

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA),
Indiranagar,
Bangalore - 560 038

Dated : 16-9-87

Application No. 1824 /86(F)

W.P. No. 1

Applicant

Shri D.V. Pathan

V/s The Secy, M/o Railways & 5 Ors

To

1. Shri D.V. Pathan
C/o Dr A.K. Bashid
No. 4, H. Kulkarni Hakkal
Goodshed Road
Hubli - 580 020
2. Shri M.S. Anandaramu
Advocate
128, Cubbonpet Main Road
Bangalore - 560 002
3. The Secretary
Ministry of Railways
Rail Bhavan
New Delhi - 110 001
4. The General Manager
Southern Railways
Park Town, Madras - 3

5. The Divisional Manager
South Central Railways
Hubli
6. The Divisional Personnel Officer
South Central Railways
Hubli
7. The Assistant Works Manager
South Central Railways
Hubli
8. The Works Manager
South Central Railways
Hubli
9. Shri M. Shreerangaiah
Railway Advocate
3, S.P. Buildings, 10th Cross
Cubbonpet Main Road, Bangalore - 2

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH IN

APPLICATION NO. 1824/86(F)

Please find enclosed herewith the copy of the Order/~~XXXXXX~~

passed by this Tribunal in the above said Application on 4-9-87.

B.V. Venkatesh
Deputy Registrar
~~XXXXXX~~
(JUDICIAL)

Encl : as above.

Balu*

c/c

RECEIVED (Gen) 17-9-87
Diary No. 1156 / 87
Date: 18/9/87

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE

DATED THIS THE 4TH DAY OF SEPTEMBER, 1987

Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman
and
Hon'ble Shri P. Srinivasan, Member (A)

APPLICATION NO. 1824/1986

Sri D.J. Pathan,
S/o Vazeer Khan,
aged about 30 years,
working as Khalasi,
T.No.1167, Welding Shop,
South Central Railway,
Hubli.

.... Applicant

(Shri M.S. Anandaramu, Advocate)

v.

1. The Union of India
rep. by its Secretary,
Ministry of Railways,
Rail Bhavan,
New Delhi.
2. The General Manager,
Southern Railways,
Park Town,
Madras.
3. The Divisional Manager,
South Central Railways,
Hubli.
4. The Divisional Personnel Officer,
South Central Railways,
Hubli.
5. The Assistant Works Manager,
South Central Railways,
Hubli.
6. The Works Manager,
South Central Railways,
Hubli.

.... Respondents.

(Shri M. Sreeranyaiah, Advocate)



This application having come up for hearing to-day,
Vice-Chairman made the following:

O R D E R

In this application made under Section 19 of the

Administrative Tribunals Act, 1985 ('the Act'), the applicant has challenged order No.E.319/Welding/1167 dated 7.4.1984 of the Works Manager, Hubli as the Appellate Authority ('AA') and order No.E.310/Welding/8/1167 dated 18.2.1987 of the Disciplinary Authority ('DA').

2. On 31.3.1982 the applicant was working as Tr. Welder in the South Central Railway Workshop of Hubli and on that day there was an incident between him and another Railway employee. On that basis, the DA instituted disciplinary proceedings against the applicant under the Railway Servants (Discipline and Appeal) Rules 1968 ('Rules') on the following charge,

"Article of charge:-

That the said Shri D.V. Pathan T.No.1167 Welding shop while functioning as Khalasi committed a serious misconduct in that on 31.3.82 at about 17.45 Hrs. he was going with his cycle through South gate he dashed his cycle to RK.572 Sri. V.A. Kulkarni and started shouting and abusing to the RPF/UBL staff as detailed in the Annexure II below.

Thus he contravened para 3.1 (iii) of Railway Servant Conduct Rule 1968. "

which was denied by him. In this view, the DA appointed one Sri Augustine Pinheiro as the Inquiry Officer (IO) under the Rules to inquire into the charge and submit his report. For reasons that are not necessary to notice the



DA later appointed one Sri Byrasetty, as the Inquiry Officer who completed the inquiry and submitted his report on 15.2.1984 to the DA holding that the applicant was guilty of the charge levelled against him.

3. On an examination of the report of the IO, and the evidence on record, the DA by his order made on 18.2.1984 (Annexure-D) inflicted the penalty of removal from service against the applicant. Aggrieved by this order, the applicant filed an appeal before the AA on 24.3.1984 which was stated to have not been disposed of by him for a considerably long time. On that basis the applicant approached this Tribunal under Section 10 of the Administrative Tribunals Act in A.No.1701 of 1936 challenging the order of the DA. On 12.9.1986 we disposed of the same with a direction to the AA to dispose of the said appeal with expedition.

4. Evidently in pursuance of our said order the Additional Chief Mechanical Engineer on 8.10.1986 had informed the applicant that the appeal filed by him had been disposed of by the Works Manager as early as on 7.4.1984 and annexed a copy of that order along with that communication. Hence this application.

5. In his application the applicant had not specifically challenged the order made by the AA. But, we do not propose to be hypertechnical and propose to examine the order made by the AA as if that had also been challenged in the application before us.

6. Sri M.S. Anandaramu, learned counsel for the applicant, contends that all the facts and circumstances justify this



Tribunal to ignore the laconic and non-speaking order made by the AA, examine the order of the DA and annul the same on the grounds to be urged by him.

7. Sri M. Sreerangaiah, learned counsel for the respondents contends that the application made by the applicant on 6.11.1986 was barred by time and that even if the application was held in time, then also, the orders made by the AA and the DA were legal and valid.

8. In our order made in Application No.1701 of 1986, we have proceeded on the assumption that the appeal filed by the applicant had not been disposed of by the AA and, therefore, issued a direction to him to dispose of the same. But before making that order, we had not notified the respondents and therefore we must now examine whether the AA had made its order on 7.4.1984 and more important than that had communicated the same to the applicant as is now made before us.

9. On the question, whether the order of the AA had been communicated to the applicant or not we had given an opportunity to the respondents to satisfy us on that question. On that question Sri Sreerangaiah has produced before us a despatch register, which according to him evidences the despatch of the order made by the AA on 7.4.1984. We have carefully examined the despatch Register produced before us.



10. The relevant entry in the despatch Register only shows that a communication addressed to the applicant by the AA had only been despatched by ordinary post. ~~The~~ does not ~~prove~~ the despatch Register ~~prove~~ that the order of the AA had been actually served on the applicant on the date it was despatched or even thereafter. In these circumstances, ~~we~~ it is safer to hold that the order made by the AA on 7.4.1984 had only been communicated to the applicant along with the letter dated 3.10.1986 (Annexure-E2) and not before that. If this is so, then it follows from the same, that the order of the AA had been communicated to the applicant on 3.10.1986 and not before that. From this, it also follows that this application presented on 6.11.1986 is well within time. For these reasons, we see no merit in the preliminary objection urged by Sri Sreerangaiah and proceed to examine the merits.

11. The order made by the AA dismissing the appeal of the applicant and communicated to him reads thus:

" I have gone through the appeal. The party is changing his statements to suit his own story. At one stage he suspects the motto of Sri Kulkarni for having quarrel earlier due to some family affair and in other case he suspects the motto of Havaldar Veerakanthaiah due to earlier quarrel at the Gate. The party has no where tried to disprove the incident for which he was issued with charge-sheet. Hence, I pass the orders that the punishment already imposed stands good".



Sri Sreeranyaiah does not dispute that apart from this order, the AA had not made any other detailed order dealing with the appeal of the applicant.

12. Even a cursory examination of this order discloses that it suffers from all the infirmities noticed by the Supreme Court in RAM CHANDER v. UNION OF INDIA AND OTHERS (AIR 1986 SC 1173) and is not at all a speaking order as required by law, the Rules and is illegal.

13. When once we find that the order made by the AA, who is enjoined to decide the appeal on questions of fact and law, was in contravention of the law and the Rules, then it ^{is} imperative for us to quash that order and compel the AA to dispose of the appeal in accordance with law only. In this view, we decline to examine the contentions urged by the applicant on the order of the DA, which have necessarily to be examined and decided by the AA in the first instance.

14. As pointed out by the Supreme Court in Ram Chander's case, it is undoubtedly open to the applicant to seek for an oral hearing before the AA. If that is sought, the AA was bound to afford him an opportunity of an oral hearing also.

15. As this matter has been pending for a fairly long time, we consider it proper to direct the AA to dispose of the appeal with expedition.

