

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH:BANGALORE

DATED THIS THE 19TH DAY OF NOVEMBER, 1986.

PRESENT:-

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

Hon'ble Mr.L.H.A.Rego, .. Member(A).

APPLICATION NUMBER 727 OF 1986.

(Writ Petition No.5598 of 1981)

N.I.Mathai,
S/o Late N.A.Issac, Aged 51 years,
Residing at Sultan Battery, Post
Moolankavu, Calicut District.
Kerala State.

.. Applicant.

(By Sri S.K.Venkataranga Iyengar,Advocate)

v.

1. The Union of India by Secretary,
Ministry of Railways, Government
of India, New Delhi.
2. The General Manager,
Southern Railway,Park Town,
Madras.
3. The Chief Commercial Superintendent,
Southern Railway, Park Town, Madras.
4. The Divisional Railway Manager,
Southern Railway, Mysore.
5. The Divisional Commercial Superintendent,
Mysore Division,Southern Railway,
Mysore. .. Respondents.

(By Sri M.Srirangaiah,Advocate).

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

O R D E R

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.P(A)86/Y/22 dated 6-1-1978 (Exhibit-Y) of the General Manager Southern Railways ('GM'), Order No.P(A)86/Y/22 dated 29-7-1977 (Exhibit-V) of the Chief Commercial Superintendent, Madras ('CCS') and Order No.Y/P.227/II/EE

1144/76 dated 24-9-1976 of the Divisional Superintendent, Mysore ('DS') (Exhibit-T).

2. The applicant who was born on 20-6-1925, joined service as a Commercial Clerk on 26-2-1949 in the Hubli Division of Southern Railways. He was promoted as a Senior Commercial Clerk in 1956, in which capacity he was working in Petha Booking Office of the Mysore Division from 1967.

3. On 29-10-1975 (Exhibit-A) the DS transferred the applicant to Arasikere Railway Station of Hassan District on administrative grounds with a direction that he should be relieved on or before 31-10-1975 and that he should thereafter report to duty at Arasikere being eligible to avail of the joining time of seven days. On the eve of that transfer or on receipt of the same, which cannot be gathered from the pleadings or the mass of papers produced by the respondents, the applicant applied for leave till about 14th or 17th of November, 1975, which had been sanctioned. But, on the expiry of that leave, the applicant did not report for duty either at Mysore or at Arasikere and continuously overstayed his leave thereafter. Hence, the DS commenced disciplinary proceedings against the applicant under the Railway servants (Discipline and Appeal) Rules, 1968 ('the Rules').

4. On 27-1-1976 the DS drew up the articles of charge and the statement of imputations under the Rules and directed their service on the applicant and the charge framed against him which in so far as it is material read thus:

MEMORANDUM OF CHARGESHEET UNDER RULE
9 OF THE RS(D&A)RULES 1968 - STATEMENT
OF ARTICLES OF CHARGE

Sri N.I. Mathai, EE 2143 is working as Senior Commercial Clerk at Mysore.

Sri N.I. Mathai, while functioning as Sr. CC/MYS committed misconduct in that he failed to carryout the transfer to ASK ordered by DS/MYS vide O.O. No. PI/C/75/95(Y/P 676/II/6) dated 29-10-1975 though he was relieved at Mysore Station on 7-1-1976 by SM/MYS with instructions to carryout his transfer to ASK.

And

And

Said Sri N.I.Mathai, overstayed 14 days casual leave from 1-II-1975 to 17-II-1975 inclusive of 3 days rest sanctioned to him by DCS/MYS and remained absent from duty from 18-II-1975 and onwards on his own accord without prior permission or sanction of leave from the competent authority.

Thus the said Sri N.I.Mathai, failed to maintain devotion to duty and thereby contravened Rule 3(i)(ii) of Railway services (Conduct) Rules 1966.

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Statement of Imputations of Misconduct or misbehaviour in support of Articles of charge framed against Sri N.I.Mathai, EE.II44, Sr. CC at MYS.

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As a Railway servant the said Sri N.I.Mathai, should carryout the transfer ordered on the administrative grounds by his superior officer immediately on being relieved by his Official Superior. Further he should maintain punctuality in his attendance and should not absent himself from duty on his own accord without prior permission or sanction of leave from the competent authority.

Sri N.I.Mathai, is working as Sr. CC/MYS. An office Order No.PI/C/75/95(Y/P.676/II/6) dated 29-10-1975 was issued on 29-10-1975 transferring him on his present pay and grade to ASK station on administrative grounds. On 7-I-1976 the SM/MYS issued him a Memo No.TR/76 dated 7-I-1976 relieving him of his duties at MYS station from 7-I-76 with instructions to carryout the transfer to ASK. Inspite of these he has not joined duty at ASK so far and deliberately failed to carryout the transfer in the interest of public service.

Said Sri N.I.Mathai was sanctioned 14 days CL from 1-II-1975 to 17-II-1975 inclusive of rest for 3 days and he was due to resume duty on 18-II-1975. But, he has absented himself from duty
from



18-11-1975 and onwards on his own accord without prior permission or sanction of leave from the competent authority. He has not also reported sick through a Railway Medical Officer if he were sick and unable to perform his legitimate duties from 18-11-1975 and onwards.

Thus the said Sri N.I.Mathai has failed to maintain devotion to duty and thereby contravened Rule 3(i)(ii) of Railway Services (Conduct) Rules, 1966".

The original memorandum with the articles of charge and the statement of imputations were sent to the residential address of the applicant on 28-1-1976 by registered post acknowledgment due, which was ultimately returned by the Postal Department on 5-2-1976 with an endorsement 'party not instation. Arrival not known. Hence, returned to sender'. On return of that cover, the DS made several attempts to serve the same on the applicant by registered post, which were all returned as in the past with one or the other endorsement. With no alternative left, the DS then appointed one Sri D.Ganeshan, APO-I, as the Enquiry Officer (EO) under the Rules to conduct the departmental enquiry and submit his report. Even the EO made more than one earnest attempt to serve the notices of hearing on the applicant which as in the past did not bear fruit at all. In that view, the EO held the inquiry ex-parte, drew up his report on 19-6-1976 holding that the applicant was guilty of the charges levelled against him and submitted the same to the DS.

5. On an examination of the report of the EO, the evidence and the records, the DS concurring with the EO issued a show cause notice under Article 311 of the Constitution to the applicant on 3-8-1976, proposing to inflict the penalty of removal from service, which he received on 10-8-1976, to which he filed a reply on 19-8-1976 before the DS. On examination of the same, the DS by his order dated 24-9-1976 (Exhibit-T) inflicted the penalty of removal from service against the applicant.

6. Aggrieved by the said order of the DS, the applicant filed

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an appeal before the CCS who after affording him an opportunity of oral hearing made an order on 29-7-1977 (Exhibit-V) affirming the finding of the DS however, modifying the punishment to one of compulsory retirement.

7. Aggrieved by the said orders of the CCS and DS, the applicant filed a revision petition under Rule 24(2) of the Rules before the General Manager, Southern Railways ('GM') who by his order dated 6-1-1978 (Exhibit-Y) dismissed and communicated the same to the applicant in due course. But, on a complaint made by the applicant to the effect that he had not received that order, the GM again communicated one more copy of the same to the applicant through the DPO, Mysore, which was received by him on 1-9-1978.

8. The applicant thereafter claims that he had submitted a petition or memorandum to the Minister for Railways (Exhibit-Z) to annul the orders made against him by all the authorities under the Rules and restore him to service. He claims that the same was not disposed of by that Minister or the Government of India, before he approached the High Court of Karnataka on 3-4-1980 or even thereafter.

9. The applicant has urged, that before inflicting the major penalty of removal or compulsory retirement from service, the DS had not effected service of the articles of charge and statement of imputations as mandatorily required by Article 311 of the Constitution and the Rules and the failure of their service completely vitiates the proceedings justifying the nullification of all orders made against him by this Tribunal, with appropriate directions for reinstatement and payment of monetary benefits to which he was entitled to in law.

10. In their detailed reply, the respondents alluding to the efforts made by the DS to effect the articles of charge and statement of imputations, have asserted that the applicant had deliberately refused to receive the charge memo and participate in the inquiry. On this

basis

basis, the respondents claim that the inquiry held ex parte was legal and the orders made thereon were also legal. The respondents have also urged that on grounds of delay and conduct, this Tribunal should not assist the applicant who was in the meanwhile, engaged in private business in Kings Coffee Works, Irwin Road, Mysore. At the hearing the respondents produced the records of the proceedings and the previous service records of the applicant.

11. Sri S.K.Venkataranga Iyengar, learned Senior Advocate assisted by Sri S.M.Babu have appeared for the applicant. Sri M.Srirangaiah, learned Standing Counsel for the Railways has appeared for the respondents.

12. Sri Iyengar has urged that the non-service of the articles of charge and statement of imputations on the applicant vitiates the entire proceedings and everyone of the orders made against him and, therefore, this Tribunal was bound to nullify all of them, direct reinstatement of the applicant till he attained superannuation on 20-6-1983 or 30-6-1983 with payment of all emoluments due to him till that date.

13. Sri Srirangaiah in refuting the contention of Sri Iyengar has urged that on grounds of delay and conduct of the applicant this is a fit case in which this Tribunal should decline to invalidate the proceedings even if there are illegalities or irregularities at any stage of the proceedings or in any of the orders made by any of the authorities. In the very nature of things, it is necessary to deal with this later contention of Sri Srirangaiah first.

14. Elaborating his contention on the question of delay, Sri Srirangaiah has urged that the final order of the GM rejecting the Revision Petition of the applicant, made on 6-1-1978, was communicated to him within one or two days, by the office in the usual course of business, and the applicant having received the same, to cover up his delay, complained that he had not received the same and the GM without standing on any technicality, forwarded another copy

the same through the DPO,Mysore, which was received byhim on 1-9-1978, on receipt of which also there was a delay of 19 months in approaching the High Court which had not been properly explained on which ground itself, this Tribunal which had stepped into the shoes of the High Court, should decline to interfere with the orders made by the authorities.

15. Sri Iyengar has urged that the applicant who received the order of the GM only on 1-9-1978 made a representation to the Minister for Railways on 9-10-1979 (Exhibit-Z) which had not been disposed of byhim or Government, till the applicant approached the High Court and on those grounds, as also on grounds stated by him in the additional affidavit filed on 17-6-1981 before the High Court, there was really no delay and this is a fit case in which this Tribunal should ignore the delay if any and adjudicate on merits only.

16. In VENKATASUBBAIAH v. UNION OF INDIA AND OTHERS (Application No. 5 of 1986 decided on 8-9-1986) a Division Bench of this Tribunal consisting of one of us (K.S.Puttaswamy, Vice-Chairman) and the Hon'ble Member Sri P.Srinivasan, dealing with the powers of the Tribunals in transferred cases from High Courts had expressed thus:

"The Tribunals constituted under the Act replace the HighCourts that were earlier exercising their jurisdiction under Article 226 of the Constitution over service matters and takes over their jurisdiction of proceedings pending on the appointed date. The Act completely excludes the jurisdiction of High Courts and the other civil courts of the countryover service matters of the Central Government and exclusively confers that jurisdiction on Tribunals constituted under the Act on and from the appointed date, however, preserving the powers of the Supreme Court over them under Articles 32 and 136 of the Constitution. From this analysis it follows that in respect of transferred proceedings, the Tribunal really steps into the shoews of the HighCourts. If that is so, the Tribunals cannot be denied the very powers the High Courts were exercising over the original proceedings that were pending before them. We are not

not concerned with the further powers that are conferred on Tribunals over such matters. But, what we are now really concerned is whether the Tribunal could reject challenges on grounds of delay and laches of the applicants as the High Courts could have undoubtedly done, if the Act had not been enacted and the Tribunals had not been constituted thereunder.

We are of the view that in respect of transferred proceedings the Tribunals can exercise everyone of the powers the High Courts could have exercised over them, when they were pending before them. By this we should not be understood as saying that the Tribunals are competent to issue prerogative writs under Article 226 of the Constitution. We are certain that Tribunals cannot exercise those powers of the High Courts. But, that is not the same thing as saying that the Tribunals cannot exercise the powers the High Courts were exercising when the proceedings were pending before them and must adjudicate all belated or stale claims as urged by Sri Narayanaswamy. The Act does not compel us to do so. We are of the view that Section 29 of the Act or any other provision of the Act does not lend itself to such an extreme contention at all. We are, therefore, of the view that Tribunals are competent to dismiss a transferred application on grounds of delay, laches and conduct on which grounds the High Courts were free to dismiss them when they exercised their jurisdiction under Article 226 of the Constitution."

We reiterate this principle and hold that we are competent to examine questions of delay and conduct, as the High Court would have done, if it had continued to exercise its jurisdiction over service matters of the Central Government employees.

17. Before examining the merits of the rival contentions touching on delay, it is useful to notice and examine a novel contention urged by Sri Iyengar on the same.

18. Sri Iyengar has urged that on receipt of the order dated 6-1-1978 of the GM, the applicant made representations to the Minister for Railways or the Government of India and those representations had to be treated as statutory representations within the purview of Section 20(2) of the Act which stood undisposed, till the applicant

approached

approached the High Court or even thereafter and, therefore, there was no delay whatsoever in the applicant challenging the orders of the authorities made under the Rules.

19. On the alleged representations made by him before the Minister for Railways, the applicant at para 17 had stated thus:

"The petitioner had sent a petition to the Railway Minister praying for reconsideration of the dismissal order when it was passed. Again he made a representation on 9-10-1979 as per Exhibit-Z to the Railway Minister putting his grievances for reconsideration of all the orders referred to above, but so far no reply is received from him."

On the first representation alleged to have been made, the applicant had not given any date or proof and the same is as vague as it could be. On this ground we cannot but hold that the applicant had not made any representation to the Minister for Railways prior to 19-10-1979.

20. On the second representation, the applicant has annexed a copy of the same which is stated to have been made by him (Exhibit-Z). Even here, the applicant had not stated on what date and by what mode he made the same. He had not also produced proof for having delivered or forwarded the same. What we have said on the first representation is also true of this representation. We seriously doubt the truth of the assertion made by the applicant on the second representation also.

21. On the foregoing discussion, we hold that the applicant had not made any representation at any time to the Minister for Railways. But, we will however, assume that the applicant had made a representation on 19-10-1979 and the same had not been considered and disposed of by the Minister or anyone authorised by the Rules of Business made by the President to dispose of the same.

22. The proceedings against the applicant who was a non-gazetted railway

railway servant, were concluded under the Rules made by the President of India under Article 309 of the Constitution of India. The Rules made by the President or the Governor under the proviso to Article 309 of the Constitution of India, till they are replaced by the appropriate legislature have all the incidents and effect of a law made by the appropriate legislature (See: VADERA v. UNION OF INDIA AIR 1969 Supreme Court 119). A railway servant is entitled to avail of the remedies of an appeal and revision as provided in the Rules only. The Rules do not provide for any remedy for the non-gazetted railway-employees before the Minister for Railways or the Government of India. The order made by the GM on revision, under Rule 24(2) of the Rules was final. In this view, the Minister for Railways or Government of India were incompetent to entertain any petition or representation made by the applicant.

23. With this analysis, we will read Section 20 of the Act on which reliance was placed by Sri Iyengar and the same reads thus:

20. Applications not to be admitted unless other remedies exhausted - (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-

(a) if a final order has been made by Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2) any remedy available to an applicant by way of submission

mission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

Sri Iyengar has maintained that the term 'representation' occurring in Section 20 of the Act comprehends every kind of representation and therefore, the representation made by the applicant before the Minister for Railways had to be treated as a representation made within the purview of Section 20 of the Act.

24. We are of the view that the representations referred to in Section 20 of the Act, are statutory representations or representations made, which the law permits to a civil servant and not to all and every kind of representations to be made day in and day out, by a frustrated civil servant like the applicant. Section 20 of the Act does not take within itself non-statutory representations or petitions, which the authority is not competent to entertain and decide the same. We are, therefore, of the view that the representations made by the applicant assuming that he had really made one, cannot be reckoned for holding that there was no delay in the applicant approaching the High Court. We see no merit in this contention of Sri Iyengar and we reject the same.

25. We have earlier noticed that the GM made his order on 6-1-1978 and communicated the same to the applicant in the usual course. A communication made to the applicant in the usual course of business on or about 6-1-1978, must have been received by him atleast in about 10 days thereafter. We are of the view that what has been stated by the respondents deserves acceptance as against what is stated by the applicant to the contrary. If that is so, then there is a delay of more than 2 years in the applicant approaching the High Court.

26. But, we will also assume that the applicant received the original copy of the order of the GM for the first time on 1-9-1978 as noted by him on that very communication and that he did not receive a copy earlier as stated by him and examine the question

of delay on that basis also.

27. While the applicant received the copy of the order of the GM on 1-9-1978, he filed the writ petition before the High Court on 3-4-1980. From this it is obvious, that there is a delay of 18 months in the applicant approaching the High Court.

28. We are not unmindful of the legal position that for approaching a High Court under Article 226 of the Constitution, there was and there is no period of limitation prescribed in the Constitution or the Limitation Act. But, it is also well settled that an aggrieved person should approach a High Court without unreasonable delay. What is an unreasonable delay will depend on the facts of each case.

29. When we examine the question either accepting the case of the respondents or the case of the applicant, it is obvious that there was contumacious and undue delay in the applicant approaching the High Court.

30. We will now examine whether the delay has been properly explained by the applicant, which would have justified the High Court or this Tribunal, as its successor to ignore the delay.

31. In the original petition presented before the High Court the applicant had not given any explanation for the delay which itself justifies this Tribunal to reject the application.

32. In para 17 of his petition, the applicant had stated that he received the copy of the order of the GM on 1-9-1979, which he reiterated in the additional affidavit filed before the High Court on 17-6-1981. What had been stated by the applicant as regards receipt of the copy of the order of the GM, having made an endorsement on the original, to the effect, that he received the same on 1-9-1978, was deliberately false. We reiterate what we have earlier expressed on the representation said to have been made to the Railway Minister. We cannot, therefore, accept the explanation offered by the applicant which is also false to his knowledge. Except for this there is no other explanation offered by the applicant for the

delay

delay. From this it follows that this is a fit case in which this Tribunal should reject the application on the ground of delay without examining all other questions.

33. But, as our order is subject to correction by the Hon'ble Supreme Court under Article 136 of the Constitution, we propose to examine and express our opinion on all other questions also.

34. In his application and also in his sworn affidavit filed on 17-6-1979, the applicant had stated that he received the copy of the order of the GM on 1-9-1979, though he had received the same on 1-9-1978. We are of the view that the applicant had deliberately misstated the date of receipt as 1-9-1979, to induce the Court to issue rule nisi, which it might not have done if he had stated that he had received the copy of the said order on 1-9-1979. We are of the view that this conduct of the applicant disentitles him for relief.

35. We find that the applicant is only conscious of his legal rights but not of his duties as a civil servant. We are of the view that such an attitude by a civil servant cannot be countenanced and orders annulled, only to enable him to make money without rendering public service and duties enjoined on him. We are of the view that this conduct of the applicant also disentitles him to relief.

36. In their reply, the respondents have asserted that after overstaying leave the applicant had been privately working at Kings Coffee Works at Mysore in the meanwhile which is not denied by him by a rejoinder or an affidavit. We have no reason to disbelieve this statement of the respondents, which is verified by the Divisional Personnel Officer. In the verification affidavit, filed in support of the writ petition as also in the additional affidavit, the applicant had given his address at Sultan Battery, Kerala State. But, in all other affidavits filed thereafter, the applicant had given his address at Mysore itself, which lends credence to the statement of the

respondents

respondents that he was working at Mysore. When the applicant after overstaying leave without attending to his official duties was engaged in private business in the meanwhile, in violation of Rules and discipline, such conduct also disentitles him to relief.

37. On the foregoing discussion, we hold that the conduct of the applicant disentitles him to all reliefs.

38. We now pass on to examine the merits of the contention urged before us by Sri Iyengar which we have noticed earlier.

39. The articles of charge and the statement of imputations drawn up by the DS who was also the disciplinary authority were forwarded to the applicant to his residential address at Mysore by registered post acknowledgment due on 28-1-1976. But, the same was returned with an endorsement on 5-2-1976. Even thereafter, attempts were made to serve the same but all of them proved in vain. From this it follows that the articles of charge and the statement of imputations were not personally served on the applicant.

40. We have noticed earlier, that the EO also made earnest efforts to serve notices of hearing on the applicant which also proved in vain.

41. When a civil servant deliberately refuses to receive the articles of charge and the statement of imputations and avoids service of the same by all known methods leading to the inquiry to be held ex parte, it cannot be contended by him later that the proceedings are illegal for want of service of the same and they should be nullified solely on that ground. We are of the view that the applicant who was aware of the disciplinary proceedings, the framing of the charge and the articles of imputation had deliberately refused to receive them. We are also of the view that the applicant had deliberately refused to participate in the inquiry held against him. We are, therefore, of the view that the applicant cannot make that a virtue or a ground for nullification of the proceedings. If we were

to accept the plea of the applicant, then we would only be placing a premium on the intent and calculated machination of a civil servant facing an enquiry to avoid the same and make that as a lame and familiar ground to undo all the adverse orders made against him under the Rules. We cannot on principle or authority uphold such a conduct by the applicant. From this it follows that there is no merit in this contention of the applicant and we reject the same.

42. While the DS imposed the penalty of removal, the CCS on appeal modified the same to one of compulsory retirement. We are of the view that the modified punishment imposed by the CCS was more than fair and just. We are of the view that the punishment imposed is not excessive and unjust. We see no ground, therefore, to interfere with the modified punishment imposed by the CCS.

43. At the hearing, Sri Iyengar on the instructions of the applicant who was present before the Tribunal, stated that the respondents had not settled the pension due to him and were not paying any pension.

44. On the very terms of the order of the CCS, the respondents are bound to settle the pension due to the applicant, under the relevant rules regulating the same, make payment of all the arrears accrued so far and also continue to pay the same in accordance with the Rules. We must therefore, issue appropriate directions to the respondents.

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

- 1) We dismiss this application in so far as it challenges the orders of the GM, CCS and DS.
- 2) We direct the respondents to settle the pension and other terminal benefits due to the applicant in terms of the order dated 29-7-1977 (Exhibit-V) of the CCS within 60 days from the date of receipt of the order of this Tribunal.

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