



OP (CAT) NO. 32 OF 2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MR. JUSTICE K. V. JAYAKUMAR

TUESDAY, THE 25TH DAY OF FEBRUARY 2025 / 6TH PHALGUNA, 1946

OP (CAT) NO. 32 OF 2023

AGAINST THE ORDER DATED 19.12.2022 IN OA NO.591 OF 2021
OF CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

PETITIONER/APPLICANT:

NITHEESH K.,
AGED 30 YEARS
S/O BALAKRISHNAN, EX-TECHNICIAN III, CENTRAL WORK
SHOP, GOLDEN ROCK, PONMALAI, THIRICHIRAPALLY,
SOUTHERN RAILWAY, PIN 620004, RESIDING AT KILIYAN
THODIKA, POOKKOTTUM PADAM, NILAMBUR, MALAPPURAM
DISTRICT, PIN - 679332

BY ADVS.
MARTIN G. THOTTAN
VARGHESE JOHN

RESPONDENTS/RESPONDENTS:

- 1 UNION OF INDIA,
REPRESENTED BY THE CHIEF WORKSHOP MANAGER, CENTRAL
WORKSHOP, GOLDEN ROCK, THIRICHIRAPALLY, TAMIL NADU,
PIN - 620004
- 2 THE DEPUTY CHIEF MECHANICAL ENGINEER (C&W),
CENTRAL WORKSHOP GOLDEN ROCK, THIRICHIRAPALLY,
TAMIL NADU, PIN - 620004



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- 3 WORKSHOP MANAGER (WP) ,
 GOLDEN ROCK, CENTRAL WORKSHOP THIRICHIRAPALLY,
 TAMIL NADU, PIN - 620004

- 4 ASSISTANT WORKSHOP MANAGER (C1) ,
 CENTRAL WORKSHOP, GOLDEN ROCK, THIRICHIRAPALLY,
 TAMIL NADU, PIN - 620004

OTHER PRESENT:

SRI. R.V. SREEJITH- CGC

THIS OP (CAT) HAVING BEEN HEARD ON 25.02.2025, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

Amit Rawal, J.

The present OP(CAT) is directed against the order dated 19.12.2022 in OA No.591 of 2021 filed by the petitioner-applicant challenging the order dated 21.1.2021 whereby petitioner-applicant was imposed a punishment of compulsory retirement from railway services on the allegation of unauthorized absence from duty for a period of 148.5 days from 19.3.2020 to 14.8.2020 excluding the quarantine period.

2. Succinctly, the facts in brief for adjudication of the lis are as under: The applicant-petitioner was employed in Central Workshop, Thiruchirapally, Tamilnadu under the Railways as Technician -III. The leave was granted for a period of three days from 16.3.2020 to 18.3.2020 (both days inclusive) on medical emergency and accordingly, he proceeded to his native place at a village in Nilambur in Kerala. On the ground of illness, another extension of leave from 19.3.2020 to 21.3.2020 was sought, which was granted.

3. On 22.3.2020, there was a general curfew declared, to contain the Covid-19 pandemic, followed by national lockdown which continued up to 2nd June, 2020. Entire activity in the



country came to a grinding halt. Later on, on 31.7.2020, hired a taxi and after obtaining a travel pass proceeded to Thiruchirapally, Tamilnadu and reported for duty and as per the medical record was ordered to undergo quarantine, firstly for 7 days and later, another 7 days ie., total 14 days from 31.7.2020 to 14.8.2020 afternoon.

4. A representation Annexure.A4 was submitted on 15.9.2020 to regularize his leave during the period of absence by relying upon other circulars of the Government with regard to treating the period as special casual leave considering the Covid pandemic. The aforementioned request was rejected and was served with a charge sheet on 19.10.2020 on the allegation of having remained unauthorized absent from 19.3.2020 to 14.8.2020, resulting into imposition of compulsory retirement.

5. Respondents contested the aforementioned petition and alleged that petitioner had failed to give the explanation of absence till the declaration of the lock down and justified the compulsory retirement.

6. The learned Tribunal on the analysis of the pleadings as well as the documents, particularly R1, granting exemption of casual leave found that the applicant-petitioner had not given



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explanation of his absence from 22nd, 23rd and 24th of March 2020 but found that the punishment of compulsory retirement was disproportionate to the alleged absence and disposed of the OA by issuing directions to the Union to consider the imposition of lesser punishment or any other punishment other than the termination of the service.

7. Before we could commence the argument, we have been apprised of the fact that pursuant to the directions of the Tribunal vide order dated 16.2.2023, Ext.P6 which has been placed on record by way of IA. No.1 of 2023 at the instance of the counsel for the applicant-petitioner, petitioner-applicant has been imposed the penalty of reduction to lower time scale of pay with immediate effect as Assistant (Workshop) Grade at bottommost seniority with pay fixed at Rs.18,000/- in the pay matrix level- 1 for a period of 48 months(which will have the effect of postponing future increments).

8. Mr. Martin G. Thottan, learned counsel appearing for the applicant-petitioner buttressed his argument laying challenge to the aforementioned findings as well as Ext.P6, to contend that there had been a categorical pleadings in the rejoinder granting the exemption to similarly situated employees much less one of the



employees had got away with lesser punishment which owing to unexplained long absence. The aforementioned averments in the rejoinder were not emphatically denied but replied that it was on account of the closure of the workshop. However, in the instant case also, the workshop remained closed from 20.3.2020 to 2.6.2020 and the extended leave of the petitioner-applicant was upto 21.3.2020. Non explanation of three days of absence cannot be that fatal considering the office memorandum dated 1.3.2021 and 28.7.2020, Ext.R1 provided that Government servants who were on leave prior to the issuance of lockdown with effect from 25.3.2020 and the leave ended during the lockdown period, deemed to have joined duty from the date of expiry of leave, if intimation of duty due to non-availability of public transport/flights has been given by the Government servant to the office or in case of leave on medical grounds, subject to production of medical/fitness certificate but the learned Tribunal has gravely erred in not appreciating the both the OMs, Ext.R1 in correct perspective, therefore there is an abdication.

9. On the other hand, Sri. R.V Sreejith, learned counsel appearing for the Union of India countered the aforementioned argument by alleging that unexplained absence of a Government



employee is a serious indiscipline and cannot be pardoned but no doubt, compulsory punishment was not found to be justified as per the order of the Tribunal. The subsequent penalty as per Ext.P6 is justified and urged this Court for upholding the order under challenge.

10. We have heard the learned counsel for the parties and apprised the paper book. Before dealing with the rival contentions, it would be appropriate to extract both the OMs dated 1.3.2021 and 28.7.2020.

Office memorandum dated 1.3.2021

Subject:- Clarification on regularization of absence during COVID-19 pandemic lockdown period-regarding.

This Department has been receiving several references requesting for clarification relating to regularization of absence during COVID-19 epidemic lockdown period.

2 In this regard, it is stated that this Department has already issued a clarification on regularization of absence during COVID-19 lockdown period vide DoPT's OM no. 14029/5/2020-Estt. (L) (pt) dated 28.07.2020 (copy enclosed).

3. It is further clarified that this Department's OM dated 28.07.2020 has been issued in view of the circumstances that the country is going through due to COVID-19 situations and the unavoidable problems faced by the Government employees in different sectors under the Government of India. A general terminology has been adopted to cover all kinds of problems faced by the employees due to COVID-19 situation. The said OM may not touch all specific circumstantial problems faced by all employees under the Government of India; however, an interpretation of such circumstances in congruence with the clarification made in the above OM is adoptable.

4. Therefore, all Ministries / Departments may examine cases relating to regularization of absence during COVID-19



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lockdown period in the light of this Department's OM dated 28.07.2020 referred to above and the guidelines issued by the Ministry of Health and Family Welfare and Ministry of Home Affairs from time to time.

Office memorandum dated 28.7.2020

Subject: Clarification on regularization of absence during COVID-19 epidemic lockdown period - regarding.

This Department has been receiving several references/queries from Central Government employees who proceeded on leave, with station leave permission, but could not report for duty due to non-availability of public transport / flights and restrictions on inter/intra state movement of persons as per Ministry of Home Affairs' Orders from time to time, to contain the spread of COVID-19 pandemic in the country. The matter has been considered and the following clarifications relating to regularization of period of absence during the period of lockdown are issued in the matter :-

Sl. No.	Situation	Clarification
1.	Government Servants who were on official tour and were unable to return to their Headquarters (HQs) due to non-availability of Public Transport.	Deemed to have joined duty on the date of expiry of official tour, if intimation in any form, indicating difficulty in joining duty due to non-availability of public transport/flights, has been given by the Government servant to the office.
2/	Government servants who were on leave prior to issue of lockdown orders with effect from 25.03.2020 and the leave ended during lockdown period.	Deemed to have joined duty from the date of expiry of leave, if intimation in any form, indicating difficulty in joining duty due to non-availability of public transport/flights has been given by the Government servant to the office. In case of leave on medical grounds, this is subject to production of medical/fitness certificate.
3.	Government servants who left HQ on the week-end prior to lockdown, i.e. 20.03.2020 (Friday), but could not return to HQ on 23.03.2020 (Monday) due to non-availability of transport.	Deemed to have joined on 23.03.2020, if intimation, in any form indicating difficulty in joining duty due to non-availability of public transport/flights has been given by the Government servant to the office.



11. On perusal of the same, the Government servants were given succor who could not join. The admitted facts in the instant case was that applicant-petitioner on account of the illness of his child was on a sanctioned leave from 16.3.2020 to 18.3.2020 and thereafter extended from 19.3.2020 to 21.3.2020. Concededly, there was a lock down on 24.3.2020. The specific pleadings of closure of workshop from 20.3.2020 to 2.6.2020 has not been denied. In such circumstances, the reasoning assigned by the Tribunal as well as the disciplinary authority of having not explained the absence of 22nd, 23rd and 24th of March 2020 is wholly unjustified leading to the imposition of compulsory appointment or punishment as indicated in Ext.P6 which amount to taking away the valuable right of service of almost seven (7) years as punishment amounted to withholding of the increment with cumulative effect.

12. It is also a matter of record that the applicant-petitioner had reported to the officer concerned in the workshop situated at Thiruchirapally, Tamilnadu after travelling a distance of 400 km during the Covid pandemic but as per the document on record was advised to undergo for quarrantine for seven (7) days and another seven (7) days ie., up to 15.8.2020. In these circumstances, we



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are of the view that there was hardly any willful absence at the instance of the applicant-petitioner leading to such serious punishment even after the directions of the Tribunal as per Ext.R6. We thus set aside both the order of the compulsory retirement dated 21.1.2021 as well as Ext.P6 dated 16.2.2023 of imposition of other punishment and allow the OA considering that the petitioner's absence from 22nd, 23rd and 24th would be considered as casual leave strictly as per the OM dated 28.7.2020 and ordered to be reinstated with all consequential benefits as expeditiously as possible, not later than one month from the date of receipt of the certified copy of the judgment.

Sd/-

AMIT RAWAL

JUDGE

Sd/-

K. V. JAYAKUMAR

JUDGE

sab



APPENDIX OF OP (CAT) 32/2023

PETITIONER ANNEXURES

Annexure A9	TRUE COPY OF THE LETTER BEARING NO.GPB/227/7217/ CRS/20/20 SF.5 DATED 21.01.2021 ISSUED BY THE 4TH RESPONDENT
Annexure A11	TRUE COPY OF THE ORDER BEARING NO.GPB/227/7217/28/20/ CRS/GOC/ SF.5/APPEAL DATED 18.03.2021 ISSUED BY THE THIRD RESPONDENT.
Annexure A13	TRUE COPY OF THE LETTER BEARING NO.GPB/227/7217/28/20/ CRS/GOC/ SF.5/REVISION DATED 23.09.2021 ISSUED BY THE SECOND RESPONDENT.
Annexure A1	TRUE COPY OF LETTER DATED 23.05.2020 SUBMITTED BY THE APPLICANT.
Annexure A2	TRUE COPY OF THE TRAVEL PERMIT ISSUED TO THE APPLICANT BY THIRUCHIRAPALLY ADMINISTRATION ON 27.07.2020
Annexure A3	TRUE COPY OF LETTER ISSUED FROM STATION SUPERINTENDENT, NILAMBUR RAILWAY STATION DATED 09.03.2021.
Annexure A4	TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE APPLICANT DATED 15.09.2020 ALONG WITH TYPED COPY.
Annexure A5	TRUE COPY OF THE MEMORANDUM OF CHARGES NO.GPB/227/7217/0028/20/CRSA/ GOC/SF.5 DATED 19.10.2020 ISSUED BY THE 4TH RESPONDENT
Annexure A6	TRUE COPY OF THE RAILWAY BOARD LETTER BEARING NO.E(G)2020/LE 2/1 DATED 03.09.2020 AND PBC NO.149/2020



Annexure A7	TRUE COPY OF THE EXPLANATION DATED 29.10.2020 SUBMITTED BY THE APPLICANT ALONG WITH TYPED COPY.
Annexure A8	TRUE COPY OF THE ENQUIRY REPORT DATED 12.11.2020 ALONG WITH COVERING LETTER DATED 19.11.2020 AND NO.GPB/227/7217/28/20/CRS/SF.5
Annexure A10	TRUE COPY OF THE APPEAL SUBMITTED BY THE APPLICANT DATED 01.02.2021
Annexure A12	TRUE COPY OF THE REVISION SUBMITTED BY THE APPLICANT DATED 05.04.2021
Annexure R1	TRUE COPY OF THE RAILWAY BOARD'S LETTER NO.E(G)2020/LE2/1/PT.2 DATED 14.06.2021
Annexure A14	A TRUE COPY OF THE RAILWAY MEDICAL OFFICER PONMALAI PRESCRIPTION (NOT VERY LEGIBLE
Annexure A15	TRUE COPY OF THE WHATSUP MESSAGE SENT BY THE SAID SENIOR SECTION ENGINEER (NOT VERY LEGIBLE)
Annexure R2	TRUE COPY OF THE WRITTEN STATEMENT OF DEFENCE DATED 29.10.2020
AnnexureA16(a)	TRUE COPY OF THE SALARY BILL OF MARCH, 2020 OF THE PETITIONER
Annexure A16(b)	RUE COPY OF THE SALARY BILL OF APRIL, 2020 OF THE PETITIONER
Annexure A16 (c)	RUE COPY OF THE SALARY BILL OF MAY, 2020 OF THE PETITIONER
Exhibit P1	TRUE COPY OF THE ORIGINAL APPLICATION NO.591 OF 2021 FILED BY THE PETITIONER BEFORE THE CAT, ERNAKULAM BENCH
Exhibit P2	TRUE COPY OF THE REPLY STATEMENT FILED



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BY THE RESPONDENT IN OA 591 OF 2021
BEFORE THE CAT, ERNAKULAM BENCH

- Exhibit P3 TRUE COPY OF THE REJOINDER FILED BY THE
PETITIONER IN OA 591 OF 2021 BEFORE THE
CAT, ERNAKULAM BENCH
- Exhibit P4 TRUE COPY OF THE ADDITIONAL REPLY
STATEMENT FILED BY THE RESPONDENTS
BEFORE THE CAT, ERNAKULAM BENCH IN OA
591 OF 2021
- Exhibit P4(a) TRUE COPY OF THE MISC. APPLICATION
NO.909 OF 2022 FILED BY THE PETITIONER
BEFORE CAT, ERNAKULAM BEHNCH
- Exhibit P5 TRUE COPY OF THE ORDER DATED 19.12.2022
PASSED BY THE CAT, ERNAKULAM BENCH IN
OA 591 OF 2021
- Exhibit P6 TRUE COPY OF THE ORDER BEARING
NO.GPB/227/7217/28/20/CRS/SF.5 DATED
16.02.2023 ISSUED BY THE 4TH RESPONDENT