

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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Commercial Complex (BDA),
Indiranagar,
Bangalore - 560 038

Dated : 24/9/87

APPLICATION NO 1783 /86(F)

W.P. NO _____

Applicant

Shri D.A. Kundagol

V/s The GM, Telecommunications,
Karnataka & 2 Crs

To

1. Shri D.A. Kundagol
Telephone Supervisor
Telephone Exchange
Hanagal
Dharwad District
2. Shri M. Narayanaswamy
Advocate
844 (Upstairs)
Vth Block, Rajajinagar
Bangalore - 560 010
3. The General Manager
Telecommunications
Karnataka Circle, Bangalore - 560 009
4. The Divisional Engineer
Telegraphs
Hubli
Dharwad District
5. The Chairman
P & T Board
New Delhi
6. Shri M.S. Padmarajaiah
Central Govt. Sng Counsel
High Court Buildings
Bangalore - 560 001

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER ~~XXXX~~
~~XXXXXXXXXXXX~~ passed by this Tribunal in the above said
application on 9-9-87.

Encl : as above

B.V. Venkatesh
Deputy Registrar

~~SECTION OFFICER~~
(JUDICIAL)

RECEIVED

Diary No. 1192/CR/87
Date: 29/9/87

Received Copy
N. J. Somaiya
29/9/87

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 9TH DAY OF SEPTEMBER, 1987

Present: Hon'ble Shri Justice K.S. Puttaswamy ... Vice Chairman
Hon'ble Shri L.H.A. Rego ... Member (A)

APPLICATION NO.1783 OF 1986

D.A.Kundgol,
S/o Aswathrao Kundgol,
Telephone Supervisor,
Telephone Exchange,
Hanagal,
Dt: Dharwad.

... Applicant

(Srhi M.Narayanaswamy, Advocate)

VS

1. The General Manager,
Telecommunications,
Karnataka Circle,
Bangalore.

2. The Divisional Engineer,
Telegraphs,
Hubli.

3. The Chairman,
P & T Board,
New Delhi.

... Respondents

(Shri M.S.Padmarajeiah, Advocate)

The application having come up for hearing, Vice-Chairman made the following:

O R D E R

In this application made under section 19 of the Administrative Tribunals Act, 1985 ('Act') the applicant has challenged order No. STAFF/11-290 dated 11.12.1985 (Annexure F) of the General Manager, Telecommunications, Karnataka Circle, Bangalore ('GM').



2. From 1969 to 1981 the applicant was working as a Telephone Supervisor ('TS') at Sirsi of Uttara Kannada District. When working at Sirsi, the applicant drew a sum of Rs.5500/- as Leave Travel Concession ('LTC') for performing journeys with his family from Sirsi to Srinagar and back. The rank and status of the applicant entitled him to travel by 1st class train, wherever such facilities were available. In his TA bill the applicant claimed that he and his family had travelled by 1 class train.

3. Some time in 1981 the applicant was transferred from Sirsi to Hangal where he is working ever since then. While working at Hangal, the Divisional Engineer, Telephones, Karwar and the disciplinary authority (DA) initiated disciplinary proceedings against the applicant under the Central Civil Services (Classification Control and Appeal) Rules 1965 (Rules) and served a charge memo on the applicant on 19.8.1982. The charge against the applicant was that he had not performed journey from Sirsi to Srinagar and had drawn the LTC TA without performing the journeys at all which he denied and asserted that he had travelled by 1st class train and that his LTC claim was genuine and true. In this view, the DA appointed one Sri V.M.Naik, S.D.O. Phones, Hubli as the Inquiry Officer ('IO') to hold a regular inquiry and submit his report.

4. On holding a regular inquiry, the IO in his report to the DA concluded thus:

"Findings of the I.O."

Shri D.A.Kundgol, during the proceedings of the inquiry has only tried to establish that he had toured North India along with his family members through the tour organised by travel agency Bharat Yatra Travels New Fort Hubli. Prosecution case mainly accuses the charged official of having not travelled in Train First Class for which he has preferred the T.A. claim. Shri D.A.Kundgol while submitting defence has not countered this aspect of the charge through documentary proof and he has not established that he did travel in Train First Class Bogie No.6778. Therefore, I find that Shri D.A.Kundgol and his four other family members did not travel in the said Train First Class bogie to North India as claimed by him.



"Conclusion

Since Shri D.A.Kundgol did not travel in Train First Class bogie 6778, his T.A. claim of first class train fare is not genuine, and amounts to false claim. Therefore, I find that charge made against Shri D.A.Kundgol vide D.E.T. Karwar Memo No.Q-90/78 dated 19-8-82 are proved."

On the charge the I.O. held that the applicant had travelled from Sirsi to Srinagar in II class train and not in Ist class train.

5. On an examination of the report of the IO and the records the DA on 22.1.1985 (Annexure A) concurring with the findings of the IO, inflicted the penalty of 'censure' against the applicant. Against this adverse and appealable order of the DA, the applicant did not file an appeal under the Rules before the GM who is the appellate authority. With this the matter should have, normally, ended. But that did not happen.

6. On 25.6.85, the GM who is also the reviewing authority under the Rules issued a show cause notice to the applicant proposing to enhance the penalty of 'censure' imposed by the DA to one of "stoppage of two increments for a period of two years and also recover the difference of LTC between I & II class train fare". That show cause notice issued by the GM (Annexure C) reads thus:

ANNEXURE: 'C'

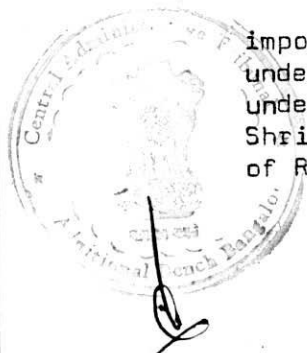
Regd. A/D.

DEPARTMENT OF TELECOMMUNICATIONS

Office of the General Manager Telecom, Karnataka Circle, Bangalore-9.

Memo No. Staff/11-290, Dated at B'lore-9, 25th June 85

Whereas Shri D.A.Kundgol, Telephone Supervisor, Hangal was imposed the punishment of 'Censure' by director Telecom, Managalore under his order No.MR/STA/10-47, dated 22.1.1985 after the Inquiry under Rule 14 of CCA(CCA) Rules 1965 for the charge that the said Shri D.A.Kundgol preferred false LTC claim contravening the provisions of Rule 3(1) (i) & 3 (1) (iii) of CCS (Conduct) Rules, 1964.



-4-

AND WHEREAS it was proposed by the undersigned to examine the said punishment order under the power of Revision vested in him under Rule 29(1) of CCS(CCA) Rules of 1965 and the official was informed accordingly vide this office letter of even number dated 24.4.85 and the official's acknowledgement dated 2.5.1985.

NOW THEREFORE, after careful examination of the case and the relevant documents the undersigned propose to enhance the penalty of 'Censure' imposed by Director Telecom, Managalore in the said punishment order to that of reduction in pay of the official by two stages from Rs.640/- to Rs.600/- in the time scale of pay of Rs.425-15-560-EB-20-640 for a period of two years and during the period of reduction he will not earn increment of pay. Besides the undersigned also proposes to limit the officials LTC claim in question to II class fare by rail for the distance travelled as per rules and recover excess payment made.

Shri D.A.Kundgol, Telephone Supervisor, Hangal is hereby given an opportunity of making representation on the above mentioned proposal and directed to submit such representation, if any, within 15 days of receipt of this memorandum. If no representation is received within the stipulated time limit, orders are liable to be issued ex-parte.

Sd/-(K.R.LUKE VYDHIAN)
General Manager - Telecom,
Karnataka Circle, Bangalore-9.
(APPELLATE AUTHORITY)

To

Shri D.A.Kundgol,
Telephone Supervisor,
Hangal - through TDE Karwar.

To this, the applicant filed his reply reiterating that he had travelled by I class train and his claim thereto was true and genuine.

7. On an examination of the show cause notice, the reply and the records, the GM on 11.12.1985 (Annexure M) rejected the plea of the applicant, concluded that he had not travelled by I class and had only travelled by II class and inflicted the penalty proposed by him.

The operative portion of that order reads thus:

"ORDER

I, K.P.Luke Vydhian, General Manager, Telecom, Bangalore hereby order that the pay of Sri D.A.Kundgol, Telephone Supervisor Hangal be reduced by two stages from Rs.640/- to 600/- in the time scale of pay of Rs.425-15-560-EB-20-640 for a period of two years w.e.f. 1.12.1985. It is further directed that Shri D.A.Kundgol will not earn increments of pay during the period of reduction. I further order that the official's LTC claim in question be limited to II class fare by railway for the distance travelled as per rules and excess payment made be recovered.



To
Sri D.A.Kundgol,
Telephone Supervisor,
HANGAL Through DET Karwar"

Sd/-
(K.P.Luke Vydhian)
General Manager.

Against this order, the applicant filed a revision petition before the Chairman, P & T Board, New Delhi under Rule 29(b) of the Rules, who did not dispose of the same within a period of six months from the date the said petition was lodged before him. Hence the applicant approached this Tribunal on 29.10.1986 challenging the order of the GM. On 13.10.1986 this Tribunal admitted this application and ordered notices to the respondents. But during the pendency of this application, the Chairman on 31.1.87 had dismissed his revision petition. Even though the applicant had not challenged the said order, we propose to examine the same also as if challenged in the application.

8. In justification of the orders made, the respondents have filed their reply and have also produced the records at the hearing.

9. Sri M. Narayanaswamy, learned counsel for the applicant, contends that before enhancing the penalties the GM had not furnished a copy of the report of IO ^{by} mandatorily required by Rule 17 of the Rules and that failure totally vitiates the impugned order of the GM.

10. Sri M.S. Padmarajaiah, Senior C.G.S.C., appearing for the respondents contends that the failure of the DA and the GM to furnish a copy of the report of the IO at any rate on the facts of the case, does not vitiate the impugned order.

11. Sri Padmarajaiah, does not dispute that ^{at} ~~no~~ stage of the proceedings either the DA or the GM had furnished a copy of the report of IO to the applicant in conformity with Rule 17 of the Rules.

12. The applicant had accepted ~~that~~ the order made by the DA and had allowed that order to become final against him. In other words, the finding of guilt recorded by the IO and accepted by the DA



in his order had become final. If that is so then the failure of the GM to furnish a copy of the report at any rate on the facts of this case would not have made any difference at all. On this short ground we reject this contention of Sri Narayanaswamy.

13. Sri Narayanaswamy next contends that the penalty for recovery of the difference of amounts between I & II class train fares imposed by the GM by itself invalidates the finding of guilt recorded by the IO with which the DA and the GM had agreed.

14. Sri Padmarajaiah refutes this contention of Sri Narayanaswamy.

15. We have earlier held that on the failure of the applicant to file an appeal against the order of the DA imposing the punishment of censure, the finding of guilt recorded against him by the IO and concurred thereto by the DA had become final. We are of the view, that finding equally governs this contention of Sri Narayanaswamy and is liable to be rejected.

16. Even otherwise, we are of the view that the proposal to recover the difference of amounts between I & II class train fares and an order thereto by the GM far from invalidating the finding of the IO only supports that very finding. After all a proposal to enhance penalty, does not and cannot invalidate or obliterate the finding of guilt recorded by the IO, and concurred by the DA. For all these reasons, we see no merits in this contentions of Sri Narayanaswamy and we reject the same.

17. Sri Narayanaswamy lastly contends that the facts and circumstances, at the highest only justified the minor punishment of 'censure' imposed by the DA and did not justify any enhancement and



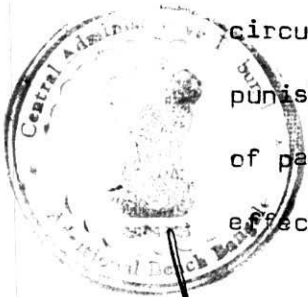
in any event the recovery of difference on which there was no charge at all was illegal and unjustified.

18. Sri Padmarajaiah opposes^{dy} any modification of the punishment imposed by the GM.

19. Even though the report of the IO is not very happily worded, it is clear that IO had held that the applicant had not travelled by Ist class for which he was entitled to and had drawn the amounts and had only travelled ~~by~~ⁱⁿ the II class. We have earlier noticed as to how that finding had become final. On that very finding it also follows that the applicant had caused loss to Government and the same could be recovered from him. This is what had been rightly done by the GM. We are ~~also~~^{of} the view that notwithstanding the procedural irregularities committed by the GM, DA and IO on this score on the peculiar facts of this case we should decline to interfere with the same.

20. We have earlier upheld the recovery of the difference of amounts between I & II class train fares ordered by the GM from the applicant though he had maintained he had really travelled by I class only and had not caused any loss to the Govt. We need hardly say that this is one punishment on the applicant.

21. From 1.1.1986 the time scale of Rs.425-640 of the applicant had been revised to Rs.1400-40-1800-50-2300. We are of the view that taking note of the earlier punishment, and all the facts and circumstances, the ends of justice require a modification on other punishment imposed by the GM by modifying the same to one of reduction of pay of the applicant by one stage from 1.1.1986 without cumulative effect, instead of two stages from 1.12.1985.



22. In the light of our above discussions we make the following orders:

- (1) We uphold the order of the GM to the extent that he had held the applicant was guilty of the charges levelled against him including the charge of recovering difference amount between I & II class train fares and also his order for recovery of their difference also and dismiss this application to that extent.
- (2) We allow this application in part and modify the other punishment imposed by the GM to one of reduction of pay by one stage only for a period of one year from 1.1.1986 without cumulative effect.
- (3) We direct the respondents and other authorities to make recoveries and payments in conformity with this order from and to the applicant.

23. Application is disposed of in the above terms. But in the circumstances of the case, we direct the parties to bear their own costs.



Sd/-
VICE CHAIRMAN
5/9/1987

Sd/-
MEMBER(A) 19-87

- True Copy -

[Signature]
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE