

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
.....

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

Dated: 21 Oct 87

APPLICATION NO 429/87(F)

W.P.No. 1

APPLICANT

A. Marisusai

Vs

RESPONDENTS

The A.C.M.E. and
Appellate Authority, SC Ry
Hubli and BCR.

To

1. Sri A. Marisusai,
No. 78, Thabli Plot,
Muchandi Chawl,
Hubli.
2. Dr. M. S. Nagaraja,
Advocate,
No. 35 (Above Hotel Swagath),
1st Main Road, Gandhinagar,
Bangalore - 5.
3. The A.C.M.E and Appellate
Authority,
South Central Railway,
Hubli.
4. The Assistant Works Manager,
R and Disciplinary Authority,
South Central Railway, Hubli.

5. The Production Engineer
(UCLs) and,
Disciplinary Authority,
South Central Railway
Hubli.
6. Sri D. Chittibabu,
J.S.S./Inspection and
Enquiry Officer,
South Central Railway,
Hubli.
7. Sri M. Greeranganah,
Advocate,
3, S.P. Building,
10th Cross, Cubbonpet,
Bangalore - 560 002

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/STAY/

~~INTERIM ORDER~~ passed by this Tribunal in the above said application
on 16 Oct 87.

RECEIVED

Diary No. 1328/CR/9

Date: 26/10/87

Encl: as above.

Deputy Registrar
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 15TH DAY OF OCTOBER, 1987

Present | Hon'ble Shri L.H.A. Rego, Member (A)
 | and
 | Hon'ble Shri Ch. Ramakrishna Rao, Member (J)

APPLICATION NO. 429/1987

Sri. A. Marisusai,
S/o Sri. A. Aralappa Achari,
No.73, Thabli Plot,
Muchandi Chawl,
Hubli.

.... Applicant.

(Dr. M.S. Nagaraja, Advocate)

vs.

- 1.The A.C.M.E. and Appellate Authority,
South Central Railway,
Hubli.
- 2.The Assistant Works Manager,/R and
Disciplinary Authority,
South Central Railway,
Hubli.
- 3.The Production Engineer/UBLS
and Disciplinary Authority,
South Central Railway,
Hubli.
- 4.Sri D. Chittibabu,
J.S.S./Inspection and
Enquiry Officer,
South Central Railway,
Hubli.

.... Respondents.

(Shri Sreerangaiah, Advocate)

This application having come up for hearing to-day,
Shri L.H.A. Rego, Member (A) made the following:

ORDER

The prayer in this application is to strike down the
order passed by Respondent(R)-3, on 25.3.1981/5.10.1981
(Annexure-A4), removing the applicant from service with



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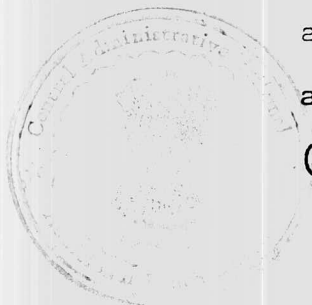
effect from 6.10.1981 AN, as also the order dated 2.4.1987 (Annexure-A8) passed by R-1 in his capacity, as Appellate Authority ('AA', for short) upholding the order of removal of the applicant from service, as passed by the Disciplinary Authority ('DA', for short) and to direct the respondents to reinstate him in service and grant him all consequential reliefs.

2. The salient facts of the case are as follows:
The applicant entered service in the South Central Railway in the year 1958, as Khalasi (Mechanical). At the material time i.e., in the year 1980, he was working as Fireman-B in the South Central Railway, Workshop, at Hubli. A charge-sheet was served on him on 23/27-10-1980 by R2, the article of charge in which, was framed as under:

"That the said Sri A. Marisusai, Fireman 'B' T.No.743 while working in Erecting Shop on 24-5-1980 at about 12-10 Hrs was apprehended by the Rakshak Sri M.K. Shaik while in unlawful possession of one Amul Spray tin 100 gms. containing green paint concealed in a gunny bag near the Lavatory No.1063/A adjacent to IDW's Office. Thus he has committed a serious misconduct and contravened para 3(i) of the Railway Service Conduct Rules, 1966."

A Statement of imputations of misconduct, in support of the above article of charge, was furnished to the applicant, along with the chargesheet, substantiating the charge (Annexure-A1). The applicant acknowledged receipt of the

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charge-sheet, but did not submit his reply thereto. Shri ChittiBabu, JSS/Inspector, UBL was appointed as, the Inquiry Officer ('IO', for short) on 13.4.1981 (Annexure-A2), to enquire into the charge framed against the applicant. The IO completed the Departmental Enquiry ('DE', for short) after giving due opportunity to the applicant, to defend his case. In the course of the enquiry, the applicant is seen to have admitted the charge and his guilt thereof, and to have stated, that he would defend the case himself and would not need the assistance of a defence counsel. All the five witnesses cited in the DE held against him, were examined in the presence of the applicant, who is said to have chosen not to cross-examine them, as he had admitted the charge levelled against him. The IO submitted his Inquiry Report (Annexure-A3) to the DA, stating, that the applicant was guilty of the charge. The DA(R3), agreeing with the findings of the IO, by his order dated 25.3.1981/5.10.1981 (Annexure-A4), imposed the punishment of removal of service ^{of} the applicant, with effect from 6.10.1981 A.N.

3. Aggrieved thereon, the applicant preferred an appeal to R-1 (Annexure-A5), who by his order dated 16.1.1982 (Annexure-A6) affirmed the penalty of removal from service imposed on the applicant, by the DA. Yet aggrieved, he moved the High Court ^{of} Judicature of Karnataka, Bangalore, in Writ Petition No.10133/82, challenging that order. This writ petition was transferred to this Tribunal and was



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registered as Application No.1817/86(T), which was disposed of by this Tribunal on 9.1.1987, setting aside the order of the AA and the matter was remitted to him, with a direction to dispose of the appeal, within a period of three months, from the date of receipt of the order, in accordance with law, after affording an opportunity of a personal hearing to the applicant, if he so desired.

4. Pursuant to this directive of the Tribunal, R-1 by a reasoned order dated 2.4.1987 (Annexure-A8), upheld the order of removal of the applicant from service, as imposed by the DA. Still aggrieved, the applicant has again approached this Tribunal, challenging the order of the DA (Annexure-A4) and of the AA (Annexure-A8) on diverse grounds.

5. Dr. M.S. Nagaraja, learned Counsel for the applicant, submitted at the outset, that he did not wish to call in question, the legality of the procedure of the DE, held against the applicant and of the guilt of charge established against him, as the applicant had squarely admitted the guilt. In these circumstances, he said, his plea to the Tribunal was, to minimise the severity of the punishment imposed on the applicant in the DE, taking duly into account his length of service which was without blemish, hitherto-fore¹ and the gravity of the misconduct of the applicant, for which he was charged.

6. In view of this submission on the part of Dr. Nagaraja, we do not propose to go into the merits of the case in regard to the illegality of procedure of the DE held against the applicant, even though in the application, this ground was



initially urged. We therefore confine ourselves to examining the rival pleadings, as to the quantum of punishment which would be commensurate with the guilt of the applicant in the charge, established against him.

7. Dr. M.S. Nagaraja, pleaded, that the applicant was charged for being in unlawful possession of a container, containing only 100 gm of paint, in circumstances which were not free from doubt, but even then, iterated, that he would not press vindication of innocence of the applicant in the context of the fact, that the applicant himself, had admitted the guilt, rightly or wrongly. This was the first offence of the like, he said, for which the applicant was brought to book and but for this incident, Dr. Nagaraja asserted, that the entire service record of the applicant spanning over two decades, was without blemish. He therefore appealed to the Tribunal, that this was a fit case, where justice needed to be tempered with mercy.

8. Shri Srirangaiah strongly opposed the plea of Dr. M.S. Nagaraja, to treat the matter leniently and minimise the punishment of removal from service, inflicted on the applicant, which he asserted was condign and proper, as compared to his guilt. He stated, that the service record of the applicant, was not unsullied, as stated by Dr. Nagaraja and pointed out an incident, where the applicant was censured for remaining absent from duty on 23.9.1967, without proper authority, which absence was treated as leave without pay.



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He further urged, that if misconduct of the like, on the part of the railway employees was treated with levity, this would seriously undermine administrative efficiency and discipline in the railways.

9. We have given due thought to the pleadings of both sides and have examined carefully, the service record of the applicant, placed before us. We notice, that but for the above lone incident of censure pointed out by Shri Srirangaiah and that too for unauthorised absence of the applicant, just for a day, the rest of his service record is not adverse. The service register of the applicant reveals, that his date of birth is 31.12.1936. As on the date when the punishment of removal from service was inflicted on the applicant by the DA, on 5.10.1981, he was nearly 45 years of age, i.e., he had another 13 years of service for his superannuation in the ordinary course. Taking the above facts into consideration, we are of the view, that the ends of justice in this case would be met, if the punishment order of removal from service, with effect from 6.10.1981 AN, imposed on the applicant by the DA, is modified to that of compulsory retirement from that date, without entitlement however, of the applicant to arrears of retiral benefits from that date till 31.10.1987, from which date, he may be paid pension due to him, with due regard to his length of service and other relevant factors.

10. In the light of the above, we make the following order:



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O R D E R

- (i) We hold that the applicant is guilty of the charge framed against him in the DE and that it warrants award of suitable punishment.
- (ii) We allow this application in part, modifying the punishment of removal from service imposed on the applicant with effect from 6.10.1931 A.N. to that of compulsory retirement from that date, subject to the condition, that the applicant will not be entitled to arrears of retiral benefits with effect from 6.10.1931 till 31.10.1937, except gratuity, but only thereafter, according to the prevalent rules and regulations.
- (iii) We direct the respondents to compute the retiral benefits, inclusive of gratuity and pay the same to the applicant with the utmost expedition and in any case, within a period of three months from the date of receipt of this order.

The application is disposed of in the above terms.

No order as to costs.

Sd/-

Member (A) 16.10.37

Sd/-

Member (J)

-True copy-

Kms/Mrv.

B. V. Venkatesh Reddy
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
21/10/37

