

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH:BANGALORE

DATED THIS THE 27TH DAY OF FEBRUARY,1987.

PRESENT:

Hon'ble Mr.Justice K.S.Puttaswamy,

.. Vice-Chairman.

And

Hon'ble Mr.P.Srinivasan,

..Member(A).

APPLICATION NUMBER 882 OF 1986.

Amiruddin,
S/o Mohammed Sarwar,
Deputy Station Superintendent,
Bijapur.

.. Applicant.

(By Sri M.Narayana Swamy,Advocate)

v.

1. The General Manager,
South Central Railway,
Secunderabad.
2. The Divisional Superintendent,
South Central Railway,
Hubli.

.. Respondents.

(By Sri M.Sreerangaiah,Advocate.)

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This application coming on for hearing this 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 sought for a direction to the respondents to treat the period between 28-1-1965 to 13-6-1975 as period spent on duty with full pay and allowances.

2. On 28-1-1965, the applicant was working as an Assistant Cabin Station Master ('ACSM') at Hospet Railway Station of the then Southern Railway Zone of India Railways. In the performance of his duties as ACSM on 28-1-1965, a disciplinary proceeding was instituted against the applicant under the Rules that were then inforce by the Divisional Safety Officer ('DSO') who ultimately on 24-7-1965

inflicted the penalty of removal from service. After various proceedings, the narration of which is not necessary, the High Court of Karnataka by its order made on 7-2-1975 in Writ Petition No.1668 of 1971 (Annexure-C) filed by the applicant quashed the said penalty of removal inflicted against him. In pursuance of the same, the Railway Administration reinstated the applicant to service on 14th June, 1975 from which date he is working in one or the other capacity at one or the other place. We may at this stage itself notice that on and after the High Court made its order on 7-2-1975 (Annexure-C) the Railway Administration had not confirmed or initiated fresh disciplinary proceedings against the applicant and had finally made an order on 25-4-1978 regulating the payment of pay and allowances due to him for the period from 29-1-1965 to 13-6-1975 on certain terms and conditions. That order which is material reads thus:

SOUTH CENTRAL RAILWAY

No.H/P.648/III/187.

Shri Ameerudeen,
CASH/MRJ.

Through SS/MRJ.

Divisional Office,
Personnel Branch,
Hubli, dated 25-4-1978.

Sub: 1. Writ Petition No.1668/1971 in the High Court of Karnataka at Bangalore filed by you -v.-Railway.

2. Re-instatement consequent to the order of High Court in W.P.No.1668/71 - Regularisation of intervening period.

Ref: This office letter of even No. dated 4/10-2-1978 and your representation dated 14-3-1978.

After carefully considering your representation quoted above, in reference to this office letter of even No. dated 4/10-2-1978, the DS/Hubli, the Competent Authority, who reinstated you in service w.e.f.14-6-1975, decided to treat the intervening period from 29-1-1965 to 13-6-1975 as period not spent on duty and also decided to pay you 50% of the pay and allowances in terms of Rule 2044 of Indian Railway Establishment Code Volume II. The payment for the said period will only be arranged on production of non-employment certificate by you.

Please acknowledge the receipt of this letter.

Sd/-
for Divisional Superintendent,
S.C.Railway/Hubli."

On 15-12-1983 a Division Bench of the High Court consisting of



of Jagannatha Shetty, J.(as His Lordship then was) and Rajasekhara Murthy, J. dropped the Contempt of Court Case No.72/77 filed by the applicant in these words on 15-12-1983:

" During the pendency of the proceeding, the respondent has made an order dated April 25,1978, a copy of which has been produced before us by Sri Dayananda, learned counsel for the respondent. Sri M.Narayana Swamy, upon perusal of that order seeks to withdraw the complaint. The complaint is dismissed as withdrawn with liberty reserved to the complainant to work out his rights elsewhere"

Even after this order, the applicant did not relent and complied with the production of a non-employment certificate for which reason the Railway Administration had not paid the amounts allowed in its order made on 25-4-1978 and had not also acceded to his several representations and demands to modify the same. On 21-4-1986 the applicant has, therefore, approached this Tribunal for the directions noticed by us.

3. The applicant has urged that the final order made by the Divisional Superintendent ('DSP') on 25-4-1978 was in contravention of Rule 2044 of the Indian Railway Establishment Code ('Rules') and the respondents were bound to pay full pay and allowances for the entire period without insisting on the production of a non-employment certificate thereto.

4. The respondents have resisted this application.

5. Sri M.Narayanaswamy, learned counsel for the applicant, strenuously contends that his client had been fully exonerated by the High Court in its order made on 7-2-1975 and, therefore, under Rule 2044(2) of the Rules, he was entitled for full pay and allowances for the entire period he was kept out of employment without insisting on the production of a non-employment certificate thereto at all.

6. Sri M.Sreerangaiah, learned Standing Counsel for the Railways appearing for the respondents contends that the order made by the High Court in Writ Petition No.1668 of 1971 did not fully exonerate

the applicant but took exception to the same on a procedural violation with liberty to the Railway Administration to continue the earlier disciplinary proceedings and, therefore, the order made by the DSO on 25-4-1978 was in conformity with the Rules, legal and valid. Sri Sreerangaiah also contends that the application made under the Act before this Tribunal was also barred by time.

7. We have carefully read the order made by Jagannatha Shetty, J (as His Lordship then was) in Writ Petition No.1668 of 1971.

8. We find that the High Court took exception to the orders made against the applicant only on the ground of an illegality in the procedure or on a technical ground only and did not at all fully exonerate him to attract his case under sub-rule(2) of Rule 2044 of the Rules. We find it impossible to hold that the High Court on an examination of the merits had fully exonerated him of the charge levelled against him in the disciplinary proceeding as urged by Sri Narayanaswamy. When that is so, then the claim of the applicant does not attract Rule 2044(2) of the Rules and only attracts sub-rule(4) of that Rule only.

9. We have earlier set out the entire effective order made by the DSO on 25-4-1978. Without any doubt, this order made by DSO is in conformity with sub-rules (4) and (8) of Rule 2044 of the Rules. We find no illegality or irregularity in the order made by the DSO on 25-4-1978 either in granting 50% of pay and allowances or in insisting on the production of a non-employment certificate enjoined by sub-rule (8) of Rule 2044 of the Rules.

10. When once we hold that the order made by the DSO on 25-4-1978 was legal, it necessarily follows from the same that the claim of the applicant before us cannot also be granted.

11. As we have held against the applicant on merits, it is not necessary for us to deal with the question of limitation raised by

Sri Sreerangaiah. We, therefore, leave open the same.

12. In the light of our above discussion, we hold that this application is liable to be dismissed. We, therefore, dismiss this application. But, in the circumstances of the case, we direct the parties to bear their own costs.

~~Ms. President~~
VICE-CHAIRMAN 27/2/87

R. L. K
27/2/87
MEMBER(A)

np/050387

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208	A. No. 1585/85(G) M. Ramachandra (COP No. 08 99182)	25-2-87	Dismissed (c)
199	Sukar		Issued on 25/3/87
200			
201	A. No. 1460/67/186(C) K. V. Kalbargi to (COP No. 4162/67/186)	-do-	Dismissed (c)
202	ct 10 Crs.		Issued on 27/3/87
203	✓ 48/85)		
204			
205			
206	A. No. 1048/86(C) (COP No. 12978/83) ✓	26-2-87	Dismissed (c)
207			
208	A. No. 1680/86(A) B. Shimangada	27-2-87	Dismissed (cc)
209			Issued on 20/3/87
210			
211			
212	A. No. 882/86(P) A. M. Siddiqui	-do-	Dismissed (c)
213			Issued on 20/3/87
214			
215	A. No. 1541/86(C) H. L. T. etc (COP No. 276/80) restoration .	27-2-87	(F-D)
216	✓		
217	A. No. 2061/86(G) Smt. S. N. Malai. (Not for Statement before). N/1	27-2-87	Amendment in Order Issued on 31/3/87
218			
219	A. No. 828/86(F) M. Gunaselvam. (As above) N/1	6-2-87	— Do —
220			
221	A. No. 1635/86(F) A. S. Murthy (As above) N/1	27-2-87	— Do —
222			
223	A. No. 1584/86(G) C. V. Ranade. (COP No. 267/85).	27-2-87	— Do —
224			