

## CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 108 of 2006

[Patna, this Monday, the 20th Day of February, 2006]

C O R A M

HON'BLE MR. JUSTICE P.K.SINHA, VICE-CHAIRMAN.

1. Subodh Kumar Mishra, son of Shri Hardeo Mishra, Supervisor [P.Way], E.C.Railway, Patna under S.E. [P.Way], Patna.
2. Dhanraj Ram, Supervisor [P.Way], E.C.Railway, Patna under S.E. [P.Way], Patna.
3. Raja Choudhary, Supervisor [P.Way], E.C.Rilway, Samastipur under S.E. [P.Way], Samastipur. ....APPLICANTS.

By Advocate :- Shri M.P.Dixit.

Shri S.K.Dixit.

## Vs.

1. The Union of India through General Manager, E.C.Railway, Hazipur.
2. Divisional Railway Manager, E.C.Railway, Danapur.
3. Sr. D.P.O., E.C.Railway, Danapur.
4. Divisional Engineer/I, E.C. Railway, Danapur.
5. Sr. D.E.N. [Co-ordination], E. C. Railway, Samastipur. ....RESPONDENTS.

By Advocate :- Shri A.A.Khan, SC.O R D E R [ORAL]

Justice P. K. Sinha, V.C.:- Heard Shri M.P.Dixit, learned counsel for the applicants and Shri A.A.Khan, learned Standing Counsel appearing for the respondents, on admission. Since this matter is being disposed of at this stage, the application filed by the applicants to be allowed to prosecute this

application jointly, is allowed.

2. The three applicants admittedly are working as Supervisor [P.Way]. Their claim is that in the Engineering Department the attendance of Supervisor [P.Way] and Gangman were maintained separately but respondent no.5 [Sr. D.E.N. (Co-ordination), E.C.Railway, Samastipur] suddenly forced the applicants to sign in the attendance sheet along with the Gangman which, as per the applicants, was meant to humiliate them. They have claimed that since they did not mark their attendance as directed but had constantly been performing their duties, their salaries for the period during which the attendance was not marked have been withheld by the respondents against which they have submitted several representations, as annexed with the application.

3. Ultimately, the applicants moved this Tribunal in OA 94 of 2004 for the same purpose, i.e., to release the withheld salary to them not paid on ground of their not signing on the attendance sheet meant for the Gangman. Without expressing any view on the matter this Tribunal by order dated 04.02.2004 [Annexure-A/4] remitted the matter for consideration of respondents no. 2 & 4 as per representation filed by the applicants, and to record a speaking order. That order has been recorded by the Divisional Railway Manager, E.C.Railway, Danapur vide Annexure-A/5, dated 11.06.2004. As per this order the applicants who are PWS have been asked to mark their attendance in the attendance sheet, along with Gangman, further



holding that there was no plausible basis of their demand to separate their attendance register, on the ground that PWS & Mate are both category III employees and do the work relating to tracks. It was mentioned therein that for this reason the PWS, in accordance with seniority, should be at the top of the attendance sheet whereafter the names of Mates have to be placed. It has been stated therein that the claim that PWS have been put under subordination of Mates was baseless because both the categories of employees work under Section Engineer/Assistant Engineer. It was also pointed out that from Divisional level to Headquarters level Class III & IV employees mark their attendance in the common attendance register. It was held that the step taken by the Assistant Engineer for a common attendance register was correct, as well good for properly running the works of the Railways. It was also noted that in course of hearing on this matter one of the applicants, Shri Mishra [Subodh Kumar Mishra] had conducted improperly and was not interested in doing the work and from their representation it also appeared that the applicants did not have positive attitude towards the administration and had violated the direction of the supervising officer by not marking their attendance as directed. It was also pointed out that they had not marked their attendance properly which was the reason why their salary was not paid.

4. In this regard Annexure-A/7 was also pointed out which was a communication to the applicants dated 03.02.2004 in which they were told that the PWS had no right to endorse their remarks upon the attendance sheet and that it was only the Jr. Engineer who could put his initial after having the



attendance of the employees marked, but the applicants since last two months were putting the remarks instead of marking attendance which was against the rule. These applicants were warned not to write their remarks upon the attendance sheet failing which departmental action would be taken against them. They were directed to mark only their attendance but not to put any initial below the attendance sheet. They were told that if they did not mark their attendance at correct place, their salary would not be paid.

5. Learned counsel for the applicants has submitted that this shows that the action of the respondents was vindictive.

6. Shri A.A.Khan, learned Standing Counsel for the respondents submitted that the applicants do not have any cause of action whatsoever, rather were indulging in indiscipline which was not conducive for proper functioning of the department, hence authorities were justified in taking a stern view in the matter.

7. To me also it appears that the applicants are trying to turn a non- issue into an issue and seek intervention of the Tribunal over such a trifling matter which relates as to on which paper they should mark their attendance. In any office in a particular section marking of attendance of senior officers as well the juniors in the same register is not an uncommon phenomena. If such a direction does not affect the applicants in the matter of their seniority or emoluments, their raising the issue under the notion of

A handwritten signature in black ink, appearing to read "S. N. D." followed by a surname.

prestige of the post, to say the least, is hardly conducive for maintaining the discipline in the department. If they had a grievance over such a trifling matter, and if their superior authority had refused to concede to their demand, they could have placed the matter before a still higher authority, if so advised, instead of running to the Tribunal.

8. Shri M.P.Dixit, learned counsel at this stage submitted that the prime concern of the applicants in filing this application was to get their salary and since they had worked on all those days for which their salary was withheld, the jurisdiction of this Tribunal is invoked to issue a direction to the respondents to pay them the salary for the days they had worked and for that, they presently are not raising the question of marking their attendance in the register along with Gangman/Mates.

9. This submission may appear to be innocuous but it may not be so. Through Annexure-A/7 a warning has already been issued to the applicants not to break the discipline and that if they refused to obey the order, departmental proceeding was threatened against them. If this Tribunal directs the respondents to pay the salaries to the applicants for the period they had actually worked and leaves the matter at that, this would negate the warning issued under Annexure-A/7 and may indicate that whether or not the applicants obey the orders; mark or do not mark their attendance as per direction of superior authority, still the authorities would be forced to pay their salaries without taking any action against, what *prima facie* would appear, an



act of insubordination.

10. Keeping this in view, when this Tribunal asked the learned counsel for the applicants as to whether or not the applicants are agreeable to mark their attendance in proper way in the register as per direction of the superior authority, the learned counsel ultimately said that the applicants agree to mark their attendance in the attendance register as per direction, aforesaid, of the superior authority henceforth but they reserve their right to move the matter for bifurcation of attendance register before other superior authorities. The applicants may place their grievance in this regard or with regard to any other service matter before their superior authorities and for that they do not have to take permission of the Tribunal. They may do so.

11. In view of the undertaking on behalf of the applicants that henceforth they would mark their attendance in the attendance register as per direction of their superior authorities, [till that order is set-aside by still a superior officer], this application is fit to be disposed of at this stage.

12. In view of the undertaking as aforesaid, which shall be adhered to by the applicants without fail, this application is disposed of with direction to the respondents to consider payment of salaries to the applicants for the days they had actually worked without properly marking their attendance in the attendance register. If there is any doubt as to whether any of the applicants had worked on a particular day, the respondents may call upon that particular



applicant/applicants to substantiate his/their claim in that regard. This will be done by passing appropriate order in that regard within two months of receipt of a copy of this order. The applicants are directed to make available a copy of this order along with a copy of the OA to respondent no.2 within 15 days of receiving a certified copy of the order.

For any present or future act of insubordination, the respondents would be free to take action against the errant employee in accordance with the law, and the extant rules.

13. With the aforesaid directions, this application is disposed of.

No costs.

  
[P. K. Sinha]/VC

skj.