

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

DATE OF ORDER: 20-1-05

ORIGINAL APPLICATION NO. 515/2002

Sh. Prabhu Dayal Verma son of Shri Dal Chand Verma, Station Superintendent, Tilonia,

....Applicat

VERSUS

1. Union of India through Chairman Indian Railway Board, Rail Bhawan, New Delhi.
2. General Manager, North Western Railways, Headquarter Office, Jaipur.
3. Divisional Manager, Western Railways, Jaipur Region, Jaipur.

....Respondents

Mr. Manohar Lal, Counsel for the applicant.

Mr. S.S. Hassan, Counsel for the respondents.

CORAM:

HOn'ble Mr. M.L. Chauhan, Member (Judicial)

HOn'ble Mr. A.K. Bhandari, Member (Administrative)

ORDER

PER MR. A.K. BHANDARI

The applicant has filed this OA u/s 19 of the Administrative Tribunal's Act, 1985 to seek the following reliefs:-

(i) to quash the order(s)/memorandum of charge no. ET/308/99/104 dated 19.1.2000 and order dated 15.3.2001, Memorandum of charge No. ET/161/2000/18(V) dated 25.5.2000 and order dated 10.10.2001 and THE NO. ET/16/2000/18(V) dated 21.2.2002 passed by the respondents.

(ii) to stay the operation of the orders no. ET/308/99/104 dated 15.3.2001, ET/161/2000/18(V) dated 25.5.2000 and the order ET/161/2000/18(v) dated 21.2.2002 passed by the respondent against the Applicant till the disposal of the present OA.

[Signature]

(iii) award the applicant exemplary damages against the respondents. The applicant has suffered owing to the deficiency of the respondent and has contacted diseases like High Blood Pressure, Insomnia. The applicant has been advised by the Doctors to undergo a Major Heart Surgery. The Applicant has also suffered a great mental harrassment at the hands of the respondent.

(iv) Any other or further relief as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case may also be granted in favour of the applicant."

2. In the course of deliberation, the counsel for the applicant vide order dated 5.7.2004 was given permission for deleting the prayer clause whereby order dated 19.1.2000 and order dated 15.3.2001 were taken out of consideration and at the same time, permission was granted to him to place on record order dated 21.2.2002 on record, it being the order of Appellate Authority and the same was marked as Annexure A/1. Although this order dated 21.2.2002 was mentioned in the prayer clause but a copy of the same had not been annexed with the OA.

3. Brief facts, as stated by the applicant, are that the applicant, Station Master, was posed at MBV Station when the same was decategorised as 'D' category station from 'B' category station on 13.7.1998. The very next day, ASM, Shri Karam Vir Khan, was transferred from MBV Station to Kund Station. After this, the applicant was left at this station alone. Although he was also told that he will be shifted to Singhana Station yet orders to this effect were not issued and the applicant remained there with four Group 'D' Staff to perform all the duties. He performed these duties round the clock as there was nobody to relieve him. As per Rule 2.07 and 2.08 of the Railway Employees General Rules, he could not have left the duty place without getting a reliever. Although the TI RE was fuly aware of this situation but no steps were taken by him and the higher authorities to provide relief to the applicant. He was not given weekly rest either to which he was entitled as per rules. Therefore, he claimed Over Time Allowance w.e.f. 13.7.1998 to 18.7.1998 (for 56 hours), 19.7.1998 to 01.08.1998 (126 hours) , 2.8.1998 to 15.8.1998 (122 hours) and 16.8.1998 to 29.08.1998 (122 hours) for a sum of Rs.27,519/- . That the claim was as per rules and the same was passed. The applicant also claimed Overtime Time Allowance w.e.f. 30.8.1998 to 09.10.1998 but this was not allowed. The respondents had not issued any order of transfer of the applicant till 29.9.1998 and even transfer order

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passed on 29.9.1998 was communicated to the applicant on 10.10.1998 through TI RE, on which day he took ~~over~~ from the applicant and the applicant took charge of the Jillo Station on 11.10.1998. The order of transfer of the applicant was passed after full two months and 16 days. It is evident that applicant was made to remain at the MBV station without work for this period. That he could not have left the duty place as there was nobody to relieve him. In this matter the respondents failed to discharge their duties and when the question of fixing responsibility arose, the same has been assigned on him. It is stated that there was no work at the station but still Overtime Allowance was claimed because the applicant have to remain at the station at all the time during day. During this period, the applicant wrote a number of letters to the respondents, requesting them about his transfer from the MBV Station, like letter dated 14.07.1998 to TI-RE, letter dated 18.7.1998 to DSO, Jaipur, letter dated 18.7.1998 to Sr. Divisional Manager, Jaipur and letters dated 24.7.1998 & 04.08.1998 to DRM, Jaipur but of no avail. But now the applicant has been charge-sheeted and punished. All the pleas of the applicant fell on deaf ears of the respondents. Further that, he was served with charge sheet on 19.1.2000 in standard form No. 11 for minor penalty and again he was served with another charge sheet in SF 5 for the same offence and again he was punished. This is against the principles of natural justice and fundamental rights. He has also suffered mental tension and harrassment. Due to this punishment he has suffered Hypertension and insomnia and is under treatment even now.

4. In the grounds, it is stated that the entire action of the respondents is arbitrary and has been taken with malafide intentions to make the applicant a scapegoat. That two charge sheets could not be issued for the same charges and he has also been punished twice. That the Inquiry Officer and the Appellate Authority failed to appreciate the evidence of Shri Mukesh Bhatnagar, Sr. Clerk who has categorically stated that there was no flaw in claiming overtime. They have also failed to appreciate the fact that Shri K.L. Saini had categorically stated that there was no order for the applicant to move out of MBV statioin till 10.10.1999. That authorities also did not appreciate the facts that he was alone with four Group 'D' staff and that even ASM had been removed due to which there was no question of handing over the charge to anybody as the applicant

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had to remain at the MBV station for 24 hours round the clock. Since there was no handing over and taken over to be done, he could not maintain Daily Diary. In these circumstances, applicant was not at fault but the fault lies with the Administration who have not taken proper steps and have taken two months and 16 days to realise their mistake. Even representations and other letters filed by the applicant were not considered by the Disciplinary Authority.

5. Respondents have given detailed reply. They admit that after conversion of MBV station to 'D' category, operations at this station were stopped because all the machines/telephones, communications instruments and staff were seized/withdrawn and staff including ASM were deployed at other station and only the applicant and four Group 'D' were left there. In these circumstances, the applicant was not required to perform any roster duty but was left with no work and the contention of the applicant that he worked for 24 hours does not make any sense. In these circumstances, he could not claim Overtime Allowance as mentioned in the application. Since he was not having any work at the station, there was no question of discharging duty beyond working hours and the question of Overtime Allowance should not have arisen. In a situation, Station Master is left as the custodian of Railway Property till such time further posting orders are given to him and the pay and allowances of the officers are not stopped. Since he was not assigned any extra duty but had to remain at the Railway Quarter till such time orders were issued, the ~~question~~ of Overtime Allowance as drawn by the applicant was illegal per se. The contention that he wrote many letters to the higher authorities on the dates mentioned in the application is denied as authorities mentioned therein did not receive any letters. It is also stated that for claiming false Overtime allowance, the applicant was charge-sheeted and the same was decided on merits. The subsequent charge sheet was different as it is based on different issues.

6. In the grounds, the action of malafide intention and illegality are denied. There has not been any abrogation of the Constitution because respondents' action was fully justified under the rules. The applicant has not been punished twice for the alleged offence as the subsequent charge sheet was issued for separate charges which have not been mentioned in the first charge sheet. The Inquiry Officer conducted inquiry in a fair

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manner giving reasonable opportunity to the applicant and abiding by the principles of natural justice. But on the face of it, when there was no work, the question of claiming Overtime allowance did not arise. Under the rules, he was required to maintain certain Daily Diary and extracts work from four Group 'D' employees which ^{he did not do} were also found to be proved.

7. Applicant has filed rejoinder and reiterated his pleadings. He justified his Overtime Allowance on the ground that he was duty bound to remain at MBV station by virtue of Rule 2.08 of General Rules applicable to Railway employee. It is wrong to say that he did not discharge any duty as the custodian of the Railway. That the Administration realised their mistake only when the applicant claimed Overtime allowance and they made him a scape goat when the responsibility were to be fix for this failure.

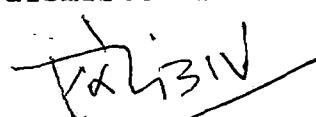
8. Parties were heard at length. Counsel for the applicant repeated his pleadings as per application and rejoinder. While reading profusely from the file, he asserted his earlier pleadings justifying claiming allowance because it was as per rules but the Administration stopped subsequent claim because they realised their failure of not posting the applicant out of this 'D' category station.

9. Counsel for the respondents on the other hand insisted that since there was no work at the station, claiming overtime Allowance was fraudulent perse. For staying at the station round the clock, he was already paid his salary & allowances. The charge sheet dated 25.5.2000 contains two charges pertaining to his duty, which he was required to perform. That maintaining Daily Diary and making 'D' category staff work according to Roster, were legitimate work during this period which ^{he} failed to discharge, which amounted to violation of rules. He denied the applicant's contention that respondents did not ask him specifically to perform these duties because applicant being an experienced Station Master is expected to be well aware of his duties. In fact he has tried to take advantage of the situation thinking that he will get away with it. In this he was perhaps encouraged by successfully drawing Rs.27,519/- as overtime Allowance. Counsel for the respondents also repeated that the two charge sheets mentioned by the applicant are based on entirely different facts.

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10. We have given careful consideration to the pleadings and arguments. We noticed that the charge sheet dated 19.1.2000 and charge sheet dated 25.5.2000 are based on different facts. The applicant was punished on the first charge sheet and the subsequent charge sheet was issued on different grounds. In the punishment order dated 10.10.2001, the Disciplinary Authority has clearly stated that he had already been punished for drawing over time allowance in the earlier punishment order. Therefore, after seeing the relevant record we find that in the second punishment order, he was considering only charge Nos. 2 & 3, which are on fresh grounds. We also noticed that the Departmental inquiry has been conducted while abiding all rules, giving all reasonable opportunity and fulfilling principles of natural justice. On the merits of charge, we feel that since there was no work at the 'D' category MBV Station and applicant was kept there only as a custodian, he was not justified in drawing over time allowance. His pay and other perks were intact, and in fact for discharging duties of a custodian four Group 'D' staff were made available to him. His contention that without staff there was no need to write Daily Diary is wrong because he in fact had four 'D' category staff under him, whose duty roster should have been written in the daily Diary. This proves the charge of not extracting work from them also. His contention about writing to higher authorities has been denied by the respondents and even by delaying his posting to some other station, respondents have not committed any illegality as long as he was getting his salary regularly. Since charges are found proved, there is nothing arbitrary in awarding punishment.

11. In view of the foregoing observations, the OA is dismissed with no order as to costs.


(A.K. BHANDARI)

MEMBER (A)

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(M.L. CHAUHAN)

MEMBER (J)