

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH: BANGALORE

Dated this the 6th day of March, 1987.

PRESENT

THE HON'BLE MR. JUSTICE K.A. PUTTASWAMY,
VICE CHAIRMAN

AND

HONOURABLE SHRI L.H.A. REGO .. MEMBER(A)

APPLICATION NO.1695 OF 1986(F)

Sri Sayyed Hussain Sab son of Madar Sab
49 years, working as Cabinman,
Mahisal Railway Station, South Central-
Railway (now not working), resident of
Mhaisal, Dist. Sangli, Maharashtra State. APPLICANT

(By Shri R.U.Goulay, Advocate for the applicant)

-vs.-

1. Station Master
Mhaisal Station,
South Central Railway,
Mhaisal, Sangli Dist.
2. Assistant Operating Superin-
tendent, South Central Railways,
Hubli, Dist. Dharwad.
3. Divisional Railway Manager,
S.C. Railways, Hubli. ..

RESPONDENTS
(Shri M.Sreerangaiah, Adv. for Respondents)

This application has come up before the
Court to-day, Hon'ble Vice Chairman, made the
following:

ORDER

In this application made under Sec.19 of
the Administrative Tribunals Act, 1985 (Act), the
applicant is challenging the order No.H/P 227/III/6787,

dated

dated 9-8-1982(Annexure-E) of the Disciplinary Authority and AOSM, Hubli (DA), had sought for various consequential reliefs as flowing from the same.

2. Prior to 9-8-1982, the applicant was working as a Cabinman at the Mahisal Railway Station of the South-Central Railway. In a disciplinary proceeding instituted against the applicant under the Railway Servants (Discipline and Appeal) Rules, 1968 (Rules), the DA on 9-8-1982 had imposed on him the penalty of reduction in rank to that of Pointsman on a pay of Rs.250/- in the pay-scale of Rs.200-250(RS) from 9-8-1982 for a period of two years and his absence from duty as Leave Without Pay. Against this order of the DA, the applicant did not file any appeal under the Rules and had suffered the same. But, still he asserts that he was not given a posting either as a Pointsman for a period of two years or as a Cabinman thereafter, and therefore, he approached this Tribunal on 2-9-1986 challenging the order of the DA and for other reliefs.

3. When this application was posted for admission before this Tribunal on 5-9-1986, the applicant has filed a memo giving up his challenge to the order

of

of the DA and the same reads thus:

"The applicant may be permitted to confine the present case only to relief entitled by him as a consequence of order of punishment as per Annexure-E dated 9-8-1982. The applicant may be permitted to agitate the case against Annexure-E, at a later stage when the appeal is decided by Department."

On recording this memo on 5-9-1986 this Tribunal has admitted this application to examine the claims of the applicant for postings and pay and allowances. But some time last week or so, it appears the Railway Administration had given him posting as a Cabinman and he is now working in that capacity at Sangli Railway Station.

4. Shri R.U.Goulay, learned Counsel for the applicant, contends that his client was not given a posting as Pointsman from 9-8-1982 for a period of two years and thereafter as a Cabinman till about last week, and therefore he was entitled for pay and allowances for the said periods, treating the same as compulsory waiting. Shri M.Srirangaiah, learned Counsel for the respondents, opposes this claim of the applicant.

5.

5. Whatever was the position, when the applicant approached this Tribunal on 2-9-1986, there is no dispute that the Railway Administration had given him a posting as a Cabinman last week or so and is working in that capacity at the place of posting. In this view, the question of this Tribunal examining the claim of the applicant for immediate posting does not survive. As the applicant had given up his challenge to the order made by the DA on 9-8-1982, that challenge also does not survive. With this, all that survives is the claim of the applicant for the period from 9-8-1982 till he was given a posting as a Cabinman last week. On this claim, the parties are not agreed and are at variance.

6. The claims of the applicant for the periods in dispute calls for a detailed examination and determination with due regard to the orders made and the fact situations. We consider it more appropriate to direct respondent Nos.2 and 3 to examine and decide the same in the first instance. When that is done, if the applicant is still aggrieved by the same, he is free to challenge the same on all such grounds as are available to him either before the authorities or before this Tribunal.

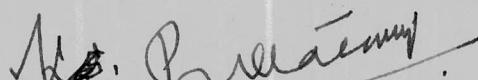
7. In the light of our above discussion, we make the following orders and directions:

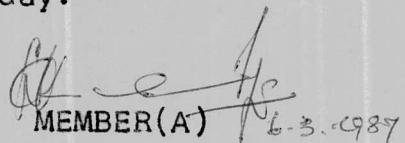
(i) We dismiss the application in so far it challenges the order made by the DA on 9-8-1982 (Annexure-E) as not pressed by the applicant.

(ii) We direct respondents 2 and 3 to examine the claim of the applicant for pay and allowances for the period from 9-8-1982 till he was given a posting as a Cabinman to Sangli Railway Station, with all such expedition as is possible in the circumstances of the case and in any event within a period of three months from the date of receipt of the order of this Tribunal and make him available all such financial benefits as he is found entitled to, in pursuance of their order.

8. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.

9. Let this order be communicated to all the parties within ten days from to-day.


VICE CHAIRMAN


MEMBER(A) 6-3-1987

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 25 APR 1991

CONTEMPT
PETITION(CIVIL)

APPLICATION NO (gx) 65 / 90
IN APPLICATION NO. 1695/86(F)
W.P. NO (S) /

Applicant (gx)

Shri Syed Hussain

To

V/s

The Station Master, Mhaisal Stn,
SC Rly, Maharashtra & 2 Ors

1. Shri Syed Hussain
Cabinman (Retired)
Kirloskarwadi
Miraj Tal
District : Sangli
Maharashtra State
2. Shri Chandrakanth Goulay
Advocate
90/1, 2nd Block
Post Office Road
Near Ganesh Mandir
Thyagarajanagar
Bangalore - 560 028
3. The Station Master
Mhaisal Station
South Central Railway
Mhaisal
Sangli District (Maharashtra)

4. The Assistant Operating
Superintendent
South Central Railway
Hubli
Dharwad District
5. The Divisional Railway Manager
South Central Railway
Hubli Division
Hubli
6. Shri M. Sreerangaiah
Railway Advocate
Hotel Mayura Bldg (2nd Floor)
No. 2, Kumbargundi Road
(Silver Jubilee Park Road Cross
- Near Town Hall)
Bangalore - 560 002

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of the ORDER/STANZA

INTERIM ORDER passed by this Tribunal in the above said C.P.(Civil)
RECORDED on 11-4-91.

for P. H.
DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE ELEVENTH DAY OF APRIL, 1991

Present:

Hon'ble Shri P.S. Habeeb Mohamed ... Member(A)

Hon'ble Shri Syed Fazlulla Razvi ... Member(J)

CONTEMPT (CIVIL) PETITION NO.65/1990

Shri Syed Hussain,
Cabinman at Kirloskar Wadi,
Miraj Tal,
District Sangli,
Maharashtra.

... Petitioner

(Shri C.R. Goulay, Advocate)

vs.

1. The Stationer Master,
Mhaisal Station,
South Central Railway,
Mhaisal, Sangli Dist.

2. The Assistant Operating
Superintendent, South Central
Railways, Hubli,
District Dharwad.

3. The Divisional Railway Manager,
S.C. Railways, HUBLI.

... Respondents

(Shri M. Sreerangaiah, Advocate)

This Contempt (Civil) Petition having come up for
hearing before this Tribunal today, Hon'ble Shri Syed Fazlulla
Razvi, Member (J), made the following:

ORDER

This is a petition filed under section 17 of the
Administrative Tribunals Act, 1985, by the petitioner abovenamed
who was the applicant in O.A.No.1695/1986 on the file of this



Tribunal. The case of the petitioner briefly put, is thus:

He had filed an application in O.A.No.1695/1986 before this Tribunal challenging the order dated 9-8-1982 of the disciplinary authority wherein he was imposed with the penalty of reduction in rank; that this Tribunal after hearing, passed the final order on 6-3-1987 disposing of the application and giving the following directions:-

"(1) We dismiss the application in so far as it challenges the order made by the DA on 9-8-1982 (Annexure E) as not pressed by the applicant.

(2) We direct respondents 2 and 3 to examine the claim of the applicant for pay and allowances for the period from 9-8-1982 till he was given a posting as a Cabinman to Sangli Railway Station, with all such expedition as is possible in the circumstances of the case and in any event within a period of three months from the date of receipt of the order of this Tribunal and make him available all such financial benefits as he is found entitled to, in pursuance of their order."

That pursuant to the above directions issued the respondents were required to examine the claim of the applicant for pay and allowances for the period from 9-8-1982 till the applicant was given a posting as a Cabinman, within a period of three

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months; that in spite of repeated oral requests and also representations given, the respondents have failed to comply with the order, Annexure A2 being the last representation given by the petitioner on 15-7-1989; that the inaction on the part of the respondents in not complying with the directions issued by this Tribunal is undoubtedly an act of contempt which requires to be taken note of seriously. Hence the petition.

2. In the contempt petition filed, the petitioner has impleaded the respondents by their official designation and the respondents have not been named. The respondents have filed their objections to the petition and the affidavit in support of the objections has been filed by the Senior Divisional Personnel Officer, South Central Railway, Hubli. By way of the objections, the respondents have pleaded that on receipt of the order passed by this Tribunal in O.A.1695/86, the third respondent examined the claim of the applicant and passed order during December 1987 to the effect that the applicant's absence from duty from 28-8-1979 till the date he joined at Sangli should be treated as leave without pay and this includes the period from 9-8-1982 to 20-2-1987. It has been further pleaded that this order was communicated to the applicant through office letter dated 23-12-1987 addressed to the petitioner and a true copy of that letter has been produced at Annexure R-1. The respondents have therefore pleaded that they have carried out the directions given by this Tribunal and the third respondent had passed an order in pursuance of such direction which order has been duly communicated to the applicant in 1987 itself and as such the respondents have not committed any act of contempt.



3. The petitioner has filed a counter reply to the reply filed by the respondents wherein he has denied to his having received a copy of the order as per Annexure R-1 and has averred that no such order has been served on him and that the respondents being prejudiced against him are bent upon to harass the petitioner. Alternatively, the petitioner has pleaded in the said counter reply that if this Tribunal were to hold that the direction given by this Tribunal in the O.A. has been complied with, this Tribunal may/pleased to reserve the liberty to challenge the order as that order has been passed in 1987 and there would be considerable delay, if the applicant were to challenge that order now.

4. We have heard the learned counsel appearing for the petitioner and Shri M.Sreerangaiah for the respondents, the alleged contemnors.

5. Consequent to direction that was given by this Tribunal in O.A.No.1695/86 directing the respondents 2 and 3 to examine the claim of the applicant for pay and allowances for the period from 9-8-1982 till the applicant was given a posting as a Cabinman was required to be complied with by the respondents within a period of three months from the date of receipt of the order passed by this Tribunal. The reply filed for the respondents shows that though the order did not come to be passed within three months from the date of receipt of the order, the order in pursuance of the directions issued ~~have~~ been passed in December 1987. The controversy is regarding the communication of this order dated 23-12-1987 a copy of which has been produced by the respondents at Annexure R-1. While the respondents claim that a copy of this order passed as per Annexure R-1 was

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duly communicated to the petitioner and the same has been served on the petitioner, the petitioner contended that he was not served with any copy of the order as per Annexure R-1. Shri M.Sreerangaiah, learned counsel appearing for the respondents had shown to us an acknowledgement signed by the petitioner and stated that the copy of the order passed as per Annexure R-1 was sent to the petitioner and the same was served as per the acknowledgement shown to us. When the said acknowledgement was confronted to the petitioner, the petitioner admitted his signature in the said acknowledgement. In para 3 of the counter reply filed by the petitioner, the petitioner has stated thus:-

"The signature of the petitioner in the acknowledgement shown personally to the Petitioner on 3.4.1991 is no doubt the signature of the Petitioner and even though there is a reference to the order of compliance, it is respectfully with due diligence to the authorities and to this Hon'ble Tribunal submitted that the order was not served upon the Petitioner. The cover received by the Petitioner was in respect of some other order not relating to the order of compliance."

The signature of the petitioner in the acknowledgement shown to the petitioner on 3-4-1991 is no doubt the signature of the petitioner, ~~and even though~~ ^{not} the petitioner has ~~neither~~ produced the cover which was served upon him the receipt of which he acknowledged and has only averred that the cover received by the petitioner was in respect of some other order not relating to the order of compliance. He has not stated as to what that some other order was in that cover nor has he chosen to produce that order. We find absolutely no reason to



disbelieve the version of the respondents that the acknowledgement containing the signature of the petitioner shown to us was the one which was obtained on communication of the order passed as per Annexure R-1.

6. In our opinion, the respondents have shown that they have complied with the directions given by this Tribunal by examining the claim of the petitioner and by passing the order as per Annexure R-1 though that order came to be passed belatedly and not within the time fixed by this Tribunal. The learned counsel for the petitioner urged that in case we are to hold that there has been substantial compliance with the directions given by this Tribunal and that the respondents have committed no act of contempt, liberty may be given to the petitioner to challenge the order passed as per Annexure R-1 before this Tribunal as otherwise his claim to challenge that order would be barred by limitation. We do not think in the facts and circumstances of this case, we would be justified in giving such liberty to the petitioner. It has been established that the order passed as per Annexure R-1 was duly communicated and served on the petitioner and that the respondents have complied with the directions given by this Tribunal. In our opinion, therefore, no prima facie case has been made out to establish that the respondents have committed any act of contempt and on this conclusion reached, we discharge the respondents and drop the contempt proceedings. No costs.

Sd —

MEMBER(A) " / " /

Sd —

MEMBER(J)

TRUE COPY

R. S. 25/4/91
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE