

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE SIXTEENTH DAY OF DECEMBER 1986

Present : Hon'ble Shri Justice K.S. Puttaswamy .. Vice-Chairman

Hon'ble Shri L.H.A. Rego .. Member (A)

APPLICATION NO. 241/86 (T)

Manchiah Ankaiah,
Ex-trolley man/BTD CPT Section,
Vottegowdama Doddi,
Maddur Taluk, Mandya District.

... Applicant.

(Shri M.C. Narasimhan ... Advocate)

V.

The Divisional Personnel Officer,
Southern Railway, Mysore Division,
Mysore.

The Senior Divisional Engineer,
Southern Railway, Madras.

The General Manager,
Southern Railway,
Madras.

The Union of India by its Secretary
to Government of India,
Ministry of Railways, Railway Bhavan,
New Delhi.

... Respondents

(Shri A.N. Venugopal ... Advocate)

This application came up for hearing before this Tribunal,
on 26th November 1986, Hon'ble Member (A) made the following:

ORDER

In this transferred writ petition which is renumbered as
an application, under the Administrative Tribunals Act, 1985,
(Act) the applicant challenges the order dated 14.6.1974 (Ex A-1)
of the second respondent, removing him from service and the
order dated 5/7.5.1979 (Ex A-2) of the first respondent,
confirming the said punishment in appeal.

2. The applicant was appointed as a Temporary Gangman in
the pay scale of Rs.70-85 on 21.6.1963, under the Assistant

Engineer, Bangalore City in the Southern Railway. He was transferred to Channapatana Section, on 22.10.1963 and later as Trolleyman, under the Assistant Permanent Way Inspector, Bidadi, on 9.11.1963. He was confirmed as Gangman on 21.6.1964. The posts of Gangman and Trolleyman are equivalent, being in the same grade, with identical scales of pay.

3. On 21.6.1971, the Assistant Engineer, Bangalore City, transferred the applicant, as Gangman to G.No.11 of the same section. It was noticed, that the applicant was unauthorisedly absent from duty since 11.6.1971. Consequent to his transfer as above, he was required to vacate the railway quarters allotted to him at Bidadi, to enable his successor to occupy the same. Despite advice to him by the Permanent Way Inspector and the Divisional Personnel Officer, he did not vacate the quarters, which implied disregard of rules and discipline.

4. The Assistant Personnel Officer, who was the Disciplinary Authority (DA), therefore, initiated disciplinary proceedings under Rule 9 of the Railways Servants (Discipline and Appeal) Rules, 1968 (Rules) and served a charge sheet on him on 27.3.1972, along with ~~the~~ statements of articles of charge and imputation of misconduct, and a statement of documents and witnesses (Ex B-1 and B-2). He was charge-sheeted under Rule 9 of the Rules, for absenting himself from duty unauthorisedly from 11.6.1971 and for failure to maintain devotion to duty, in contravention of Rule 3(1)(ii), of the Railway Services (Conduct) Rules, 1966 (RSCR for short). He submitted his reply to the charge sheet on 6.4.1972. The Chief Clerk, Divisional Office, Mysore, was appointed as the Inquiry Officer (IO).

5. The I.O. held the inquiry according to ~~the~~ Rules. The

14

applicant is said to have submitted representations on 24.7.1973 and 10.12.1973 (Ex P-1 and Ex P-2 respectively) requesting the I.O. to examine one Shri M.R. Radhakrishna as a witness. The inquiry was initially fixed on 26.2.1973 but had to be adjourned, as the Permanent Way Inspector, Channapatna, who had to be examined was transferred to Thiruvarur. The disciplinary proceedings were concluded on 28.11.1973, but before that, the applicant did not request the I.O. to examine Shri Radhakrishna as a witness, though he was specifically asked to cite the names of witnesses if any, on his side. It was in his representation dated 10.12.1973 (Ex F-2) long after conclusion of the disciplinary proceedings, that he requested Shri Radhakrishna to be examined.

6. The I.O. submitted his Inquiry Report on 6.2.1973, along with his findings, through the Assistant Personnel Officer, Mysore (APO) (Ex G-2) to the DA (the Divisional Engineer/II/ Mysore) who is said to be the competent authority to remove the applicant from service. The I.O. held the charges against the applicant as proved. The DA on perusal of the report of the IO, issued a notice on 6.3.1974 (Ex G-1) to the applicant, along with a copy of the report of the I.O. to show cause, as to why he should not be removed from service. The applicant submitted his reply thereto, on 23.3.1974 (Ex A) after due consideration of which, the DA passed orders on 14.6.1974 (Ex A-1) removing the applicant from service with effect from 19.6.1974. The applicant filed an appeal thereon on 27.6.1974 (Ex J) to the first respondent. Since there was no response thereto, the applicant filed Writ Petition No.6585 on 9.12.1974, for quashing the impugned order dated 14.6.1974 (Ex A-1) passed by the second respondent.

16

7. Soon after filing of the above writ petition, the appellate authority, had by his order dated 28.12.1974 dismissed his appeal. The applicant, therefore, filed an application before the High Court of Karnataka, for amending his prayer to the effect, that this appellate order be annulled. The same was allowed. Since the appellate order was not a speaking one and did not conform to Rule 22(2) of the Rules, the High Court quashed the same on 20.11.1978 (Ex L) and remanded the case to the Appellate Authority (AA) for fresh disposal in accordance with law.

8. Thereon, the first respondent disposed of the appeal dated 27.6.1974 anew, on 5.5.1979 (Ex A-2) in compliance with the above directive of the High Court, confirming the punishment of removal of the applicant from service. Aggrieved, the applicant filed a writ petition again in the High Court of Karnataka, which has since been transferred to this Bench under the Act and is now the subject matter before us.

9. In his application, the applicant has challenged the validity of Rule 6 of the Rules, as conferring uncanalised and unguided power and ^{has pleaded} for striking down the same. But, at the hearing of the case, this challenge was not rightly pursued. Even otherwise, we are of the view, that Rule 6 of the Rules, which only categorises various types of punishments as 'minor' and 'major', as in the case of all discipline Rules against Government servants, does not confer any uncanalised and unguided power as vaguely urged by the applicant. We see no merit in this challenge of the applicant to Rule 6 of the Rules and, therefore, we reject the same.

10. In his application, the applicant has also urged that the APO

101

"EXAMINATION OF SHRI K.V.VENKATARAMANAGOWDA, P.W.1/CPT

Q.5. Had he applied for leave for the period of his absence? from 1.6.71?

A. On verification of the file of this office the following leave letters sent by the party to this office are available which are furnished below:-

- 1) 8 days leave recommended by APWI/BID vide his letter dated 20.6.71.
- 2) 15 days LAP from 18.6.71 vide his application dated 22.6.71.
- 3) 45 days leave from 3.7.71 vide his application dated 29.6.71.
- 4) to sanction the entire leave at his credit vide his application dated 10.8.71.
- 5) 30 days leave from 16.10.71 vide his application dated 13.10.71.
- 6) 2 months leave from 16.4.72 vide his application dated 13.4.72.

CROSS EXAMINATION OF SHRI K.V. VENKATARAMANAGOWDA, PW1/CPT BY THE DEFENCE HELPER

Q17. Do you know anything about the circumstances in which he was transferred by the PWI/CPT after refusing the recommendation of leave to the party by APWI/BID?

A. As per records there is no refusal of leave by PWI and the letter dated 14.6.71 is clearly mentioned that party has not asked for any leave letter to the gangmate of Gang No.4. The circumstances of his transfer from Trollyman to Gangman to Gang No.11 is clearly given in AEN/B/SBC letter No.E/IV/CPT dt. 3.7.71 that the party is responsible for trying to misappropriate 3 bags of cement and in view of the unreliability and with a view not to keep him at BID.

EXAMINATION OF SHRI T.R. SAMPATH, PWI/THIRUVARUR THE THEN PWI/CPT.

Q.32. Did he vacate the Rly Qrs at BID?

A. He did not vacate the Rly. Qrs. till I left the Section.

CROSS EXAMINATION OF SHRI T.R. SAMPATH PWI/THIRUVARUR BY THE DEFENCE HELPER AND THE APPLICANT

At this state, I feel it is necessary the letter of AEN/B/SBC mentioned in the answer to Q.17 of this

61

enquiry to enable me to bring the facts before the enquiry authority. A copy of the letter may kindly be supplied to me now.

E.O. The copy of the AEN/B/SBC letter required by you cannot be supplied.

Q.41 Did you at any time made recommendation for my transfer from trolleyman to gangman?

A. No. I do not remember.

Q.43 I have submitted my representation dated 25.6.71 detailing my grievances and to permit me to continue in the same post for some more time, duly cancelling the order to G.No.4. Why this was not considered?

A. The letter was addressed to AEN/B/SBC and further instructions were awaited from him.

No more questions by the defence helper to the PWI/Shri T.R. Sampath.

EXAMINATION OF THE APPLICANT BY THE I.O.

At this stage you have heard and seen the deposition of the witnesses. Do you admit the charge or deny the charge? and do you want to examine yourself?

A. I deny the charge. I shall submit my defence statement within 15 days and I need not be examined."

13. In referring to Question 5 supra, the counsel for the applicant sought to stress the fact, that letter No.E/IV/CPT of 3.7.71 of AEN/B/SBC had a crucial bearing on the circumstances leading to the transfer of the applicant and his being chargesheeted, as it referred to misappropriation of cement by the applicant but yet a copy of the same was not furnished to the applicant by the I.O. as was evident from the answer to Question 32 supra. No privilege was claimed by the I.O. to deny this document to the applicant. According to the counsel for the applicant, this formed the basis for initiation of disciplinary proceedings against and transfer of the applicant and, therefore, the applicant was not given due opportunity to vindicate himself which was violative of the principles of natural justice. He also pointed out that

14

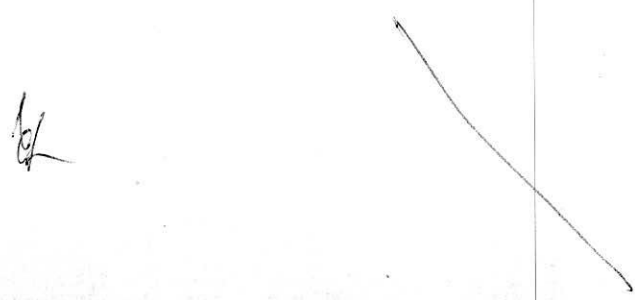
who initiated the disciplinary proceedings was not competent to appoint the Inquiry Officer (vide ground No.15) and, therefore, the entire proceedings were vitiated. We must at the outset notice, that Sri M.C. Narasimhan, counsel for the applicant, did not rightly pursue this contention at the hearing of this case. We find that this ground urged for the first time in this application, had not been urged either before the DA or the AA. When that is so, this belated contention of the applicant, which in any event is not a case of inherent want of jurisdiction, cannot be entertained by this Tribunal. We must reject this contention on this ground itself. Even otherwise, we find that under the Rules, the APO was competent to initiate disciplinary proceedings and appoint the I.O. We see no infirmity in the appointment of the I.O. and the completion of the disciplinary proceedings against the applicant. We, therefore, reject this contention of the applicant.

11. Shri Narasimhan submitted, that the appellate order dated 5.5.1979 (Ex A-2) was contrary to law and facts; that the first respondent did not apply his mind to the case as an appellate authority but merely amplified his earlier order dated 28.12.1974 (without taking into account the representation dated 27.12.1974 of the applicant) only to overcome the order dated 20.11.1978 of the High Court; that at no time, the applicant was asked by the I.O. about examination of witnesses; that the I.O. did not inform the applicant that the enquiry was closed on 28.11.1973, and in fact, it did not conclude on that date; that the applicant was denied the opportunity on 10.12.1973, to examine the witnesses when he was given time to file his defence statement; that the applicant was under the impression, that examination of witnesses would take place after he had submitted the defence statement;

12

that the I.O. did not permit questions by the applicant, which would have helped unravel the facts relating to the alleged misappropriation of cement, which leads to infer that the I.O. had a bias against the applicant; that the enquiry was held in violation of the principles of natural justice as the applicant was denied the opportunity of examining witnesses and asking fact-finding questions; that the findings of the I.O. are preverse and the punishment meted is excessive, as it has not been taken into account extenuating circumstances; that some other authority viz. the Divisional Personnel Officer, Mysore has passed the impugned order dated 5.5.1979 (Ex A-2) and not the first respondent in Writ Petition No.6585 of 1974, who was the Divisional Superintendent S. Rly Mysore and, therefore, this order is wrong and untenable; that the Assistant Personnel Officer was not the competent authority to issue the charge sheet and appoint the I.O; that the Chief Clerk, Divisional Office, Mysore, could not have been nominated as the I.O.; that Rules 1705 to 1715 of the Rules were violated, as neither the I.O. nor the DA considered the representation dated 6.4.1972 of the applicant, wherein he had indicated the names of his defence counsel to permit them access to relevant record; that as against only one witness proposed to be examined according to the annexure to the charge-sheet, two were actually examined in the enquiry, which was violative of Article 311(2) of the Constitution of India and also Rule 17(2) of the Rules.

12. The counsel for the applicant drew our pointed attention to the following parts of the "Question and Answer" examination of Shri K.V. Venkataramanagowda, P.W.1/CPT, Shri T.R. Sampath, PW1/Thiruvavur, the then PW1/CPT, the Defence Helper and the Applicant by the I.O.



not have made an unqualified statement before the I.O. on 28.11.73 in reply to Question 43 supra, that he would submit his defence statement within 15 days and that he need not be examined, (apparently without taking into account what Shri Radhakrishna would have deposed as a witness).

18. It is pertinent to cite here K. BEHARI CHAKRAVARTY's CASE, 1970, where the Supreme Court held, that as the delinquent had expressly stated before the I.O., that he did not wish to tender evidence, oral or documentary, even though he later on complained, that he was not given adequate opportunity to defend his case, the departmental enquiry held against him, was not vitiated. We, therefore, find no merit in the contention of the counsel for the applicant, that refusal of request of the applicant by the I.O. to examine Shri Radhakrishna as his witness, resulted in violation of the principles of natural justice.

19. The counsel for the applicant next sought to make an issue of a copy of the letter dated 3.7.79 not having been provided to the applicant even on request, as it had a vital bearing on the charge-sheet framed against the applicant. We find that the applicant had not specifically urged this point in the writ petition. Our attention, however, was drawn by the counsel to the reply given by the I.O. to the applicant on Question 34 supra. Even though the I.O. should have given cogent reasons for not providing a copy of this letter to the applicant, we are of the view, that no travesty of justice has been caused to him on this account, as the letter did not have a direct bearing on the articles of charge actually framed against the applicant.

20. Shri Narasimhan lastly contended, that the punishment of removal inflicted against the applicant by the DA and upheld by the AA was very excessive and was disproportionate to the gravity of the offence, if any, committed by the applicant.

62

21. We have given our anxious consideration to the quantum of punishment imposed by the DA and affirmed by the AA. When the applicant had overstayed from duty unauthorisedly from 11.6.71 and onwards continuously for inordinately long, ostensibly engaging himself in some other avocation, it would be odd for any authority or this Tribunal to hold that the offence established did not justify his removal from service. We see no ground to interfere with the quantum of punishment imposed by the DA and affirmed by the AA. We, therefore, reject this contention of Shri Narasimhan.

22. As all the contentions urged for the applicant fail, 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.

Mr. Narasimhan

VICE CHAIRMAN

MEMBER (A)

16-12-1980

bsv

the applicant was not allowed to examine one Shri M.R.Radhakrishna as a witness, despite request by him.

14. Inviting our attention to Question 43 supra, the counsel sought to prove that the disciplinary proceedings were not actually concluded on 28.11.1973, as the applicant had stated in reply to that question, that he would submit his defence statement within 15 days and that he was not informed by the I.O. that the disciplinary proceedings had come to an end on 28.11.73. Besides, according to the counsel, PWII was examined after 28.11.73. The counsel for the applicant further contended, that the disciplinary proceedings against the applicant were not held in accordance with Sections 9(19) and 9(20) of the Rules.

15. Refuting the above contentions one by one, the learned counsel for the respondents stated, that the Appellate Authority had, in compliance with the directives of the High Court passed a speaking order, duly considering all the relevant grounds urged by the applicant and that the same was in conformity with the Rules and procedure. The DA had passed final orders removing the applicant from service after ensuring proper compliance with the Rules and procedure. The applicant was afforded a reasonable opportunity to defend himself and was provided with the assistance of a colleague of his choice, as his Defence Helper at the disciplinary proceedings. The applicant, however, absented himself from duty without permission for an inordinately long period and at no time before his removal from service, was he inclined to resume duty in compliance with the transfer order.

16. As regards examination of witnesses, counsel for the respondents pointed out, that the applicant did not submit a list of witnesses on his behalf. He is seen to have requested the I.O.

14

to examine Shri Radhakrishna as his witness on 10.12.73 i.e. long after the conclusion of the disciplinary proceedings on 28.11.73. This evidently, was not allowed by the I.O. The counsel for the applicant, however, disputed about the date of conclusion of the disciplinary proceedings viz. 28.11.73 for the reasons mentioned earlier. The counsel for the respondents inviting our attention to the relevant answer of the applicant to Question 43 supra pointed out, that the applicant had categorically stated before the I.O. on 28.11.73, that he did not desire to be examined and that he would submit his defence statement within 15 days. According to the counsel, the only plausible inference that could have been drawn from this statement is that the disciplinary proceedings had concluded on 28.11.73.

17. According to procedure, it is at the close of the recording of evidence that the I.O. is required to question the delinquent (if the latter had not been examined) on the circumstances appearing against him in the evidence, for the purpose of enabling him to substantiate his defence. It was precisely this opportunity which was given to the applicant by the I.O. on 28.11.73 which, however, he did not avail of - (vide his reply to question 43 supra). It is therefore evident therefrom, that the disciplinary proceedings, concluded on 28.11.73. That being the case, the belated request of the applicant on 10.12.73 i.e., long after completion of the disciplinary proceedings against him, to examine one Shri Radhakrishna as his witness, could not be considered by the I.O., which, in our view, did not violate the provisions of the Rules. Neither the applicant nor his Defence Helper, requested the I.O. before the conclusion of the disciplinary proceedings on 28.11.73, that they desired the above witness to be examined. Further, if the applicant was earnest in regard to the examination of this witness, he would

12

Sl.no: 13(R)

D.No. 1763/87 / Sec.IV.A

SUPREME COURT OF INDIA
NEW DELHI

Dated: 3rd August, 1987

FROM

The Additional Registrar,
Supreme Court of India.

TO

The Registrar,
High Court of
Administrative Tribunal
Bangalore Central
Bench.

PETITION FOR SPECIAL LEAVE TO APPEAL (ETVIL) NO. 3994/1987
(Petition under Article 136 of the Constitution of India for
Special Leave to Appeal to the Supreme Court from the
Judgment and Order dated the 16-12-86 of the High
Court of Central Administrative Bangalore Bench
in Abmu 241/86).

Manchick Aukaral

..PETITIONER

The Divisional Personnel Officer
vs.
For

..RESPONDENTS

Sir,

I am to inform you that the petition above-mentioned
for Special Leave to Appeal to this Court was filed on behalf
of the Petitioner above-named from the Judgment and Order of
the High Court noted above and that the same was dismissed
by this Court on the 20th day of July, 1987.

Yours faithfully,

[Signature]
ASSISTANT REGISTRAR



R
H/S
Smit RK