

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH: BANGALORE

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

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

APPLICATION NO. 820 of 1986(T)  
(W.P.No.22212 of 1981)

DATED THIS THE FOURTEENTH DAY OF NOVEMBER, 1986.

Y.Yelakkaiah,  
No.1650,  
8th Cross, Ashokpuram,  
MYSORE.

.. Applicant

(Sh. Abdul Khuddus..Advocate)

vs.

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

2. The Works Manager,  
Southern Railway,  
Mysore South,  
Mysore 8.

3. Sri M.Abdul Basith,  
Asst. Personnel Officer,  
Southern Railway,  
Mysore.

4. The Deputy Chief Personnel  
Officer (M & S),  
Southern Railway,  
Personnel Branch, Madras 3.

.. Respondents

(Sri M.Sreerangaiah..Advocate)

This application has come up for hearing before this Tribunal today. The Member Shri L.H.A.Rego made the following:

ORDER

This is a writ petition transferred under Section 29 of the Administrative Tribunals Act, 1985 wherein the applicant has challenged

the Order dated 13.3.1981 (Annexure G) passed by the second respondent removing him from service and the Order dated 26.6.1981 (Annexure K) passed by the fourth respondent confirming the same and prayed for consequential relief.

2. The applicant was appointed as Hamal on pay of Rs.70 per mensem in the grade of Rs.70-85, on 21.11.1965 by the Divisional Personnel Officer, Southern Railway, Mysore Division (DDO for short). On 29.6.1979 he was transferred to the Millwright Shop as a Khalasi in the grade of Rs.196-232.

3. On receipt of a report on 4.12.1980 from the Assistant Shop Superintendent, Millwright Shop, Southern Railway, Mysore South, that the applicant had assaulted a worker, the Asstt. Works Manager, Millwright Shop, ordered suspension of the applicant the same day, but this order could not be given effect to till 22.12.1980, on account of plea of illness by the applicant. The applicant was sanctioned subsistence allowance during the period of his suspension. In his capacity as Disciplinary Authority (DA), the second respondent served on the applicant, a statement of imputations of misconduct in support, (Annexure B) on 23.12.1980. The applicant submitted his explanation thereon, on 30.12.1980. Not satisfied with his explanation, the DA appointed the third respondent as the Inquiry Officer (IO), for holding a departmental enquiry under Rule 9 of the Railway Servants (Discipline and Appeal) Rules 1968 (Rules for short). The departmental enquiry was initiated on 10.2.1981 and concluded on 24.2.1981.

4. The IO submitted his enquiry report to the DA, stating that the charges framed against the applicant were proved and that he had acted in a manner unbecoming of a railway servant, in contravention of Rule 3 of the Railway Servants (Conduct) Rules, 1966. Thereon, the DA informed the applicant on 13.3.1981, that the charges were proved against him and that

he was removed from service with effect from 20.3.1981.

5. The applicant thereon, on 29.3.1981, appealed to the Chief Workshop Engineer, Southern Rly, Madras, the Appellate Authority (AA for short), who on 26.6.1981 rejected the appeal, confirming the punishment of removal from service imposed by the DA. While rejecting the appeal, the DA inter alia observed as follows:

" A very junior employee has man-handled a supervisory official in broad day light during working hours in the presence of other employees. Such gross indiscipline cannot be tolerated. Unless deterrent punishment is given to the charged employee, such instances will considerably encourage indiscipline in the shops. Taking all the facts into consideration I am of the view that the punishment imposed is fully justified and does not call for any modification. The punishment imposed should, therefore, stand."

6. Aggrieved, the applicant filed a writ petition in the High Court of Karnataka, which has since been transferred to this Bench and is now the subject matter before us.

7. The applicant has mainly alleged, that the first respondent being the DA under the Rules, the second respondent who is subordinate to him, is not competent to appoint the IO or to issue the charge-sheet, on account of which the entire departmental enquiry proceedings are vitiated; that the third respondent was not competent to hold the departmental enquiry, as he was appointed by a person other than the DA and therefore the inquiry is vitiated; that consequently, the impugned orders dt. 13.3.1981 (Annexure G) and 26.6.1981 (Annexure K) passed by the second respondent and affirmed by the fourth respondent respectively, are also vitiated; that the DA, did not give an opportunity to the applicant according to the Rules, to make a representation on the penalty proposed to be imposed on him; that the IO examined, four more witnesses unnamed in the annexure to the articles of charges, taking the applicant by surprise, which was in violation of the Rules; that the IO did not follow the Rules in recording

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the evidence of the applicant and his witnesses; that the DA failed to consult the Commission, before passing the order dated 13.3.1981 (Annexure G); that the second respondent could not act as a DA, as he was neither the appointing authority nor was he superior to the DPO, who in fact, had appointed the applicant; that the second respondent did not apply his mind and give his findings specifically on each charge, taking into account the evidence on record, before passing the order dated 13.3.1981; that the DA failed to take into account, the facts and circumstances of the alleged assault, before deciding the quantum of penalty and was biased against him and that the AA merely approved the views of the DA without applying his mind.

8. We have carefully heard the pleadings of both parties and given the same, due consideration. The contention of the learned counsel for the applicant, that the first respondent being the DA under the Rules, the second respondent who is subordinated to him, is not competent to appoint the IO or issue the charge-sheet is ill-founded. The learned counsel for the respondents brought to our notice, that <sup>the</sup> second respondent is not inferior in status to the first respondent and that both of them belong to the Class I Gazetted Grade. Besides, the second respondent is authorised to remove Class IV employees from service, to which category the applicant belonged. In this connection we may refer to Bharat Ram's Case SC 1969 and RAM NARESH V. STATE SC 1967, in which it was observed, that where the IO happened to be a subordinate of the DA and where the status of the IO is as inferior to that of the DA, the holding of the departmental enquiry is valid and lawful. We, therefore, reject this contention of the applicant. For this reason, we also negative the other contention of the counsel for the applicant, that the third respondent was not competent to hold the departmental enquiry on the score, that he was appointed by a person other than the DA.



9. The objection raised by the counsel for the applicant, that his client was not given an opportunity to make a representation on the penalty proposed to be imposed on him, is not tenable, as this opportunity was no longer available to him, consequent to the amendment of Article 311(2) of the Constitution under the Constitution 42nd Amendment <sup>Act</sup>, 1976. The pertinent sub-rule of the Rules, was also amended by the Railways in 1978 itself.

10. As for the contention of the applicant, that four more prosecution witnesses, not listed in the annexure to the articles of charges furnished to the applicant were examined, the counsel <sup>and</sup> for the respondents submits, that this was done in accordance with the Rules, <sup>1</sup> that these witnesses were examined in the presence of the applicant and his defence helper, who were given due opportunity to cross-examine them. The IO is seen to have summoned these witnesses to tender evidence in the inquiry, which he considered material to help unravel the facts and circumstances of the case. We see no injustice caused to the applicant on this account and therefore turn down this contention.

11. The contention of the counsel for the applicant, that the DA failed to consult the Railway Service Commission prior to passing the order <sup>13</sup> 13.3.1981 (Annexure G) is repelled, by the counsel for the respondents, for the reason, <sup>he</sup> that the applicant being only a Class IV employee, <sup>1</sup> was not selected by the Railway Service Commission for appointment. We see no reason therefore, to uphold this contention of the applicant.

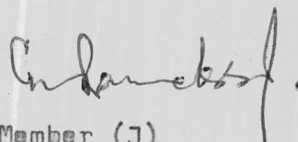
12. The next ground of attack by the counsel for the applicant, was that the DA did not apply his mind and give his finding specifically on each charge before passing the order. We have examined carefully the order passed by the DA on 13.3.1981 (Annexure G). We find, that the DA has taken into account the facts and circumstances of the case, analysed the evidence and has passed a reasoned and speaking order. Besides, in the course of the

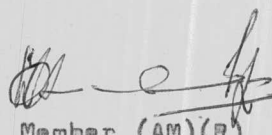
departmental enquiry <sup>both</sup> ~~not~~ the applicant and his defence helper, are seen to have stated, that they were satisfied with the conduct of the departmental enquiry. The contention of the applicant on this score therefore, is without basis. The allegation of the applicant, that the DA was biased against him is clearly an afterthought, against the background of his own statement, that he was satisfied with the departmental enquiry.

13. The counsel for the applicant similarly alleged that the AA <sup>to</sup> ~~tt~~, did not apply his mind to his appeal and passed a cursory order. We have carefully perused the letter dated 26.6.1981 (ANNEXURE K), wherein the order of the AA is incorporated. The AA has analysed the facts and the evidence on record and has given cogent reasons for turning down the appeal of the applicant. We see ~~not~~ merit in the contention of the applicant that the AA did not apply his mind before passing the above order and therefore, reject the same.

14. We must observe, that the misconduct of the applicant in manhandling his colleague is most reprehensible and calls for deterrent punishment. We are convinced that the charges framed against the applicant, are conclusively proved on the basis of the departmental enquiry held against him and that the punishment meted is condign.

15. In the result, the application fails. We dismiss the same accordingly with however, no order as to costs.

  
Member (J)

  
Member (AM)(R) 14.11.88

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH  
\*\*\*\*\*

Commercial Complex(BDA),  
Indiranagar,  
Bangalore - 560 038

Dated : 13-7-87

**Review** Application No. 24/86( )  
in Application No. 820/86(T)  
W.P. No \_\_\_\_\_/\_\_\_\_\_

- Applicant

**Shri Y. Yalakkaiah**

V/s The Divisional Personnel Officer  
Southern Railway, Mysore & 3 Ors

To

1. Shri Y. Yalakkaiah  
No. 1650, 8th Cross  
Ashokpuram  
Mysore
2. Shri M. Narayanaswamy  
Advocate  
844 (Upstairs)  
Vth Block  
Rajajinagar  
Bangalore - 560 010
3. The Divisional Personnel Officer  
Southern Railway  
Mysore Division  
Mysore
4. The Works Manager  
Southern Railway  
Mysore South, Mysore - 8
5. Shri M. Abdul Basith  
Assistant Personnel Officer  
Southern Railway  
Mysore
6. The Deputy Chief Personnel Officer (M&S)  
Southern Railway  
Personnel Branch  
Madras - 3
7. Shri M. Sreerangaiah  
Railway Advocate  
3, S.P. Buildings, 10th Cross  
Cubbonpet Main Road, Bangalore - 560 002

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH IN REVIEW

APPLICATION NO. 24/87

Please find enclosed herewith the copy of the Order/~~Interim Order~~  
passed by this Tribunal in the above said Application on 8-7-87.

Encl : as above.

SECTION OFFICER  
(JUDICIAL)

Balu\*

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE

DATED THIS THE 8TH DAY OF JULY, 1987

Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman  
and  
Hon'ble Shri L.H.A. Rego, Member(A)

REVIEW APPLICATION NO. 24/1987

Shri Y. Yelakkaiah,  
No.1650, 8th Cross,  
Ashokpuram,  
Mysore.

.... Applicant

(Shri M. Narayanaswamy, Advocate)

v.

1. The Divisional Personnel Officer,  
Southern Railway, Mysore Division,  
Mysore.
2. The Works Manager, Southern-  
Railway, Mysore South,  
Mysore-8.
3. Sri M. Abdul Basith,  
Assistant Personnel Officer,  
Southern Railway,  
Mysore.
4. The Deputy Chief Personnel  
Officer (M&S) Southern Railway,  
Personnel Branch,  
Madras-3.

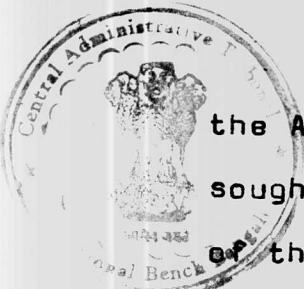
.... Respondents.

(Shri Srirangaiah, Advocate)

This application having come up for hearing to-day,  
Vice-Chairman made the following:

ORDER

In this application made under Section 22(3)(f) of  
the Administrative Tribunals Act, 1985, the applicant has  
sought for a review of an order made by a Division Bench  
of this Tribunal consisting of one of us (Shri L.H.A. Rego)  
and Hon'ble Shri Ramakrishna Rao, Member (J) in A.No.820/86.





2. In A.No.820/86 which was a transferred application, this Tribunal had upheld the punishment of removal imposed against the applicant in a disciplinary proceeding.

3. Shri M. Narayanaswamy, learned counsel for the applicant contends that even if the finding of guilt against his client was upheld, then also, it was a fit case in which the punishment of removal should have been modified to a minor penalty.

4. In the course of the order the Tribunal had specifically adverted to the gravity of the charges and the punishment imposed and has found that the punishment of removal was justified. We cannot examine the order made by this Tribunal as if we are a court of appeal and come to a different conclusion on any of the question much less on the quantum of punishment imposed by the authority and upheld by this Tribunal. We see no patent error in the order made by this Tribunal to justify a review.

5. In the light of the above discussion we hold that 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.

Vice-Chairman

Member (A)

SECTION OFFICER

CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH

BANGALORE

bsv/Mrv.

"True copy"

D.NO. 1527/88 IVA

SUPREME COURT OF INDIA  
NEW DELHI

Dated 19-7-88

From:

The Additional Registrar  
Supreme Court of India  
New Delhi

To

*28/7*  
*S.T.*  
The Registrar  
Central Administrative Tribunal  
Bangalore Bench, Bangalore.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 3406/88

(Petition Under Article 136 of the Constitution of India

for Special Leave to Appeal to the Supreme Court from

the Judgment and Order dated 14-11-86 of the

High Court of Central Administrative Tribunal Bangalore  
Bench, Bangalore in Appn. No. 220/86.

Y. Yetabbaiah  
vs

....Petitioner .

Div. Personnel Officer and ors .... 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 Central Administrative Tribunal, Bangalore Bench, Bangalore  
of the High Court noted above and that the same was/were  
dismissed by this Court on the 2<sup>nd</sup> day of April,  
1988.

Yours faithfully,

*[Signature]*  
for ADDITIONAL REGISTRAR

