

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.175/99.

Dated this *Thursday* the *17th* Day of *April*, 2003.

Coram : Hon'ble Smt. Shanta Shastri, Member (A)
Hon'ble Shri K.V. Sachidanandan, Member (J)

1. A.K. Kashyap,
Senior Section Engineer (PC),
Western Railway, Mumbai Central.
2. Rajiv Kulshrestha,
Senior Section Engineer (ACC),
Western Railway, Mumbai Central.
3. K.G. Bajaj,
Section Engineer (PC)
Western Railway, Mumbai Central.
4. K.P. Tiwari,
Section Engineer (PC),
Western Railway, Mumbai Central.
5. M.S. Patil,
Section Engineer (Raj.),
Western Railway, Mumbai Central.
6. S.C. Verma,
Junior Engineer (I) (Raj.),
Western Railway, Mumbai Central.
7. Shakeel Ahmed,
Junior Engineer (I) (Raj.),
Western Railway, Mumbai Central.
8. Mahadeo Nachnekar,
Section Engineer (ACC),
Western Railway, Mumbai Central.
9. V.N. Srivastava,
Section Engineer (ACC),
Western Railway, Mumbai Central.
10. Sharad Chauhan,
Junior Engineer (I) (ACC),
Western Railway, Mumbai Central.
11. Vilas Pimple,
Section Engineer (TL),
Western Railway, Mumbai Central.
12. A.P. Tiwari,
Junior Engineer (I)(TL),
Western Railway, Mumbai Central.
13. Sanjeev Kulkarni,
Junior Engineer (I)(TL),
Western Railway, Mumbai Central.

14. M.K. Vichare,
Section Engineer (TL),
Western Railway, BDTs,
Mumbai Central.

15. R.D. Singh,
Section Engineer (TL),
Western Railway, BDTs,
Mumbai Central.

...Applicants.

(By Advocate Shri Ramesh Ramamurthy).

Versus

1. Union of India, through
the General Manager,
Western Railway, Churchgate,
Mumbai - 400020.

2. Chief Electrical Engineer,
Western Railway, Churchgate,
Mumbai - 400 020.

3. Chief Mechanical Engineer,
Western Railway, Churchgate,
Mumbai - 400 020.

...Respondents.

(By Advocate Shri V.S. Masurkar).

ORDER

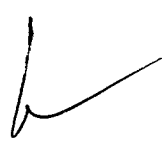
By K.V. Sachidanandan, Member (J).

The applicants belong to electrical department of Western Railway challenged the joint procedure order issued by Respondent No.2 and 3 dt. 7.10.98 alleging that the said order is based on a wrong interpretation of the Railway Board's letters dated 26.8.1998 and 12.8.1996. They have prayed for the following reliefs:-

"8(a) that it be declared that the Joint Procedure Order dated 7.10.1998 is contrary to the statutory service rules framed by the President of India, relating to Discipline & Appeal matters, writing of ACRs etc. and therefore the said Procedure Order is illegal and bad in law.

(b) that this Hon'ble Tribunal be pleased to hold and declare that the Railway Board's Orders dated 26.8.1998, 29.6.1996 read with 12.8.1996 stipulates a common authority viz. Coaching Depot Officer only for the development of integrated maintenance and not for exercising powers or authority over staff matters.

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(c) that this Hon'ble Tribunal be pleased to quash and set aside the Joint Procedure Order dated 7.10.1998.

(d) that the Applicants be permitted to file this application jointly as the cause of action is the same for all the Applicants, the reliefs sought are common to all and they have a common interest in the subject matter of this application.

(e) that such other and further order or orders be passed as the facts and circumstances of the case may require.

(f) that costs of this application be provided for."


They further contended that the joint procedure order bestowed all the powers including disciplinary powers over both the electrical and mechanical staff and making it seem to be the first step towards eventual merger of the presently distinct Electrical Staff with Mechanical Department, in the name of integrated maintenance of coaches. The authority competent to initiate the ACRs in respect of Electrical Department staff and their administrative control are being sought to be changed and placed under the Mechanical Department, without any orders to that effect from the President of India/Railway Board. The applicants further contended that they are all permanent employees of the Union of India and are members of the Electrical Department under the control of Respondent No.2. The applicants channel of promotion, disciplinary authorities, ACR writing, counter-signing authority and reviewing authority are all within the Electrical Department. The channels of promotion are also within the electrical department itself. They have further stated that the electrical wing in any Railways is concerned with the installations, repairs and

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maintenance of Electrical equipment on trains, including electrical equipment for running airconditioning facilities, train lighting, over head cables etc. As far as maintenance of coaching stock is concerned, till the issue of the impugned orders, the work was done by the electrical and mechanical departments of the Railways within the respective areas of work i.e. the electrical wing would undertake repairs and maintenance of all the electrical equipment, wires, train lighting, airconditioning equipment on the trains and the balance of the maintenance job would be done by the mechanical department. The ACRs, disciplinary actions of all such electrical staff involved in maintenance of coaches was always done by officers of the electrical department only and the further hierarchy specified in the Rules. Both the departments had a separate entity and identity and there was no dual control by any other department as sought to be done by the impugned order dated 7.10.1998. The Railway Board vide their letter dated 28.6.1985 and 25.1.1989 are of great importance (Exhibit 'D' and 'E'). The instructions issued in Board's letter dated 25.1.1989 remained largely unimplemented on account serious misapprehension about the instructions among the Electrical staff. The Chairman, Railway Board issued a letter dated 29.6.1996 clarifying in the said letter that in supersession of all the clarification/modification issued on the subject, and it is made clear that the cadres of electrical and mechanical wings upto Senior Supervisor level will be distinct cadres with separate

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seniority groups. The Coaching Depot Officer will have the unified administrative control and will be/disciplinary authority and will write the confidential reports of all the staff in the Depot (Exhibit 'F'). This clarification/modifications and decisions of the Railway Board is contradictory to the Discipline and Appeal Rules and Rules relating to writing of Confidential Reports. Further vide letter dated 12.8.1996 addressed to the General Manager, Western Railway wherein it was stated that Paragraphs 4, 4.1, 4.2 and 5 of letter dated 29.6.1996 were revised and replaced by two new paragraphs. The original paragraph in that letter which related to unified administrative control, Coaching Depot Officer being the disciplinary authority and the person who writes the confidential reports of all the staff, were ~~xxx~~ deleted. Another letter dated 26.8.1998 was issued by the Railway Board for making it clear that implementation of the scheme of integrated maintenance of coaching stock. It is also ~~make it~~ clear from the order that basic objective of integrated maintenance is to avoid the application of infracture and development of Integrated Maintenance Facilities. The said order dated 26.8.1998 of the Railway Board has reiterated and reaffirmed the earlier order dated 12.8.1998 and the Joint Procedure Order runs counter to the said orders of the Railway Board. The Chief Electrical Engineer Respondent No.2 vide order dated 20.10.1998 has stayed the implementation of the said Joint Procedure Order dated 7.10.1998 in so far it relates to the working of


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the Electrical Department. The said order of Respondent No.2 was communicated to all the concerned authorities of Western Railway. It was also mentioned that the Joint Procedure Order issued by Western Railway is not correct order and violates basic principles behind the concept of Integrated Coaching Maintenance as laid down in Board's letter dated 26.8.1998. The applicant states that improper and incorrect Joint Procedure Order dated 7.10.1998 will result in duplication in the accountability and overlapping of responsibility of two distinct department. The two respective departments have been performing their assigned duties side by side without any problem. The work done by each department was accountable by the staff and officers of the said department and the said persons were responsible for any defects or deficiencies in the work done by them. Being aggrieved by the said order the applicant has filed this O.A.

2. The respondents have filed their detailed reply statement contesting that the joint application is not maintainable and, therefore, on this ground the joint application is devoid of any merit and deserves to be dismissed. The entire application proceeds on the presumption that their service conditions are being unilaterally altered, whereas the policy decision is very clear that implementation of the policies of Railway Board starting from 1985 till 1998 dealing with integrated maintenance of coaches is neither in violation

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of any of the service conditions of the applicants like pay scale, status, seniority, promotion etc. nor in breach of any of the statutory provisions governing their service condition and the action of the respondents is strictly in accordance with policy framed by the Railway Board and the purpose of the said policy to reduce certain administrative difficulties as well as streamlining the quick work in the Coaching Depots so that the efficiency at the highest rate is achieved which in turn will be in the larger interest of the railway passengers and, therefore, also the applicants have no right to question the policy which is being framed in the public interest. The respondents further submit that no rights whatsoever of the applicants are being violated also there cannot be any grievance which can be judicially reviewed by this Tribunal. The matter of writing confidential report is a subjective as well as objective assessment by 3 different authorities, i.e. Reporting Officers, Reviewing Officer, Accepting officer. The respondents administration has every right to notify the respective authorities who will write the confidential report. The Railway Servants (D&A) Rules, 1968 prescribed a detailed procedure which is a compliance of Article 311 of the Constitution of India, therefore, even if a disciplinary proceeding is initiated an officer gets complete opportunity to defend his matter strictly in accordance with Railway Servants (D&A) Rules, 1968 and, therefore, also the presumption and assumption of the applicants in the present case requires no

consideration. The Western Railway is also more than a decade behind in implementation of the policy and sole intention of the present applicants is to further delay the implementation of the policy which is strictly in the interest of the administration as well as in the public interest and by implementing the said policy it is not taking away any of the rights of the present applicants. The orders of the Ministry of Railways cover all the aspects of said order of 7.10.1998 and itemwise authority being given are referred to. The said joint procedure order does not run counter to Ministry's directives as claimed by the applicants, so also the joint procedure order does not alter the conditions of service for the applicants in any way, therefore, the respondents submitted that the OA does not have any merit and it is liable to be dismissed.

3. The applicants have filed their rejoinder stating that the Chief Electrical Engineer has not agreed with the joint procedure order dated 7.10.1998 and has in fact stayed it. The General Manager, Western Railway has also agreed that the Joint Procedure Order dated 7.10.1998 is required to be modified. Therefore, the Chief Mechanical Engineer cannot claim to file this reply. On the other hand, employees like the applicants working in places other than Coaching Depots are controlled only by officers of Electrical Department in respect of all service matters. The Ministry's letter dated 29.6.1996 has been specifically superceded by the letter dated

12.8.1996 (Exhibit 'C' to the O.A.) and it has been directed that the guidelines in the Board's letter dated 25.1.1989 be followed in this behalf. The Board's letter dated 25.1.1989 is actually in supercession of the earlier letter dated 1.8.1988. Therefore, the only policy which has to be followed by the respondents is as set out in the Ministry's letter dated 25.1.1989 read with 12.8.1996. The letter dated 1.8.1998 cannot be referred to as it has been specifically superceded. The Joint Procedure Order dated 7.10.1998 impugned herein does not conform to the said letters of the Railway Board now holding the field.

4. We have heard Shri Ramesh Ramamurthy, learned counsel for the applicants and Shri V.S. Masurkar, learned counsel for the respondents. The learned counsel took us to the pleadings, material evidence placed on record. The learned counsel for the applicants submitted that the Railway Board circular has got statutory effect which cannot be changed by any of the subordinate authority including General Manager, therefore, the impugned order is ~~in~~ totally derogatory of the Board's directives ^{and} is vitiated by legality and administrative laches. Learned counsel for the respondents on the other hand submitted that the Railway Board's order cannot be said to be superceded by this impugned order. The impugned order is in implementation of the Railway Board's letter and the policy of the Railway/Government which is based on the interest of the

employees. The mere fact that the officer from a different category under whom the applicants are engaged, cannot be authorised to write ACR since that will likely get disturbed and much prejudice would be caused to the applicants.

5. We have given anxious thought to the pleadings, evidence and the arguments advanced by the learned counsel for the parties. The applicants 15 in numbers, who belong to electrical department of Western Railway, have challenged the joint procedure order dated 7.10.98 issued by the respondents No. 2 and 3 stating that the same is issued based on wrong interpretation of the letters dated 26.08.98 and 12.8.96. Applicants stated that the said joint procedure order which is impugned at Exhibit 'A' in this OA, is not in conformity with the Board's direction in so far as vesting the powers, including disciplinary powers over both the electrical and mechanical staff with that of Depot Manager in the name of integration of different departments. According to them, the authority competent to initiate ACRs in respect of electrical department staff and their administrative control are being sought to be changed and placed under the mechanical department without any orders to that effect from the President of India / Railway Board. Applicants' contention is that the electrical wing in any Railways is concerned with the installations, repairs and maintenance of electrical equipment on trains, including electrical equipment for running air-conditioning facilities, train lighting, overhead cables etc. As far as maintenance of coaching stock is concerned, till the issue of the impugned orders, the work was done by the electrical

and mechanical departments of the Railways within the respective areas of work, i.e., the electrical wing would undertake repairs and maintenance of all the electric equipment, wires, train lighting, air-conditioning equipment on the trains and the balance of the maintenance job would be done by the mechanical department. It is stated that the ACRs and disciplinary actions of all such electrical staff involved in maintenance of coaches was always done by the officers of the electrical department only and the further hierarchy specified in the rules. Electrical department had a separate entity and identity and there was no dual control by any other department as sought to be done in the impugned orders. But the Exhibit 'A' was sought to be implemented with a view to provide integrated maintenance of coaching stock in the Railways and to avoid duplication of infrastructures and control with the consequent overlapping of responsibility and dilution of accountability and to ensure implementation of the directives issued by the Railway Board from time to time. Instructions were issued in Exhibit 'A', the impugned order, in which the clause (8) reads as under :

"8. The Depot Officer will exercise administrative control over officers, Supervisors and staff of both Mech. & Elect. disciplines attached to the Depot and will initiate their ACRs. He will exercise disciplinary powers, within his competence, over all the personnel working in the Depot (Mech. & Elect., etc.) under his administrative control."

As far as the other laudable suggestions made in the impugned order, viz. the existing facilities etc. is concerned, the Divisions and Workshops should review and find ways and means of making optimum use of the available infrastructure keeping in view the growth of AC coaches and

without causing disruption to the existing system. In the O.A., the mode of appointment of the Depot Officer is not seriously challenged. What is under challenge is that the exercise of administrative control over officers, Supervisors and staff of both Mech. & Elect. disciplines attached to the Depot by the Coaching Depot Officer, who has been given with the power of competence to initiate ACRs and disciplinary action over all personnel working under his administrative control. According to the applicant, before integration, the administrative and disciplinary control were exercised by the concerned authority of that particular department and if this is permitted as per the impugned order, the applicants will be put to great difficulties and prejudiced and biased. This is in total violation of Railway Servants (Disciplinary & Appeal) Rules, 1968. On the principle, an employee cannot be treated under the administrative control of more than one department. They also quoted Board's letter No. E(D&A)78RG-15 dated 6.7.79. They stated that the Electrical department staff is made under the control of the Mechanical officer, which is violative of Railway Service Conduct (D&A) Rules, and quoting the Railway Board letter No. E(D&A)78RG-6/13 dated 16.10.1973, the applicants have argued that even the employee may be working under other department during the course of his employment, but the disciplinary authority is always the parent department. Their further contention is that the Electrical department has a set up which facilitates performance of assigned tasks in a better manner and the responsibilities at various levels of electrical department are clearly defined. The line of communication and the

channels of command are quite clear and distinct and, therefore, any violation of the given set of rules and practice through the impugned orders will adversely and prejudicially affect the interest of the applicants. They also argued that in case of implementation of the said policy the applicants would be put to disastrous consequences/results.


6. There is no quarrel with reference to the concept of integrated maintenance depots which has been introduced in order to coordinate the working pattern of different departments. Hence, we cannot accept the contention of the applicants that if a Mechanical Depot Officer is empowered to write ACRs of the electrical staff, that will adversely affect the working of the electrical establishment and further that would be detrimental to the smooth and efficient functioning of the department and the authority or right to impose the penalties to enforce obedience and ensure conformity will be dealt unfairly and injudiciously, thus affecting the future prospects/career of employees. A Supervisor of the Mechanical Department is also a technically qualified person and not altogether a stranger in the technical field and, therefore, he can evaluate the work of such employees as well. Moreover, the apprehension of the applicants that the disciplinary action which will be initiated unfairly and injudiciously will also not hold good for the reason that if disciplinary action is initiated against an employee, he will be given opportunity to defend his case strictly in accordance with the Railway Servants (Disciplinary & Appeal) Rules. Further, there are Appellate Authority and Revisional Authority, who

necessarily may not be from the different disciplines and, therefore, the contention that the justice will be denied to the applicants has no force. Applicants' contention that their future career will be affected because the ACRs being written by the supervisory officer of a different discipline, who is incompetent to do so, will also have no force on the ground that the ACR is written taking overall assessment of an employee on different aspects such as intelligence, knowledge of rules & regulations, quality of work, amenability to discipline, punctuality and integrity etc. We do not think that a Supervisor coming from different disciplines will be incompetent to assess the performance of an employee on the above aspects. Most of these observations require no technical knowledge. Therefore, the contention of the applicants that an officer from a different discipline cannot assess and make ACR reports and if done, it will be against the applicants, cannot be sustained. For the reasons discussed above, we are not inclined to accept the arguments of the applicants to find fault with the Annexure A/1 order on this ground.

7. According to the respondents, this is a policy decision of the Railway taking larger interest of the administration for smooth functioning of the existing system. On going through the impugned order and other orders on record, it cannot be strictly said that it is exclusively a policy decision. It is a decision taken by the respondents in order to ensure smooth functioning of pattern of work and to expedite coordinate functioning of different department altogether. Even if the above argument is accepted, the question to be looked into by us

is whether there is any discrimination and if so, the impugned order is faulted or not. The entire idea that is mooted by the decision of the Railway Board vide letter No. 95/M(C)/165/11 dated 26.08.98 (Exhibit 'B') on the subject Integrated Maintenance of Coaching Stock, wherein it is suggested that all proposals should be jointly formed by CME and CEE before submission to the Railway Board. In Board all such proposals will be similarly scrutinised. It is further stated in the said letter that the Railways should review and find ways and means of making optimum use of the available infrastructure keeping in view the growth of AC coaches and without causing disruption to existing system. Vide letter No. 95M(C)/165/11 dated 12.08.96 (Exhibit 'C'), the Board also made it clear that the integrated maintenance of coaching stock needs to be clearly understood that the basic objective of integrated maintenance of coaching stock is to avoid duplication of infrastructure and control with the consequent overlapping of responsibilities and dilution of accountability and the guidelines have been laid down in the Board's letter No. 88/ER-II/1300/RRC/2(Pt.V) dated 25.01.89 (Exhibit 'E'), which is again reiterated in Board's letter No. 95/M(C)/165/11 dated 29.06.96 (Exhibit 'F'). In the said letter Exhibit 'F', it has been decided that Group 'C' and 'D' cadres as in existence at present will continue upto senior supervisor level as distinct cadres with separate seniority groups. The above categories of staff shall be placed under the unified administrative control of Coaching Depot Officer, which implies, inter-alia, that the CDO will be the disciplinary authority and will write the confidential report of all the staff in the depot. Thus,

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there will be no disturbance to the service prospects and avenue of advancements of Group 'C' and 'D' staff presently engaged in coach maintenance. But the order Exhibit 'F' has been replaced by the Railway Board vide order No. 95/M(C)/165/11 dated 12.08.96 (Exhibit 'C'), which reads as under:-

"No. 95/M(C)165/11

New Delhi, Dt. 12.08.96

My dear Venkateswaran,

Sub: Integrated Maintenance of Coaching Stock.

Further to my predecessor's DO letter of even number dated 29th June, 1996, paras 4, 4.1, 4.2 and 5 of the letter may be replaced by the following:

4. The matter has been considered again in the Board. It needs to be clearly understood that the basic objective of integrated maintenance of coaching stock is to avoid duplication of infrastructure and control with the consequent overlapping of responsibilities and dilution of accountability. The guidelines for achieving the objective of integrated maintenance of coaching stock have been laid down in Board's letter No. 88/ER/11/1300/RRC/2(Pt.V) dated 25th January, 1989.
5. Please ensure that these instructions are implemented expeditiously on your Railway.


With best wishes,

Yours sincerely,
Sd/-
(C.L. KAW)

Shri V. Vankateswaran,
General Manager,
Western Railway,
Churchgate,
Mumbai : 400020 "

8. Considering that the objective of integrated maintenance of coaching stock is to avoid duplication of infrastructure and control with the consequent overlapping

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of responsibilities and dilution of accountability, we are of the view that the intention of the Board is only for ensuring the objective of integrated infrastructure and not to bring the applicants in the disciplinary fold. Probably, because of this concept in view, the respondent No. 2 vide vide letter dated 20.10.98 (Exhibit 'I') has stayed the operation of the order on the ground that "the circular is being interpreted in a manner that violates these basic fundamentals of the Board's orders. It is also seen that a JA grade officer has been post as CDO at MCT. With this posting most of the provisions of the joint circular have become infructuous and violative of the very essence behind the CRB's letter No. 95/M(C)/165/1 dated 12th August, 1996. In view of the foregoing, the circular is hereby stayed from implementation in so far as it relates to the working of the electrical discipline. A fresh circular to avoid unintended interpretation while meeting the objectives of the integrated infrastructure will be issued shortly." The applicants have also brought to our notice a letter dated 15.1.99 written by the Chief Electrical Service Engineer, Western Railway addressed to the Chief Electrical Engineer, South Central Railway, Secunderabad, wherein it has been stated that the Joint Procedure Order issued by the Western Railway is not correct order and it violates the basic principle behind the concept of integrated coaching maintenance as laid down in the Board's letter dated 26.08.96.

9. On the facts and in the circumstances discussed above, we are of the view that the Joint Procedure Order Exhibit 'A' dated 07.10.98 issued by the Western Railway in

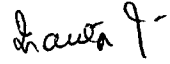
so far as it relates to para 8 of the said order, it is not in conformity with the directives of the Railway Board's ~~vide~~ letters, circulars or orders on the subject and not in true spirit of the objectives laid down for the development of integrated maintenance infrastructure. Therefore, para 8 of Exhibit 'A' cannot be sustained in the eye of law and it deserves to be set aside and quashed. If it was a policy of the Ministry of Railways, it should have been applicable to all other Railways, whereas it ~~was~~ brought to our notice during arguments that this position and practice is not followed in other Railways which are under the same Ministry and some of the Railways have taken contrary view. Therefore, we find that the impugned Joint Procedure Order is not a uniform procedure and hence, there is a discrimination under Article 16 of the Constitution of India.

10. In the conspectus of facts and circumstances, we set aside and quash para 8 of the Joint Procedure Order (Exhibit 'A') dated 07.10.1998 since it is faulted because the decision was not taken by the Ministry/Railway Board uniformly. The interpretation given to the Railway Board's decision is misconceived and therefore, the order will not be sustained to the extent referred to above. However, we make it clear that since the matter is pending before the Railway Board, a uniform decision pertaining to all Railways be taken by the Board and communicated to all of them, if they so desire. This order will not come in their way to take a decision on the subject.

11. With the above observations, the OA is allowed in part. No order as to costs.



(K.V. SACHIDANANDAN)
JUDICIAL MEMBER



(SHANTA SHASTRY)
ADMINISTRATIVE MEMBER

cvr.