and the stabling of the train at a destination where the relief crew is expected to take over. Applicants aver that in view of the strenuous nature of duties, the requirement to man the engine room at all times, not being able to attend to basic human needs like call of nature, they should be relieved on the dot on completion of the stipulated hours of work irrespective of late running of trains, non-availability of relief staff and in strict compliance of 'signed on' and 'signed off' duty hours. The allegation in the charge sheets covers claiming rest short of destination for relief crew change point, non-completion of running duty of ten hours or twelve hours of total working, unnecessary detention of trains which are valuable rolling stock and a source of revenue to the respondents, detention in two line station making the station a non-crossing

one and creating operational blocking of fixed rolling line stock in limited line sections. Applicants produced parliamentary assurances and recommendations of committees and arbitration awards in support of their case. The respondents are limited by administrative orders to be implemented in the interest of providing service to the nation which provide a duty of 10 hours from wheel start to wheel stop or twelve hours from signing on to signing off and the provision of the applicants having been informed of the requirement of working an additional stretch or covering the running delay to reach the crew change station and claiming the relief thereafter. The applicants and respondents are fighting a battle of humanitarian conditions, public service and safety conditions covering fatigue, proper stabling at appropriate changing destinations and the claiming of rest as a right and the performance of duty in the practical conditions of delay etc., being a condition of the service in the respondent department.

3. Heard learned counsel for applicants and respondents and perused the written submissions made. The matter and prayer in the four OAs being of a similar nature, since common questions of law, facts and reliefs have been raised in the four OAs and have been argued together by the applicants and respondents, we dispose them of by a common order. For the purpose of detailed examination, the counsel has presented OA 31/13 as the leading case and the same is being examined for the common reliefs sought by all.

4. Applicant produces an order in OA 215/90 during arguments, which has gone into great length in the history of the various Committee Reports and recommendations on hours of duty and the same need not be revisited. All such

administrative orders on restricting duty hours are covered by exceptional circumstances of unavoidable operational exigencies or circumstances covered under Section 71(c) 4 of Indian Railway Act, which is a condition of service which the applicants accepted when they exercised the choice of entering service with the respondents. The respondent is guided by the principle of providing a reasonable duty hour limit at a stretch for the running staff based on limitations imposed by nodal Ministries like the Labour Ministry. The respondent also looks upon long periods of detention of trains as period of inaction for the driving staff but does not make an issue of it while including it in the duty hour. But is the respondent right in including such periods of enforced rest in duty hours (counted towards duty) while requesting the staff to continue to work up to crew change destination (pre fixed without knowledge of forced detention of train due to operational exigency), with adequate compensation and/or is the applicant wrong in deserting the train on his completion of fixed duty of ten hours sign off. The crew is aware of their sign on and sign off destination which is made known when they are deputed for duty. While fixing this, the respondent does so bearing the duty hour limit in mind. Hence there is no doubt about the duty destinations, but the sign off duty destination may not be possible to be reached due to delays not accountable to staff but operational reasons. The applicants are also aware that the relieving staff are available at the sign off destination, unless they give advance notice of delay, in which case the changing crew have to be transported to a suitable ten hour relief destination. The applicants are also aware that if their duty included periods of inaction or non-running duties, they can cooperate to reach the pre-

decided sign off destination within a reasonable period of delay bearing safety of train and staff in mind which will also ensure non-stabling of trains in places other than relief stations thereby reducing the risk of accident. In the OA, three statements made in para 42 are relevant:

(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 to signing off".

(e) claiming of rest short of destination will lead to absurd results".

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

5. In OA 188/90 and the case cited by the applicants' counsel, applicant had signed on at 8 PM and signed off at 8.20 am next day (OA 188/90). Applicant has, therefore, worked for 12.20 hours. In OA 191/90 applicant had completed 14 hours of duty before he claimed rest. In OA 209/90, applicant had signed on at 22.45 hrs on 19.3.1989 and claimed rest at 11.35 hours on 20.3.1989 after completing 12 hours and 50 minutes of duty. In OA 214/90 applicant had signed on at 2100 hours on 7.4.1989 and signed off at 10.05 hours on 8.4.1989 after completing 13.05 hours of duty.

In OA 222/90, applicant had signed on at 1300 hours on 20.6.1989. He claimed rest at 1.20 hours after completing 12 hours and 20 minutes of duty.

In OA 246/90 applicant signed on at 2.30 am and claimed rest at 3.45 pm after 12.15 hours of duty.

6. From these OAs cited by applicants in support of their case, it is seen that applicants had completed over 12 hours of duty. The applicants' counsel

did not provide a complete copy of OA. Hence, only the facts relating to above OA are taken to compare the duty hours completed vis-a-vis the OAs under consideration.

7. In OA 368/12 filed before this Bench, applicant had completed 11 hours of duty from sign on and was asked to continue upto Palghat which was half an hour away. Applicant claimed rest at Lakkidi on completion of 11 hours of duty and refused to proceed to Palghat. According to para 2 of Railway Board letter No.E/LL/91-HER-II dated 3.4.1992 produced as Annexure A6 by the applicant and which the respondent claims is the latest instruction regarding duty at a stretch of running staff, "the overall duty at a stretch of running staff from signing on should not ordinarily exceed 12 hours". Applicant had signed in at 14.30 hours and claimed rest at 1.30 hours after 11 hours of duty. Para 2 of the above order states:-

"(a) The overall duty at a stretch of running staff from signing on should not ordinarily exceed 12 hours and they are entitled to claim relief thereafter;

(b) The running duty at a stretch should not ordinarily exceed 10 hours from the departure of the train and the staff should be entitled to claim relief thereafter;

(c) In operational exigencies, the running duty may be extended beyond ten hours within overall limit of ten hours, provided a due notice has been given to the staff by the controller before completion of 8 hours of running duty;

(d) If a train does not reach within the overall limit of 12 hours his normal crew changing point or destination of the train/or the place where the relief has been arranged and such point is approximately one hours journey away, the staff shall be required to work to that point."

8. In this case, though reporting was at 14.30 hours, departure was at 15.55.

~~hours and he had not completed 10 hours running duty from the departure of~~

the train while claiming rest. Annexure A3 Railway Board letter dated 9.8.2005 deals with hours of work, period of rest, compensatory rest and overtime allowance for railway employees. It does not deal with duty time at a stretch. It deals with normal period of duty hours i.e., 48 hours of a week for continuous category of staff and excess duty time worked by him will be accounted for by payment of overtime allowance. Hence excess duty is not prohibited but is compensated with payment of overtime allowance. The health impact of such small extensions of duty would vary from person to person. Respondent avers that running staff who work the train cannot stop the train at the mid section on completion of duty hours. A train can become late due to various reasons beyond control and such contingencies are covered by railway Board letter No.E/LL/91-HER-II dated 3.4.1992 wherein he is expected to work up to his destination. Respondent also avers that this is the only instruction regarding the duty time at a stretch for running staff and not Annexure A3.

9. Annexure A3 is an amendment of Railway Servants (Hours of Employment) Rules 1961 amended on 28th February, 2005. This document in para 2 (k) states:-

- (K) short off means a period of rest which is
 - (i) In the case of intensive workers:-
 - (A) Less than 12 hours in a roster of 6 hours duty, and
 - (B) Less than 14 hours in a mixed roster of 6 & 8 hours of duty
 - (ii) in case of continuous workers – less than 10 hours.
 - (iii) In the case of essentially intermittent workers – less than 8 hours.

Presuming that the applicant had worked continuously, he had to put in 10 hours of work and therefore as per 2005 orders above and Annexure A6 orders also, he had not completed 10 hours of work. Applicant cannot claim relief on

the basis of mere parliamentary assurances without converting the same into an office order and such a claim is not admissible. It has not snowballed into a rule. In the absence of a statutory rule, the claim to the contrary made by the applicants cannot be sustained. Hence claiming relief prior to completion of 12 hours is not covered by Annexure A6 or Annexure A3 orders.

Annexure A6 order is titled "Duty at a stretch of Running Staff" and is apparently dated (not clear in the copy supplied) 3.4.1992. Annexure A3 order dated 9.8.2005 does not say that it supersedes A6 orders and is titled "Revision of Railway Servants (Hours) Employment) Rules 1961". Annexure A3 order makes a reference to 'Rule 1961' and nowhere it is stated that it amends or replaces order dated 3.4.1992. Hence the applicability of order dated 3.4.1992 is unquestionable as it does not stand repealed or superseded by any subsequent order. That order clearly covers the subject of duty of running staff. Counsel for respondent states that the 1992 rules are statutory in nature and 2005 rules do not overrule the 1992 statutory rules. Generally when a later rule supersedes an earlier rule, a specific reference to supercession in the later rule of the earlier rule is made. This is not so in the 2005 rules. True, administrative orders/circulars/instructions cannot override statute/rules, but such instructions do assist and cover situations where rules are silent or where rules require further clarification.

10. In OA 31/13, in para 1, the respondent has in detail brought out the duty hours of the applicant, his signing on and signing off. Applicants' running duty hours was 7 hours 42 minutes and overall duty was 10 hours & 35 minutes and hence he had not crossed the 12 hour limit. Applicant started duty at 19.42

hours on 2.5.2011 and claimed rest at Ullal Railway station at 3.30 hours on 3.5.2011, thus working for 7 hours 48 minutes and had not completed 8 hours of running duty. The relief crew was provided at Mangalore junction which was taken away from Ullal and applicant was aware of this arrangement. Had applicant proceeded immediately on receipt of proceed signal, he would have reached Mangalore in less than 15 minutes as it was only 7 km away from Ullal. Instead he claimed rest and deserted the loco causing 240 minutes delay which according to respondent was willful disobedience leading to the penalty imposed. The applicant in his rejoinder makes two contradictory statements. He avers that respondents have a duty to arrange relief on completion of ten hours, of which he had completed 7 hours 48 minutes. In the same sentence in para 2 he goes on to say that the statutory working hours for a railway servant working on continuous roster is only 8 hours per day, conveniently ignoring the fact that he had worked only for 7 hours and 48 minutes and would have reached Mangalore, the destination which falls within the closing duty of 8 hours. Having committed the act of desertion at Ullal Railway Station, when he was ordered to proceed to Mangalore where relief crew was provided, his disobedience is proved to be a clear dereliction of duty, particularly when he had a residual duty of 13 minutes to perform.

11. The applicant in OA 360/12 has filed MA No.433/12 for condonation of delay in filing the OA. MA is allowed. Delay is condoned. The applicant in this OA while working at KTYM/N on 7.2.2008 signed off at Thiruvalla at 2.00 hours thereby making the station non-crossing. He had been asked to work up to Kayamkulam junction where there was sufficient loop line facility to stable the train for crossing which was short of 30 minutes run from Thiruvalla.

The action of the applicant made the station non-crossing and caused heavy detention and severe operational hassles in the single line section, Applicant signed off at 20.00 hours after completion of 10 hours from sign on. He would have reached Kayamkulam in half an hour i.e., after 30 minutes of duty. Whereas safety of train and driver is important, it is equally important for trains to be stabled at safe destinations so that they do not make a station non-crossing or cause detention of trains. Half an hour of additional running could have achieved this; applicant should have complied with the order to reach Kayamkulam instead of refusing to work.

12. It would not be feasible for the respondents to arrange duties and rest of drivers accurately to the last minute as it is dependent on various factors and the extra duty requested was just half an hour. It is true that he had completed 10 hours duty since sign on, but he could have been more responsible by stabling the train at a safe and next assigned destination where crew can be made available. When the applicant joins the respondent organization, he is aware that he is not entrusted with a desk job and is engaged to run trains across the country. The nature of the duties was known to applicant when he had joined the respondent service and had been working for a couple of years and such occasions may have arisen in the past also. It does not appear to be a new phenomenon faced by applicant which took him by surprise, or one he had not faced in the course of his duty.

13. Applicant in OA 18/2013 was claiming rest before completion of 10 hours of running duty or 12 hours of total working duty. Annexure A6 instructions were issued in 2005 and the challenge of the same if any should have been made within one year and not belatedly in 2013 after 8 years,

thereby barred by limitation. There are any number of judgments of the Apex Court that rights available to litigants are not enforceable if the litigant does not approach the court within the time prescribed, a fact which is applicable to all the four cases. The applicant in OA 18/13 had worked for 9 hours 45 minutes only from signing on.

14. There are two aspects which are required to be covered in this case. The first is that the Tribunal cannot take over the functions of the disciplinary authority. Judicial review of disciplinary action as laid down by Apex Court in **Surendra Kumar Vs. UOI (2010) 1 SCC 158** is to examine the manner in which the departmental inquiry is to be conducted. Judicial review is not directed against a decision but against the decision making process. It is not an appeal from a decision but a review of the manner in which the decision is made.

The Apex Court in **Govt of A.P. Vs. P.Chandra Mouli (2009) 13 SCC 272** held:-

"14. It is trite that the power of punishment to an employee is within the discretion of the employer and ordinarily the courts do not interfere, unless it is found that either the enquiry proceedings or punishment is vitiated because of non-observance of the relevant rules and regulations or principles of natural justice or denial of reasonable opportunity to defend etc or that the punishment is totally disproportionate to the proved misconduct of an employee".

As there is nothing malafide, vindictive or unduly harsh or punishment disproportionate to the offence so as to shock the conscience, judicial intervention is not justified.

15. The second aspect is regarding the applicability of Annexure A3 or Annexure A6 orders. Applicant has in lead OA No.215/90 of CAT, Ernakulam Bench cited the case of the applicants who had completed duty hours stretching

from 12.15 hours to 13.05/14 hours and hence had overstretched their duty beyond reasonable time. The situation in the present set of OAs is not comparable. Annexure A3 order of Railway Board deals with hours of work, period of rest, compensatory rest and overtime allowance for railway employees. It does not deal with duty time at a stretch or the duty at a stretch being broken by small periods of inaction. Annexure A6 order is titled Revision of Railway Servants (Hours of Employment) Rules 1961. Annexure A3 order makes a reference to 'Rule 1961'. It nowhere amends or replaces Annexure A6 order dated 3.4.1992. Annexure A6 order operates in a different field altogether. It has not been directly or indirectly overridden by the subsequent Rules. Hence the applicability of the order dated 3.4.92 is unassailable as it does not stand repealed or superseded by any subsequent order. It clearly covers the subject of duty of running staff.

16. The finding entered by the disciplinary authority, confirmed by the appellate authority is challenged by the applicant only on the assumed reason that they were legally entitled to leave the train as they had completed their duty time and not on any other ground. There was no violation of rules or of natural justice. We have already found that the contention raised by the applicants based on the subsequent rule, which has not replaced or overridden the earlier orders relevant on the point, is unsustainable. As such, the finding entered by the disciplinary authority, confirmed by the appellate authority is well founded and it requires no interference.

17. Coming to the penalty imposed on the applicants, it is seen that in fact the authorities concerned had shown undue leniency in the matter. Despite the

fact the it was a very serious issue where the applicants had left the train totally unmindful of the consequence and in utter disregard for the safety of the railways, safety of passengers and the undue hardship that would be caused to the train travelers, they left the train with impunity. It is undecernible why such a flee bite punishment alone was awarded. A punishment imposed should be commensurate with the gravity of the offence/misconduct committed by the applicants. That should have been borne in mind by the authorities concerned. We fail to understand why a proper punishment commensurate with the wrong committed by them was not imposed. Be that as it may, since the punishment awarded is found to be unduly lenient, no further interference is required in the matter of penalty imposed on the applicants.

18. Judicial review of administrative action is intended to prevent arbitrariness, capriciousness, irrationality, unreasonableness, bias and malafide which do not appear to be attracted in this case.

19. The OAs are devoid of merit and require to be dismissed. We do so. No order as to costs.

(P.Gopinath)
Administrative Member

(N.K.Balakrishnan)
Judicial Member

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