

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

APPLICATION NO.519 OF 1986(T)  
(W.P.No.16757/84)

DATE OF DECISION: 28.08.1986

C O R A M

The Hon'ble Shri Ch.Ramakrishna Rao, Member(Judicial)

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

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B.Rahim : Applicant

Versus

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| 1. The Union of India,<br>Southern Railway,<br>rep. by the General Manager,<br>Southern Rly., Park Town,<br>Madras-600 003.          |              |
| 2. The Chief Engineer/Construction,<br>Bangalore Division,<br>18th Millers Road, Bangalore Cantt.,<br>Bangalore.                     | Respondents. |
| 3. The Divisional Electrical Engineer,<br>Construction, Bangalore Division,<br>18th Millers Road, Bangalore Cantt.,<br>Bangalore.56. |              |
| 4. The Electrical Foreman,<br>Construction/Bangalore Divn.,<br>Near Bangalore City Rly. Station,<br>Bangalore.                       |              |

Shri N.R.Naik : Advocate for applicant.

Shri M.Sreerangaiah : Advocate for Respondents.

JUDGMENT

DELIVERED BY SHRI L.H.A.REGO, MEMBER(AM)

Writ Petition No.16757/84, on the file of the High Court of Karnataka, has been transferred to this Bench under Section 29 of the Administrative Tribunals Act, 1985 and numbered as Application No.519 of 1986. The main prayer of the applicant is to quash the impugned order dated 7.7.1984

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issued by the fourth respondent terminating his service.

2. The facts of the case are briefly as under:

the applicant had joined service on 8.9.1978 as a ELR Khalasi in the Electrical Department of Bangalore Division of the Southern Railway. His services were confirmed as a casual labourer and an appointment card was issued to him by the fourth respondent. Taking into account the continuous service of 7 years rendered by him, he was empanelled for regular service and deputed for medical examination by the fourth respondent under his letter dated 23.4.1984. The railway medical officer, who examined him, opined that the applicant was not considered fit for the post of Khalasi in the open line in 8-1 category but was certified to be fit in the B-2 category. In view of the medical report, the Division Personnel Officer/SBC (DPO/SBC for short) directed that he be retained for a short time till alternative employment could be found for him. He was, therefore, asked to perform shift duties of an ELR Watchman day or night. He was appointed in this post on 25.9.1984 for watch and ward on the stores kept near the office of the AEN attached to the office of the Electrical Foreman (Construction), Bangalore Division. Both these offices had only one exit gate, the key of which was entrusted to the watchman of the office of the AEN. He was on duty during the night of 2/3-6-1984 when a theft of railway material (cables) worth about Rs.29,312/- took place. The fourth respondent reported the matter to the police for investigation. While the investigation was in progress, a show cause notice was issued on 22.6.1984 by the fourth respondent to the applicant

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to explain his lapse regarding the railway material, which was stolen and as to why he should not be terminated from service if his explanation was not satisfactory.

3. The applicant in his defence, mainly pleaded that due to darkness occasioned by shut-down of power-supply, rain at the time of the theft and non-supply of torch and rain coat, he was handicapped from performing his duties of watch and ward effectively. As his explanation was not found satisfactory and the applicant had admitted his guilt of negligence, the fourth respondent terminated his services with effect from 7.7.1984. Thereon, the applicant preferred an appeal to the third respondent on 16.7.1984. The applicant states that no reply was received from the third respondent to his appeal until 18.10.1984 and, therefore, he had to approach the High Court of Karnataka for relief. His appeal is seen to have been rejected by the third respondent on 23.4.1984 and the penalty of removal from service ordered by the fourth respondent confirmed.

4. We have examined carefully the contentions of both the parties and the material placed before us. The learned counsel for the petitioner contends that the fourth respondent has overlooked the provisions of Rule 2511(a) and of Rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968 while initiating disciplinary proceedings against the petitioner and terminating his services while the learned counsel for the respondents contends contra.

5. To appreciate the contentions, it will be useful to extract Rule 2511(a), which reads as under:-

"Casual labour treated as temporary are entitled to all the rights and privileges admissible to temporary railway servants and also include the benefit of the discipline and appeal rules."

The services of the applicant as a casual labourer were confirmed by the fourth respondent and he was empanelled for regular service taking into account the continuous service of 7 years rendered by him. Chapter 36 (PP 764-765) of the Railway Establishment Manual reveals, that a casual labourer acquires temporary status after working for four months and that he is deemed as a "railway servant" under the Railways Act though not for <sup>Code</sup> Court Rules. The aforementioned Rule 2511(a) states that a casual labourer is entitled to all the rights and privileges admissible to temporary railway servants inclusive of the benefits of the Discipline and Appeal Rules. Termination of <sup>s</sup> Service constitutes a major penalty according to Rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968. According to Rule 9 ibid, no order imposing any major penalty shall be made except after an enquiry is held in the manner specified therein, which does not seem to have been done in this case.


6. We are, therefore, convinced that the applicant was not given reasonable opportunity of being heard and of substantiating his defence, which is clearly violative of the provisions of Article 311(2) of the Constitution of India.


7. Before concluding, we cannot help observing that the applicant should not have been denied by the respondents the essential facility of a torch and rain coat to enable him to perform his duty of watch and ward effectively in the dark hours of the night and during rain.

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8. We therefore, set aside the impugned order dated 7.7.1984 issued by the fourth respondent and direct the third respondent to reinstate the applicant and grant him consequential relief. The respondents however are at liberty to hold a departmental enquiry de novo, against the petitioner in strict accordance with the Railway Servants (Discipline and Appeal) Rules, 1968.

9. In the result, the application is allowed.

  
(L.H.A. Rego)  
Member (AM)  
28.8.1986

  
(Ch. Ramakrishna Rao)  
Member (JM)  
28.8.1986.