

CENTRAL ADMINISTRATIVE TRIBUNAL: NEW BOMBAY BENCH, NEW BOMBAY.

STAMP APPLICATION No.852 OF 1988

Sri Yogesh Kumar Singh,
B-1-110 Diwan and Sons,
Maneckpur,
Diwanman Vasai Road,
District: Thane. .. Applicant.

(By Sri T.R.Ramamurthy, Advocate).

v.

1. Union of India
through the General Manager,
Western Railway, Churchgage,
BOMBAY-20.
2. Senior Divisional Commercial
Superintendent, Western Railway,
Bombay Central, Bombay-400 008.
3. Divisional Manager,
Western Railway, Bombay Central,
Bombay-400 008. .. Respondents.

CORAM:

Hon'ble Mr.Justice K.S.Puttaswamy, .. Vice-Chairman(J).
Hon'ble Mr.P.S.Chaudhuri, .. Member(A).

ORAL JUDGMENT:

(Per: Justice Shri K.S.Puttaswamy, VC)

Dated 21-12-1988.

In this application made under Section 19 of the Administrative Tribunals Act,1985 ('the Act') the applicant has challenged Order No.Con.E/C 308/2/2/154 dated 26-10-1988 of Senior Divisional Commercial Superintendent, Bombay Central, Bombay ('SDCS-BC').

2. On 7-1-1987, the applicant was working as Senior Ticket Collector at Bombay Central. In the performance of his duties on that day, the Divisional Commercial Superintendent and Disciplinary Authority ('DA') initiated disciplinary proceedings against the applicant under the Railway Servants (Discipline and Appeal) Rules,1968 ('Rules'), on the charge appended to his Memorandum No.Con.E/C/308/2/2/154 dated nil (Exhibit-A). In conformity with the Rules, the DA concurring with the findings of the Inquiry Officer ('IO') by his Order No.Con. E/C 308/2/2/154 dated 11-11-1987 (Exhibit-H) imposed on the applicant the following punishment:

"Withholding of privilege of one set of pass". This will be withheld in the current year if due, otherwise the same will be withheld from the dues of the following years".

The applicant did not challenge this order in any legal proceeding under the Rules. But, the SDCS-BC exercising the powers of review conferred on him issued a show cause notice and then by his Order No.Con/E/C/308/2/2/154 dated 26-10-1988 (Exhibit-K) imposed on the applicant the following penalty:

"Reduction to the post of TC in scale Rs.950-1500 (RP) on pay Rs.950/- p.m. for a period of three years with the effect of postponing future increments".

Without availing the legal remedy of an appeal available to him under the Rules, the applicant has challenged this order before us under the Act.

3. Sri Ramamurthy, learned counsel for the applicant strenuously contends that every one of the grounds urged against the impugned order justifies us to interfere with the impugned order without insisting on the applicant to exhaust all the legal remedies available to him under the Rules. In support of his contention Sri Ramamurthy strongly relies on the rulings of the Principal Bench in 1986(3) A.T.C.307 and 1987 (3) A.T.C. 244.

4. In the very order made against the applicant, the SDCS-BC~~T~~ has stated that an appeal against his order lies under Rule 18 of the Rules to the Divisional Railway Manager, Bombay Central ('DRM'). An examination of the Rules shows that an appeal lies to the DRM as of right both on questions of fact and law.

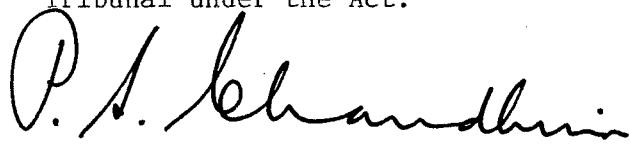
5. We are of the view that every one of the grounds urged against the impugned order can undoubtedly be urged by the applicant in an appeal before the DRM. We are also of the view that every one of the facts and circumstances do not justify us to entertain this application before the applicant exhausts the legal remedies available to him under the Rules. On this view, we consider it proper to reject this application reserving liberty to the applicant to exhaust the legal remedies available to him under the Rules and then only approach this Tribunal under the Act. On this view, we decline to examine the grounds urged against the impugned order.

6. Sri Ramamurthy submits that the applicant will avail the legal remedy of an appeal within one month from this day and the appellate authority be directed to condone the delay in filing that appeal and deal with the same on merits.

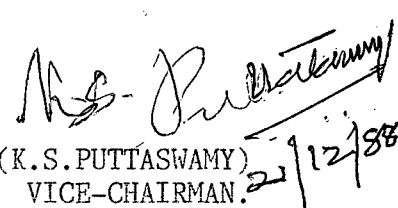
7. We are of the view that this submission of Sri Ramamurthy

is well founded. We, therefore, direct the appellate authority to condone the delay in filing the appeal, if any, and deal with the appeal only on merits and not on the ground of limitation. We do hope and trust that the appellate authority will decide the appeal to be filed by the applicant with expedition.

8. In the light of our above discussion, we hold that the application is liable to be rejected. We, therefore, reject this application reserving liberty to the applicant to exhaust the legal remedies available to him under the Rules and then only approach this Tribunal under the Act.



(P.S.CHAUDHURI)
MEMBER(A)



2/12/88

(K.S.PUTTASWAMY)
VICE-CHAIRMAN.