

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 386 OF 2010

Tuesday, this the 1st day of November, 2011

CORAM:

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

I.Fasuludeen Kunju
Passenger Guard / Quilon / Southern Railway
Residing at Thadathil Veedu, Ottakkal P.O
Thenmala, Quilon District ... Applicant

(By Advocate Mr. TCG Swamy)

versus

1. Union of India represented by the General Manager
Southern Railway, headquarters Office
Park Town PO, Chennai – 3
2. The Assistant Operations Manager
Southern Railway
Trivandrum Division
Trivandrum – 14
3. The Senior Divisional Operations Manager
Southern Railway, Divisional Office
Trivandrum Division
Trivandrum – 14
4. The Additional Divisional Railway Manager
Southern Railway
Trivandrum Division
Trivandrum – 14 ... Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been heard on 01.11.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant, a Passenger Guard of Quilon Railway Station of Southern Railway, Trivandrum Division has filed this OA seeking to call for the records leading to the issue of Annexures A-1, A-2 and A-3 and quash



the same and to direct the respondents to grant all consequential benefits including arrears of pay and allowances. The applicant was served with a charge memo dated 10.04.2007, a true copy is marked as Annexure A-4. The charge levelled against the applicant was that he as a Guard committed serious dereliction to duty and he behaved in a manner unbecoming of a Railway servant that after clearing rest at 20.45 hours on 05.04.2007 he was neither available at HQrs nor did he respond to a call at 21.00 hours to work TID goods Ex-Quilon which resulted in over working of the I/C Guard of TID. Thus he has violated Rule 3 1(ii) & (iii) of Railway Services Conduct Rules, 1966. The appellant submitted his reply vide Annexure A-6 denying the allegations. According to him, during the period of rest hours or thereafter nobody came to his quarters to serve " call " where he was staying with his family. His quarters is hardly 50 meters from the 1st platform of Quilon junction. He also denied of any call being made at 21.00 hours for responding. According to him, he was waiting for his turn nobody informed " Train Notice ". Hence, he has not violated Rule 3 1 (ii) & (iii) of Railway Services Conduct Rules, 1966. He also sought for an enquiry to be conducted if his explanation is not accepted. Annexure A-6 is dated 24.04.2007. The authorities did not accept the explanation as according to them, they were not satisfied with the explanation offered and by Annexure A-1 he was imposed a penalty of postponing the annual increment from ₹ 6050/- to ₹ 6200/- in the pay scale of ₹ 5000-8000 normally due on 01.08.2008 or otherwise eligible for a period of 12 months. However, this will not have effect of postponing his future increments. Aggrieved he preferred an appeal Annexure A-7. In Annexure A-7 appeal it was specifically pointed out that no call boy was sent to his quarters which is hardly 50 meters from the Railway Station. The register maintained



by the Station Master and the extract of which was perused would show as follows:-

*" P-40
GD I.F.Kunju to work TID goods 23.00 hours.
Phone switched off "*

*Sd/-
S.M.Padmakumar*


2. This showed that the call was not conveyed to him and the presumption that he was not available at HQrs is erroneous. The Appellate Authority by Annexure A-2 dismissed the appeal observing that the charge sheeted employee had tried to justify his gross act of indiscipline instead of correcting himself. The penalty imposed is adequate and commensurate with the misdemeanor of the employee. Thereafter, he preferred a revision which was also dismissed by Annexure A-3. Hence, he prays to quash Annexures A-1, A-2 and A-3, the order of penalty, the Appellate order and the Revisional order respectively.

3. It is contended that going by the report of the Station Master the call could not be conveyed to the applicant as the mobile phone was switched off. It is admitted by them that no call boy was sent to him. Thus after 21.00 hours of rest, he was not called for duty and the charge is only that he has switched off the mobile phone. Undisputedly, no mobile was supplied by the Railway, which was his own private mobile. The usual practice of calling the Guard for work is to send a call boy to the quarters which is situated 500 meters of the Railway Station and only if he has refused or if he was not available then there would be a misconduct on the part of the employee. Merely switching of the mobile phone without providing a mobile from the Railways is not at all misconduct in the eye of law.

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4. In the reply statement filed by the respondents they have referred to the Station Master's register and the information recorded to say "phone switched off " as shown by the employee himself. It is contended that usually a messenger is sent for calling the guard. But since the mobile was switched off, should that he was not available in the quarters. According to the respondents, the penalty imposed is only minor penalty and the charge stood proved as the explanation was found to be unsatisfactory and hence no interference is called for.

5. We have heard the counsel on both sides. Admittedly, the charge against the employee is not that he did not attend duty despite information being conveyed to him. But the charge is that he has switched off the mobile. The Department has not supplied any mobile to the employee for official purpose. If so, merely switching off the mobile is not a misconduct in the eye of law. Admittedly, no call boy was sent to his quarters. The Station Master never said that as the charged employee was not available at quarters and that is why he attempted to call him over phone. There is no reason, in the absence of any either oral or documentary evidence to infer that he is not available in the quarters. The usual practice is to send call boy. But admittedly no call boy was sent to the applicant's quarters. In such circumstance the mere fact that mobile was switched off, no misconduct was proved. The penalty is based on surmises and the findings is perverse. Accordingly, we quash Annexure A-1, A-2 and A-3 and whatever benefit the applicant has lost as a result of this will stand restored.



6. OA is **allowed** as above. No costs.

Dated, the 1st November, 2011.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R.RAMAN
JUDICIAL MEMBER

VS

****CORRECTED COPY**

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Southern Railway, Trivandrum Division has filed this OA seeking to call for
the records leading to the issue of Annexures A-1, A-2 and A-3 and quash

the same and to direct the respondents to grant all consequential benefits including arrears of pay and allowances. The applicant was served with a charge memo dated 10.04.2007, a true copy is marked as Annexure A-4. The charge levelled against the applicant was that he as a Guard committed serious dereliction to duty and he behaved in a manner unbecoming of a Railway servant that after clearing rest at 20.45 hours on 05.04.2007 he was neither available at HQrs nor did he respond to a call at 21.00 hours to work TID goods Ex-Quilon which resulted in over working of the I/C Guard of TID. Thus he has violated Rule 3 1(ii) & (iii) of Railway Services Conduct Rules, 1966. The appellant submitted his reply vide Annexure A-6 denying the allegations. According to him, during the period of rest hours or thereafter nobody came to his quarters to serve " call " where he was staying with his family. His quarters is hardly 50 meters from the 1st platform of Quilon junction. He also denied of any call being made at 21.00 hours for responding. According to him, he was waiting for his turn nobody informed " Train Notice ". Hence, he has not violated Rule 3 1 (ii) & (iii) of Railway Services Conduct Rules, 1966. He also sought for an enquiry to be conducted if his explanation is not accepted. Annexure A-6 is dated 24.04.2007. The authorities did not accept the explanation as according to them, they were not satisfied with the explanation offered and by Annexure A-1 he was imposed a penalty of postponing the annual increment from ₹ 6050/- to ₹ 6200/- in the pay scale of ₹ 5000-8000 normally due on 01.08.2008 or otherwise eligible for a period of 12 months. However, this will not have effect of postponing his future increments. Aggrieved he preferred an appeal Annexure A-7. In Annexure A-7 appeal it was specifically pointed out that no call boy was sent to his quarters which is hardly 50 meters from the Railway Station. The register maintained

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2. This showed that the call was not conveyed to him and the presumption that he was not available at HQrs is erroneous. The Appellate Authority by Annexure A-2 dismissed the appeal observing that the charge sheeted employee had tried to justify his gross act of indiscipline instead of correcting himself. The penalty imposed is adequate and commensurate with the misdemeanor of the employee. Thereafter, he preferred a revision which was also dismissed by Annexure A-3. Hence, he prays to quash Annexures A-1, A-2 and A-3, the order of penalty, the Appellate order and the Revisional order respectively.

3. It is contended that going by the report of the Station Master the call could not be conveyed to the applicant as the mobile phone was switched off. It is admitted by them that no call boy was sent to him. Thus after 21.00 hours of rest, he was not called for duty and the charge is only that he has switched off the mobile phone. Undisputedly, no mobile was supplied by the Railway, which was his own private mobile. The usual practice of calling the Guard for work is to send a call boy to the quarters which is situated 50** meters of the Railway Station and only if he has refused or if he was not found available that there could be a misconduct on the part of the employee. Merely switching of the mobile phone without providing a mobile from the Railways is not at all misconduct in the eye of law.

4. In the reply statement filed by the respondents they have referred to the Station Master's register and the information recorded to say "phone switched off " as shown by the employee himself. It is contended that usually a messenger is sent for calling the guard. ** But since the mobile was switched off, it showed that he was not available in the quarters. According to the respondents, the penalty imposed is only minor penalty and the charge stood proved as the explanation was found to be unsatisfactory and hence no interference is called for.

5. We have heard the counsel on both sides. Admittedly, the charge against the employee is not that he did not attend duty despite information being conveyed to him. But the charge is that he has switched off the mobile. The Department has not supplied any mobile to the employee for official purpose. If so, merely switching off the mobile is not a misconduct in the eye of law. Admittedly, no call boy was sent to his quarters. The Station Master never said that as the charged employee was not available at quarters and that is why he attempted to call him over phone. There is no reason, in the absence of any either oral or documentary evidence to infer that he is not available in the quarters. The usual practice is to send call boy. But admittedly no call boy was sent to the applicant's quarters. In such circumstance the mere fact that mobile was switched off, no misconduct was proved. The penalty is based on surmises and the findings is perverse. Accordingly, we quash Annexure A-1, A-2 and A-3 and whatever benefit the applicant has lost as a result of this will stand restored.

6. OA is **allowed** as above. No costs.

Dated, the 1st November, 2011.

K GEORGE JOSEPH
ADMINISTRATIVE MEMBER

JUSTICE P.R.RAMAN
JUDICIAL MEMBER

**** corrected vide order dated 25.11.2011 in RA 63 of 2011.**

VS