

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA),
Indira Nagar, Bangalore-38.

Dated

Application No. 857 /86(T)

Writ Petition No. 9257/82

APPLICANT

K. Puttur Raj

VERSUS

To

Shri A.V. Srinivas,
Advocate,
107 (Upstairs) Gandhi Bazaar,
Basavangudi, Bangalore-4.

RESPONDENT(S)

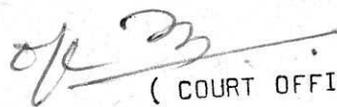
The Secretary, M/o Railways,
New Delhi & 2 ors.

M. Sreevanth
Central Govt. Standing Counsel,
High Court Bldgs.,
Bangalore.

Writ petition No. 9257/82 on the file of Hon'ble High Court of Karnataka, Bangalore, transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985, and registered in this Tribunal as Application No. 857/82(T) is posted before the Bench on 31-7-86 for fixing the date of final hearing.

2. You are directed to appear on the aforesaid date at 10.30 AM failing which further proceedings will be held in your absence.

By order of the Tribunal.


(COURT OFFICER)

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1817

Registered A/D

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Application No 857 /1986(T)
(W.P.No 9257 /1982)

Applicant

Versus

Respondents

K. Muthuraj
To

O.O.P. by Secy M/Rlys B200

Sh. A.V. Srinivas

Advocate for Applicant

Take notice that W.P. No 9257/82 on the file of the High Court of Karnataka, Bangalore, transferred to this Tribunal Under Section 29 of the Administrative Tribunals Act, 1985, and registered as Application No 857 /1986(T) is posted for ~~final~~ hearing on 27-10-86. You are directed to appear on the said hearing date, failing which the matter will be heard in your absence.

By Order

Date: 19/8/86.

Sris
for DEPUTY REGISTRAR

Please file.
R

Issued
He
20/8/86



In the High Court of Karnataka at Bangalore

PRESENTATION FORM

W.P No. 9257 of 198 2 857/86

Serial No. District

Advocate Sri

M. SREERANGAIAH
ADVOCATE

Between

Muthuraj

and

The Union of India and others

Sl No.	Description of Papers Presented	Court fee affixed on the papers
1	On the Memo of .....Petition	....
2	On the Memo of Appeal/	....
3	On Vakalath	....
4	On Certified Copies	....
5	On I. A. No..... for	....
6	On Process Fee	....
7	On Copy Application	....
8	<u>Statement of</u>	....
9	<u>objections with V.A.</u>	....
10	.....	....
TOTAL ....		....

Number of copies Furnished

Presented by

M. Sreerangaiah
Advocate for Petitioner/
Appellant/Respondent

Advocate's Clerk

Date 2-8-85 198 , Bangalore.

Cespr recd
Other side Served 2/8/85
Adv + petr

Received Paper with
Court-fee lables as above

Receiving Clerk

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.P.No. 9257 of 1982. 857/86

Between:

K.Muthuraj.

Petitioner.

And:

The Union of India
and others.

Respondents.

I N D E X

Sl.No.	Particulars.	Page Nos.
1.	Statement of objections.	1-5
2.	Verifying affidavit.	6

Place: Bangalore;

Dated:- 2 - 8 - 85

M. V. S. N.
Advocate for Respondents.

5. Regarding paras 20 to 22 of the petition

It is submitted that the grounds urged in para 20, 21 and 22 of the petition are untenable that though the Inquiry Officer, found the petitioner guilty of the charges framed against the petitioner, the findings were not accepted since the Inquiry Officer has failed to follow the procedure in full in conducting the Inquiry. Hence a fresh inquiry was ordered. The Inquiry Officer, after conducting inquiry on the basis of earlier chargesheet came to the conclusion that the petitioner has remained absent unauthorisedly. ~~By~~ ^{while} ~~ms~~ processing the said Inquiry Report it was noticed that the chargesheet implicated that the petitioner remained absent unauthorisedly from 6-1-78 and onwards which included the period from 9-3-78 to 11-4-78 for which leave had been sanctioned to the petitioner on the grounds of sickness. Hence it became necessary to issue a fresh chargesheet excluding the said period of sick leave for 33 days. It is submitted that it is clear from para 8 of the memorandum of charges dated 12-3-81 Annexure 'D' ~~that~~ the said chargesheet has been issued in cancellation of the chargesheet dated 6-7-78. The first chargesheet has been served on the petitioner for the 2nd time on 2-9-80 when second inquiry conducted. However, as already stated a fresh chargesheet dated 12-3-81 was issued to the petitioner in cancellation of the earlier memorandum dated 6-7-78.

6. Regarding paras 23 to 35 of the petition

The respondent submits that the grounds urged in paras 23 to 35 are untenable. The fresh inquiry based on the fresh chargesheet dated 12-3-81 was also conducted in accordance with law. The examination of witness and marking of documents as exhibits on behalf of the Administration did not arise as the petitioner accepted the charge that he remained absent unauthorisedly and that he failed to maintain devotion to duty contravening Rule 3(1)(ii) of the Railway Services (Conduct) Rules 1966. The Inquiry Officer put Questions to the petitioner and record^{ed} his replies. This does not amount^s to cross-examination of the petitioner. The petitioner has stated before the Inquiry Officer that he does not have the assistance of the Defence Helper or a counsel and that he defends his case himself and the petitioner has further stated that he has no witness to be examined. This allegation is made for the 1st time in the Writ petition. The respondent further submits that the document relied upon by the Inquiry Officer during Inquiry was the muster pertaining to the petitioner for the period in question.

M. V. Reddy

The said muster was shown to the petitioner at the commencement of the Inquiry. The petitioner did not demand for the supply of said muster. For the 1st time he is making this allegation in the writ petition. The petitioner has not whispered in the memorandum of appeal to the Divisional Railway Manager - Respondent No.2. It is submitted ^{that} as is clear from the chargesheet dated 12-3-81 charges ^{made} against petitioner are very specific with full particulars. The Inquiry Officer has in his detailed Inquiry report, discussed the statements made by the petitioner before him regarding reasons etc. for his unauthorised absence and Inquiry Officer has not accepted the said explanation and has come to the conclusion that the periods of absence from 6-1-78 to 8-3-78 and again from 11-4-78 to 12-12-78 are unauthorised absence as admitted by the petitioner himself.

It is submitted that the Inquiry has been conducted in accordance with law after giving fair and free opportunity to the petitioner to defend himself. The inquiry is neither arbitrary nor unfair and the petitioner's removal from service is lawful and in accordance with the rules governing the same. The delay if any in completing the Inquiry is due to Administrative reasons but does not involve lack of bonafides ^{as} alleged by the petitioner.. The petitioner is not entitled to re-instatement either with continuity of service or without or with back wages or without back wages.

Wherefore the respondents ^{pr}ay that this Hon'ble Court may be pleased to dismiss the above writ petition with costs in the end of justice.

Place: Bangalore
Date: 23.7.85

M. Sreerangiah
Advocate for Respondents.

Address:

M. Sreerangiah
Railway Advocate
S.P.Bldgs. 10th cross
Cubbonpet Main Road,
Bangalore

In the High Court of Karnataka, Bangalore

W.P.No.9257/82

857/86

Between

K. Muthuraj
and

Petitioner

The Union of India
and others

Respondents

Affidavit

I, P. Sreekantan, aged 57, s/o Perumal do hereby solemnly affirm and state as follows:

1. I am working as Divisional Personnel Officer, Southern Railway, Mysore, in the office of 2nd respondent. I am acquainted with the facts of the case.

2. I submit that the statements made in para 1 to 6 of the accompanying statement of objections are true to my information based on records which I believe to be true.

Dated 26th July 1985

at Mysore

Identified by me

A. Muralidharappa
PTC/MYS

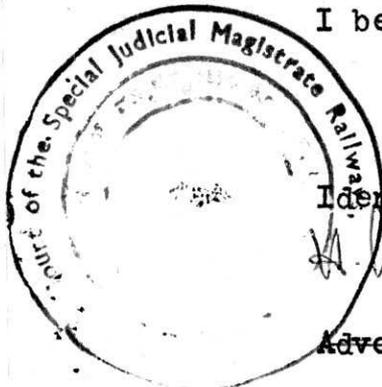
Advocate

P. Sreekantan
Deponent

Sworn to before me

[Signature]
Special Judicial Magistrate
Railways, Mysore.

26/7/85



CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Application No 857 /86(F)

(WPNO 9257/82)

Applicant

Shri K. Muttu Raj

To

Versus

Respondent(s)

Union of India rep by.
Secy MCO Railway Govt

Sri A.V. Srinivas. Delwa

Gandhi Bazar

Basavanagudi B'lore - 4

Take notice that Application above mentioned is posted for hearing
on 5-2-87. You are, therefore, directed to appear in
person or through a duly authorised legal practitioner on the said date.

By Order of the Registrar.

Bangalore.

Date : 23/12

Hars
(SECTION OFFICER)

23/12

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Balu*

Issued
29/12/86

S. Muthuraj

SOUTHERN RAILWAY

MYSORE DIVISION

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Sl. No.	Description	Folio No.	Remarks
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/ Divisional Railway Manager
Mysore.

Rao/-

Gm-clerk
(Govinda Raju D.H.)
Clerk DPO/01/mys

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH: BANGALORE

DATED THIS THE 3RD DAY OF FEBRUARY, 1987.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy, .. Vice-Chairman.

And

Hon'ble Mr. P. Srinivasan, .. Member(A).

APPLICATION NUMBER 857 OF 1986.

K. Muttu Raj,
Son of Krishnaswamy,
Hindu, Major, Residing at
Railway Quarters No. 19, Southern Railway,
Sagar, Shimoga District.

.. Applicant.

(By Smt. Shantha Challappa, Advocate)

v.

1. Union of India,
by its Secretary to Government,
Ministry of Railways,
New Delhi.
2. The Divisional Railways,
Manager, Southern Railways,
Mysore.
3. Divisional Operating
Superintendent, Southern
Railways, Mysore.

.. Respondents.

(By Sri M. Sreerangaiah, Advocate).

--

This application coming on for hearing this day, Vice-Chairman made the following:

ORDER

In this transferred application received from the High Court of Karnataka under Section 29 of the Administrative Tribunals Act of 1985 ('the Act') the applicant has challenged order no. Y/TGL.92/78 dated 23-1-1982 (Annexure-J) of the Divisional Railway Manager, Mysore Division, Mysore ('DRM') and order No. Y/TGL/92/78 dated 29-10-1981/2-11-1981 (Annexure-G) of the Senior Divisional Operating

Superintendent, Southern Railway, Mysore ('Superintendent').

2. At the material time the applicant was working as a 'Hamal' at the Sagar Railway Station of the Southern Railways owned by the Union of India. From 6-1-1978 the applicant absented himself from duty without obtaining prior sanction of leave till 3-3-1978 and again from 11-4-1978 to 12-12-1978. For his aforesaid unauthorised absences, the Superintendent commenced disciplinary proceedings against the applicant under the Railway Servants (Discipline and Appeal) Rules of 1968 ('the Rules'), framed a charge memo on 6-7-1978-31-7-1978 and sought to serve it on him, which did not bear fruit. But, still the Inquiry Officer ('IO') held an inquiry and submitted his report holding the applicant guilty of the charge levelled against him.

3. On an examination of the report of the IO, the Superintendent by his order made on 2-1-1979 set aside the same and directed a de novo inquiry in accordance with law against the applicant. In pursuance of the same, the IO framed a fresh charge sheet on 12-3-1981 (Annexure-A) and served the same on the applicant to which he filed his statement. On this, the Superintendent appointed one Sri Ramaswami, a Traffic Inspector as the Inquiry Officer before whom the applicant appeared on 20-7-1981 and admitted the charge levelled against him: however, he gave an explanation for his absence. On 4-9-1981, the IO submitted his report holding the applicant guilty of the charge levelled against him. On an examination of the same, the Superintendent by his order dated 29-10-1981/2-11-1981 (Annexure-G) inflicted the penalty of removal from service. Aggrieved by the same, the applicant filed an appeal before the DRM who by his order dated 23-1-1982 dismissed the same. On 1-3-1982 the applicant approached the High Court under Article 226 of the Constitution in Writ Petition No.9257 of 1982 challenging those orders which on transfer has been

registered as A.No.857 of 1986.

4. The applicant has challenged the orders on the grounds that will be noticed and dealt with by us. In justification of the orders the respondents have filed their statement of objections before the High Court.

5. Smt. Shantha Challappa, learned counsel for the applicant, contends that on the first charge sheet into the very misdemeanour an inquiry had been held and dropped and therefore, it was not open to the Superintendent to frame a second charge sheet on that very misconduct, hold a fresh inquiry and impose the punishment, and the same is without jurisdiction and illegal.

6. Sri M.Srirangaiah, learned counsel for the respondents contends that the earlier proceedings having been set aside by the Superintendent, it was open to him to frame the second charge sheet; therefore, the inquiry held, the punishment imposed were legal and valid.

7. We have noticed that though the first charge sheet had not been served, the IO had held an inquiry and submitted his report holding the applicant guilty of the charge levelled against him which was set aside by the Superintendent and a de novo inquiry was directed to be held. In pursuance of the same, a fresh charge sheet was framed against the applicant and a fresh inquiry was held by another Inquiry Officer. From this it follows that the claim of the applicant that on the first charge framed against him, the same had been decided in his favour on the very misconduct is not factually correct.

8. On the very terms of the order made by the Superintendent on 2-1-1979, the inquiry held later and punishment imposed on the misconduct proved, was not unauthorised and illegal.

9. Even otherwise the second charge sheet framed against the applicant was not really a fresh charge sheet. In reality and subs-



tance, that charge sheet was in continuation of the first charge sheet on which the proceedings had not really ended in favour of the applicant. On this view also, we cannot uphold the contention of the applicant.

10. On the foregoing discussion we see no merit in this contention of Smt. Shantha Challappa and we reject the same.

11. Smt. Shantha next contends that the punishment of removal imposed was too severe and disproportionate to the gravity of the misconduct proved against the applicant.

12. Sri Srirangaiah sought to justify the punishment against the applicant.

13. The charge levelled and proved against the applicant was one of unauthorised absence from duty without any moral turpitude. That the same called for punishment can hardly be doubted. When the punishment was imposed, the applicant had rendered nearly 20 years of service. His explanation for his absence without obtaining prior sanction cannot be characterised as wholly fanciful. On a conspectus of all these facts and circumstances, we are of the view that the punishment of removal was too severe and the same calls for substantial modification. We are of the view that the ends of justice would be met by modifying the same into one of reduction by one stage in the time scale of pay for a period of one year without cumulative effect and appropriate directions to be indicated in our order.

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

- (a) We uphold the orders of the appellate and the disciplinary authorities made against the applicant in so far as they hold that he was guilty of the charge levelled against him. But,



in modification of those orders in so far as they relate to punishment, we direct that there shall be a reduction by one stage in the time scale of pay of the applicant for a period of one year without cumulative effect.

- (b) We direct the respondents to adjust the period of absence of the applicant from 6-1-1978 to 12-12-1978 excluding the period he actually worked against earned leave and half pay leave available to his credit under the Rules and treat the balance as extraordinary leave without pay with continuity of service. He will not be eligible to any back wages till he reports for duty except leave salary to the extent indicated above.
- (c) We declare that the respondents are entitled to recover or deduct all such rents as are due by the applicant for the occupation of the railway quarters at the normal rates and not at the penal rates.
- (d) We direct the respondents or the other competent authority to forthwith give an order of posting to the applicant and then regulate all other matters in accordance with law and the directions contained in this order.

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

16. Let this order be communicated to all the parties within 10 days from this day.

Mr. R. Narasimham
VICE-CHAIRMAN
3/2/87

P. S. ...
MEMBER(A).
3/2/87

np/

REGISTERED

URGENT
OUT-TODAY

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 10-2-87

Application No. 857 /86(T)

W.P. No. 9257/82

Applicant
Shri K. Muttu Raj
To

V/S The Secy. M/o Rlys & 2 Ors

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Shri K. Muttu Raj
Railway Quarters No. 19
Southern Railways
Sagar
Shimoga District 2. Smt Shantha Challappa
Advocate
C/o Shri A.V. Srinivas
Advocate
107 (Upstairs), Gandhi Bazar
Basavanagudi
Bangalore - 560004 | <ol style="list-style-type: none"> 3. The Secretary
Ministry of Railways
New Delhi 4. The Divisional Railways Manager
Southern Railways
Mysore 5. Divisional Operating Superinten-
dent
Southern Railways
Mysore 6. Shri M. Sreerangaiah
Senior Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560001 |
|---|--|

M. Sreerangaiah
10/2

Janki
E
12/2/87

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH
IN APPLICATION NO. 857/86(T)

Please find enclosed herewith the copy of the Order/
~~interim order~~ passed by this Tribunal in the above said
Application on 3-2-87.

Shri
Encl: As above.

B.V. Venkatesh Reddy
Deputy Registrar
(Judicial)

o/c
Please
issue to
all
10/2/87

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE 3RD DAY OF FEBRUARY, 1987.

PRESENT:

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And

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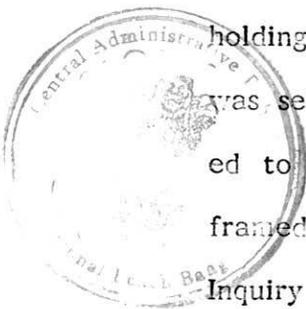
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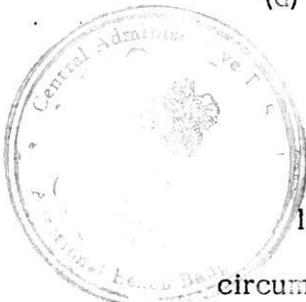
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- (d) We direct the respondents or the other competent authority to forthwith give an order of posting to the applicant and then regulate all other matters in accordance with law and the directions contained in this order.



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

16. Let this order be communicated to all the parties within 10 days from this day.

Sd/-

VICE-CHAIRMAN

3/27/01

Sd/-

MEMBER(A).

-True Copy -

B. V. Venkatesh Reddy
DEPUTY REGISTRAR

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

10/12/01

np/