

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH, BANGALORE

Dated this the 29th day of April, 1987.
Present

THE HON'BLE MR.JUSTICE K.S.PUTTASWAMY VICE CHAIRMAN

THE HON'BLE MR.L.H.A.REGO .. MEMBER(AM)

APPLICATION NO.1295 OF 1986 (T)

S.A.Basha S/o Abdul Khadar,
30 years, Ex-Fitter-Chargeman,
South Central Railways
No.3, "Akarmanjil," Ganeshpet,
Hubli.

.. Applicant

(Shri M.V.Seshadri, Advocate for the applicant)

-vs.-

1. The Union of India
by its Secretary,
Ministry of Railways,
New Delhi.
2. The Divisional Railway Manager,
South Central Railway, Hubli
3. The Divisional Mechanical -
Engineer, Loco, South Central-
Railway, Hubli. .. Respondents.

(By Shri M.Srirangaiah, Adv.for the respondents)

Application coming on for hearing this
day, PUTTASWAMY, J. (Vice Chairman) made the follow-
ing:

Order

ORDER

This is a transferred application and is received from the High Court of Karnataka under Section 29 of the Administrative Tribunals Act, 1985 (Act).

2. The applicant with the qualification of a Diploma in Mechanical Engineering, joined service as Chargeman 'B' on 13-12-1974 in the South Central Railway. At the material time, the applicant was working as Chargeman-B in the office of the Divisional Superintendent, South Central Railway, Gadag of Hubli Division.
3. From 15-9-1977 to 5-12-1977, the applicant absented himself from duty during which period, he claimed that he was medically unwell. But, the authorities taking the view that he had overstayed without permission, initiated disciplinary proceedings under the Railway Servants Discipline and Appeal Rules, 1968 (Rules) and he was removed from service, the validity of which was challenged by him before the High Court of Karnataka in Writ Petition No.10786/79 which was then exercising jurisdiction over service matters. When the said writ petition was pending, the authorities themselves

they are really due, without unnecessarily driving the applicant to approach this Tribunal for that relief.

34. In the circumstances of the case, we direct the parties to bear their own costs.

K.S. Puttaswamy
(K.S. PUTTASWAMY) 29/4/87
VICE CHAIRMAN

R. Srinivasan 29.4.87
(R. SRINIVASAN) 2d
MEMBER (AM)

np/kms:

annulled the said disciplinary proceedings and initiated fresh disciplinary proceedings under the Rules on the following charge:

"Statement of Articles of Charge framed against Sri S.A.Basha, Fitter Chargeman- 'B'/MRJ.

Article-I

That the said Shri S.A.Basha while functioning as Fitter Chargeman 'B' at Gadag was called by 'Traub India Limited', Poona for an interview on 6-9-1977 when he was on LAP from 4-9-1977 to 10-9-1977 and he had taken up an employment with that firm with effect from 1-10-1977 without the knowledge of the Administration which is in contravention to Rule No.15(1) of Railway Services (Conduct) Rules, 1966 and thereby he has violated Rule Nos.3(1)(i)(88) and (iii) of Railway Services (Conduct) Rules, 1966."

As the applicant denied this charge, the disciplinary authority (DA) ultimately appointed one Sri Abdul Razack, Assistant Mechanical Engineer as the Inquiry Officer (IO), who held a regular inquiry and then submitted his report on 26-2-1981 recording that he was guilty of the said charge. Accepting the said report of the IO, the DA by his order dated 20-4-1981 (Annexure-A) inflicted the penalty of dismissal from service. Aggrieved by the same, the applicant filed an appeal before the Divisional ^{nc} Personal Officer, Hubli ('AA'), who by his order dated 3-7-1982 (Annexure-K) dismissed the same. Aggrieved by the said orders, the applicant filed a memorial before the Minister for Railways on or about 18-8-1982 which was not disposed of

by Government till 1-9-1984. Hence, the applicant approached the High Court on 3-9-1984 in Writ Petition No.15433 of 1984 challenging the orders of the AA and the DA on diverse grounds, which on transfer has been registered as Application No.1295 of 1986.

4. Sri M.V.Seshadri, learned Counsel for the applicant, contends that the applicant had been removed by an authority lower ^{than} _{to} his appointing authority, in that he had been appointed by the Divisional Superintendent of South Central Railway, but had been removed by the Divisional Mechanical Engineer, South Central Railway, who is subordinate to him.

5. Sri M.Sreerangaiah, learned Counsel for the respondents, contends that the applicant had been appointed by the Assistant Personal Officer and not by the Divisional Superintendent and the DA who initiated the disciplinary proceedings and dismissed him from service was an authority higher than the appointing authority.

6. We are satisfied that the applicant was appointed by the Assistant Personal Officer as asserted by Sri Sreerangaiah. We are also satisfied that the Divisional Mechanical Engineer is an

authority superior to the Assistant Personal Officer. If that is so, it was undoubtedly open to the latter, to initiate disciplinary proceedings and dismiss the applicant from service. We see no merit in this contention of Sri Seshadri and we reject the same.

7. Shri Seshadri contends that the appellate order made by the AA, without considering the material contentions urged by the applicant on questions of fact and law and the factors enumerated in Rule 27 of the Rules, was not a speaking order and ^{was} illegal. In support of his contention, Shri Seshadri strongly relies on the ruling of the Supreme Court in RAMCHANDER v. UNION OF INDIA (AIR 1986 S.C. 1173).

8. Sri Sreerangaiah contends that the order made by the AA, ^{through} brief was a speaking order and does not suffer from any infirmity.

9. In his order, the AA had found, that the evidence on record, justified the conclusions reached by the IO, and the DA. The fact that the AA had not elaborately set out reasons for his concurrence with the DA and the IO, though desirable, does not make his order as laconic and arbitrary. On reaching

26. Sri Seshadri contends that all the facts and circumstances did not justify the authorities to impose the extreme penalty of dismissal from service and the same is generally disproportionate.

27. Sri Sreerangaiah contends, that the facts and circumstances justified the extreme penalty of dismissal from service.

28. We have examined the nature of the charge levelled against the applicant and proved. The charge levelled and proved is a serious one. When a serious charge is proved, the authorities were justified in inflicting the extreme penalty of dismissal from service. If we were to accede to any modification in the penalty, it would only be a travesty of justice. We see no justification whatsoever, to modify the punishment imposed by the authorities.

29. Sri Seshadri lastly contends that even for the period the applicant had worked viz., from 1-8-1979 to 21-4-1981, the authorities had not paid the salaries due to him. Sri Sreerangaiah does not admit the correctness of this submission of Sri Seshadri.

30. In his application, the applicant had not particularised his claims and had not also sought for a specific relief. But, if the applicant had worked from 1-8-1979 to 21-4-1981 and had not been

paid his salary for the said period, as asserted by him, which has necessarily to be ascertained by the Railway Administration from their records, then they are bound to pay salaries for the said period if the ^{claim} ~~same~~ is really true. We have no doubt that the authorities will examine this claim of the applicant for which he is also free to make a separate application and ^{do} ~~decided~~ get the ^{do} ~~decided~~ same in accordance with law.

31. Sri Sreerangaiah contends, that there was gross delay and laches in the applicant approaching the High Court, even after the AA made his final order and on that ground also, this Tribunal should decline to interfere with the impugned orders.

32. As we have held against the applicant on merits, we consider it unnecessary to deal with this contention of Sri Srirangaiah and leave open the same.

33. In the light of our above discussion, we dismiss this application. But, this order does not prevent the applicant from claiming salaries and allowances if any due to him for any period before his dismissal before the appropriate authority which we have no doubt will be examined and decided by that authority and payments made if

his conclusion, that the evidence on record justified the conclusions of the IO and the DA, the AA had also found that the punishment imposed against the applicant was adequate and did not call for his interference. Even though the discussion of the AA on this aspect is not very adequate, it cannot be said that he had failed to apply his mind to the quantum of punishment and had reached an arbitrary conclusion as had happened in Ramachander's case. For all these reasons, we find it difficult to uphold this contention of Sri Seshadri and we reject the same.

10. Sri Seshadri contends, that the order made by the DA ^{who} had mechanically concurred with the report of the IO, was not a speaking order and ^{was} illegal.

11. Sri Sreerangaiah contends, that when the DA concurs with the report of the IO, he was not required to give elaborate reasons as ruled by the Supreme Court in STATE OF MADRAS v. A.R. SRINIVASAN (AIR 1986 S.C.1827).

12. In his report, the IO had found that the applicant was guilty of the charge levelled against him, with which the DA had concurred and had imposed the penalty. In such a case, the failure of the DA if any, to give reasons or discuss the evidence as held by the Supreme Court in Srinivasan's case, does not vitiate the order of the DA. We see no merit in this contention of Sri Seshadri and we reject the same.

21. We have carefully examined the evidence of PW-1 and all the material documents produced by him. On a consideration of the evidence of PW-1 and all the documentary evidence on record the IO had reached his conclusion. The evidence of PW-1 and the documents produced by him though not marked as Exhibits through him, undoubtedly touch on the question that was before the IO. The evidence of PW-1 and the documents produced by him were not irrelevant to the charge and the finding recorded by the IO. If that is so, it is impossible to hold that the finding of the IO is based on 'no evidence' or inadmissible evidence. If the finding of the IO with which the DA and AA have concurred is based on evidence then, as pointed by us in S.K.SRINIVAS vs. THE DIRECTOR GENERAL, ESIC (Application No.1653/86 dated 30-1-1987), it is not open to us to re-appreciate the evidence and come to a different conclusion. At the highest, the error if any, committed by the IO was only in not marking the documents through PW-1 as exhibits. But, that procedural defect cannot be a ground to invalidate the order which is otherwise valid.

22. Sri Seshadri next contends that the documents produced by PW-1 were not the originals but were all copies without the signatures of the

applicant and therefore the IO should not have acted on them.

23. Sri Sreerangaiah contends, that the documents produced by PW-1 had been properly admitted and the failure, if any, to summon the originals which were not then available, does not invalidate the conclusions reached by the IO, the DA and the AA.

24. In his examination, PW-1 had alluded to the documents produced by him. In his evidence PW-1 had also stated that many of the originals were not available with the Company. In the course of examination of PW-1, the applicant did not also object to the admission of the unsigned copies. If that is so, ^{then} ~~as~~ we cannot permit the applicant to challenge their admission at this stage.

25. Even otherwise, in a domestic inquiry, the strict rules of evidence are not applicable. PW-1 who had occasion to deal with the interview, selection and the appointment of the applicant had identified the documents and had sworn that they were all connected with the application, selection and the appointment of the applicant. All the authorities have accepted their genuineness and have acted on them. In these circumstances, this Tribunal cannot take exception to their admission or their reliance at this stage and invalidate the orders.

13. Sri Seshadri next contends that the IO had not afforded ^{a reasonable opportunity} to the applicant to defend himself against the accusation as guaranteed in Article 311 of the Constitution, the Rules and the principles of natural justice and such failure invalidates the entire proceedings.

14. Sri Sreerangaiah, contends that at all stages, the IO had afforded all reasonable opportunity to the applicant to defend himself against the accusation.

15. Before the IO, the applicant was assisted by a defence assistant. On every material date of inquiry and particularly on those dates on which the oral inquiry was held by the IO, the applicant and his defence assistant were present and have cross-examined the sole witness who has been examined on behalf of the department. If that is so, then it is difficult to hold that the applicant had not been afforded a reasonable opportunity to defend himself in the inquiry held by the IO.

16. In the course of inquiry, the applicant made more than one application to summon various documents. We find that on those applications, the IO did not make specific orders.

17. We have perused the applications made by the applicant to summon the documents and confront them to the sole witness examined for the department. We

are of the view, that the failure of the IO to summon those documents, if any, would not have made any difference in the examination of that witness or in the conclusions reached by the IO on ~~the~~ evidence. We also find that the IO had not refused to record any evidence to be placed by the applicant in rebuttal of the evidence placed by the Department. If that is so, then it is difficult to hold that the applicant had not been afforded a reasonable opportunity to defend himself before the IO.

18. We have carefully examined the proceedings of the IO at every stage and all the material documents. We are satisfied that the IO had afforded all reasonable opportunity, at every stage to the applicant to defend himself, against the accusation though it is true, that he had committed some procedural infirmities like not marking the documents as exhibits which do not go to the root of the matter. For all these reasons, we see no merit in this contention of Sri Seshadri and we reject the same.

19. Sri Seshadri next contends that the IO had recorded his finding of guilt on 'no evidence' and in any event on evidence that is inadmissible.

20. Sri Sreerangaiah contends, that the finding of the IO is based on the disinterested and trustworthy evidence of PW-1 and the documents produced by him and the same cannot be held as based on no evidence or inadmissible evidence.

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

APPLICATION No. 1295/86(T)

(WP.NO. 15433/84)

COMMERCIAL COMPLEX, (BDA)
INDIRANAGAR,
BANGALORE-560 038.

DATED: 25 MAY 1987

APPLICANT

Shri S. A. Basha

V3

RESPONDENTS

The Secy, M/o Railways & 2 Ors

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SUBJECT: SENDING COPIES OF ORDER PASSED BY THE
BENCH IN APPLICATION NO. 1295/86(T)

Please find enclosed herewith the copy of the Order passed by this Tribunal in the above said Application on
29-4-87

ENCL: As above.

DEPUTY REGISTRAR
(JUDICIAL)