

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE TWENTY FIRST OCTOBER 1986

Present : Hon'ble Shri Ch. Ramakrishna Rao ... Member (J)

Hon'ble Shri P. Srinivasan ... Member (A)

APPLICATION NO. 1414/86

Sri T.S. Seshan,
S/o T.S. Sivaramakrishna,
Driver 'C'/UBL
No.61, N.R. Colony,
Ramaiah Building,
Murugeshpalya,
P.O. V imanapura,
Bangalore-560 017.

... Applicant

(Shri M.S. Ananda Ramu ... Advocate)

V.

The Union of India
represented by its
Secretary,
Ministry of Railways,
'Railway Bhavan',
New Delhi.

The General Manager,
South Central Railway,
Secunderabad, A.P.

The Divisional Railway Manager,
Divisional Office,
Personnel Branch,
South Central Railway,
Hubli.

The Senior Divisional
Mechanical Engineer (LCO),
Hubli.

... Respondents

(Shri M. Srirangaiah ... Advocate)

This application came up before the Court today for hearing.

Hon'ble Member (A) made the following:

O R D E R

In this application which has been received on transfer from
the High Court of Karnataka, the applicant who was a Driver 'C'
in the South Central Railway at Hubli before he was removed from

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service by an order dated 6.7.1983 (Annexure K) complains that the order of removal from service was bad as it had been passed without giving him an opportunity of being heard. His appeal against such removal was dismissed as time barred by an order dated 21.9.1984 at Annexure M. The complaint against the order passed in appeal is that it is not a speaking order.

2. Shri M.S. Ananda Ramu, learned counsel for the applicant, submits that the appeal against the order removing him from service was in time because even though the said order was dated 6.7.1983 the applicant had received it only on 20.7.1984 when he went to the office of the Senior Divisional Mechanical Engineer (SDME), Hubli to meet him. The disciplinary proceedings had been initiated against the applicant for absence from duty for long periods without submitting medical certificate. The applicant had sent several letters to the Enquiry Officer stating that he was sick and was undergoing treatment in Government Hospital and that he would be able to attend before the Enquiry Officer only when he was declared medically fit to do so. He had also promised to produce medical certificate as soon as he was declared fit to move about. That is why he had been unable to attend before the Enquiry Officer and his complaint was that the Enquiry had been completed in his absence. The enquiry report and the order imposing penalty had not been served on him. It was only on 16.7.1984, on being declared fit to move about that he went to the Office of the Senior Divisional Mechanical Engineer, Hubli, with medical certificate to report for duty when he was informed that he had been removed from service. He sought an interview with the Senior Divisional Mechanical Engineer ^(SDME) by a letter dated 18.7.1984 and met the latter on 20.7.1984. The SDME advised the applicant to receive the penalty order and to file an appeal, recording a note

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on 20.7.1984 to that effect. The original letter addressed by the applicant to the SDME dated 18.7.1984 and the note made thereon by the SDME on 20.7.1984 advising him to receive the order and to prefer an appeal were shown to us. Therefore, Shri Ananda Ramu contended, the applicant having received the order of penalty only on 20.7.1984, filed the appeal on 23.7.1984 i.e., within three days. The appeal was not barred by limitation and it should have been entertained and decided on merits.

4. We think there is considerable force in the contention of Shri A-nanda Ramu that in the circumstances of the case the applicant's appeal was in time. Shri Srirangaiah, however, contended in this connection the order imposing penalty could not be served on the applicant immediately because he was avoiding service but it was displayed on the notice board of the office soon after its issue. However, considering that the applicant has been writing to the authorities repeatedly that he was ill and under treatment in a Government hospital, we think it reasonable to take the view that he could not have become aware of the order imposing the penalty till it was physically delivered to him. Even if it be considered that his appeal was delayed this was a fit case for condonation of delay in terms of the proviso to Rule 20 of the Railway Servants Discipline and Appeal Rules, 1968. We would, therefore, set aside the appellate order, direct the appellate authority to entertain the applicant's appeal and write a speaking order after considering the merits of the case. We would further direct that the appeal be disposed of on or before 31.12.1986. We refrain from expressing any opinion on all the other points urged by learned counsel for applicant in this case. The applicant can raise all these points before the appellate authority when his appeal is heard. If the applicant is aggrieved

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