

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH BANGALORE

DATED THIS THE 5TH DAY OF FEBRUARY, 1987

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

Present:

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

APPLICATION NO. 958 OF 1986.

G.G. Perur,
S/o Gangappa Subbanna Perur,
major, r/o Gardenpet,
padadaiahana Hakkala, Hubli.

... Applicant

(Shri K.H. Jagadish, Advocate)

V.,

1. The Director of Audit,
South-Central Railway,
Secunderabad (AP).

2. The Deputy Director of Audit,
South-Central Railway,
Secunderabad (AP).

3. The Audit Officer,
South-Central Railway,
Secunderabad (AP).

... Respondents.

(Shri M.S. Padmarajaiah, CGSC)

This application has come up for hearing before
this Bench to-day, Shri K.S. Puttaswamy, Hon'ble
Vice-Chairman, made the following.

O R D E R

In this transferred application received from the
High Court of Karnataka under Section 29 of the Admi-
nistrative Tribunals Act of 1985, the applicant has
challenged order No. DDA/SCR/64 dated 11-8-1982 of the
Director of Audit, South Central Railway, Secunderabad

(Annexure-G) ('Director') modifying order No.DDA/SCR/64 dated 1.7.1982 (Annexure-E) of the Deputy Director of Audit, South Central Railway, Secunderabad - Disciplinary Authority ('DA').

2. At the material time, the applicant was working as a Grade-D Sepey in the office of the Divisional Audit office Workshop and Stores Audit, South Central Railway, Hubli. When he was working in that office, the DA in exercise of the powers conferred on him by the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (the Rules) commenced disciplinary proceedings against the applicant on the charges communicated in his charge sheet dated 16th November, 1981, elaborated in the statement of imputations accompanying the same which was served on him on 31.12.1981, to which he did not file any written statement denying the charges. But, notwithstanding the same, the DA appointed one ^{↳ B.G. 4} Sri/Sathyamurthy an Audit Officer as the Inquiry Officer ('IO'), who held a regular inquiry into the charges and submitted his report to the DA holding that the applicant was guilty of the charges except Charge No.3. On an examination of the report of the IO and the evidence on record, the DA by his order dated 1.7.1982 (Annexure-E) inflicted the penalty of removal from service against the applicant. Aggrieved by the same the applicant filed an appeal before the Director who by his order dated 11.8.1982 concurring with the findings recorded by the DA and IO however modified the punishment imposed to one of compulsory retirement from service. On 6th October, 1982 the applicant approached the High Court

in Writ Petition No.36178 of 1982 challenging the said orders, which on transfer has been registered as Application No.958 of 1986.

3. Among other grounds the applicant has urged that in the inquiry held by the IO he was not afforded a reasonable opportunity to defend himself in violation of Article 311(2) of the Constitution and the principles of natural justice, which is repudiated by the respondents in their statement of objections.

4. Sri K.H. Jagadish learned counsel for the applicant, contends that his client was seriously unwell on all the dates the inquiry was held by the IO and was physically unable to attend the inquiry, as certified by Government Doctor on 14.3.1982 and, there was a denial of reasonable opportunity to the applicant to defend himself in the inquiry in contravention of Article 311(2) of the Constitution and the principles of natural justice which justifies this Tribunal to quash the proceedings and afford an opportunity before the IO.

5. Sri M.S. Padmarajaiah, learned Central Government Senior standing Counsel appearing for the respondents contends that the applicant deliberately absented himself on all the hearing dates the inquiry was held by the IO and, there was no denial of a reasonable opportunity before the IO at all.

6. On an examination of this very contention, the appellate authority has held against the applicant. What has been held by that authority which is essentially on a question of fact cannot be characterised as illegal. On this short ground we must reject this contention.

7. Even otherwise we find that on every hearing date that was duly intimated the applicant did not appear and participate in the inquiry before the IO. In the inquiry held by the IO on different dates, the applicant did not impart any information in writing or otherwise to the effect that he was unwell and that he was physically unable to appear and participate in the inquiry. On any of those dates. When that was so it was undoubtedly open to the IO to proceed ex-parte record the evidence and submit his report. From this it follows that there is no merit in the contention of the applicant that ~~he~~ was denied ^{denied} a reasonable opportunity to defend himself before the IO.

8. We have also examined the medical certificate issued by the Doctor on 14.3.1982. We are of the view that that certificate issued by a doctor of the out-patient department of the hospital does not disclose that the applicant was unable to move and participate in the inquiry on the dates the inquiry was held by the IO. We cannot, therefore, place any reliance on the medical certificate produced by the applicant and invalidate the proceedings.

9. As the only contention urged for the applicant on merits fails, this application is liable to be dismissed. But then Sri Jagadish urges for a direction to the respondents to settle the pension and other terminal benefits due to the applicant with expedition. Sri Padmarajaiah does not dispute that the pension and other terminal benefits due to the applicant had not so far been settled. But he submits that the same had not been settled as the applicant himself had not appeared and had not submitted the necessary documents to process them.

10. In the light of our above discussion, we dismiss this application. But notwithstanding the same, we direct the respondents to arrange for the payment of arrears of pension and other terminal benefits due to the applicant within 3 months from the date he files all the necessary documents in that behalf before the competent authority.

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

Ms. Pillai
Vice-Chairman 5/2/1987.

P. J. V
Member (A) 5/2/87

np/Mrv.