

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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Commercial Complex (BDA),
Indiranagar,
Bangalore - 560 038

Dated : 25-9-87

APPLICATION NO 213 / 87 (A)

W.P. NO _____

Applicant

S.V. Narayanarao

vs DCS, S.C. Rly & anr.

To

1. S.V. Narayanarao,
Sr. Commercial Clerk,
Belgaum Goods Office,
South Central Railway,
Belgaum.

2. Divisional Commercial Supdt.,
South Central Railway, Hubli.

3. The Asstt. Divisional Railway
Manager, South Central Railway,
Hubli.

4. Dr. M.S. Nagaraja, Adveral
35, Above Hotel Swagath
1st Main Road,
Gandhinagar, Bangalore.

5. Sh. M. Sreenivasiah, Adveral
SP Building,
Cubbonpet Main Road,
Bangalore - 560002.

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 16-09-1987.

Encl : as above

DEPUTY REGISTRAR

~~SECTION OFFICER~~
(JUDICIAL)

RECEIVED

Diary No. 1188/CR/87

Date: 29-9-87

Five copies 28/9/87

29/9/87

28/9/87

28/9/87

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 16th DAY OF SEPTEMBER, 1987

Present : Hon'ble Sri Ch.Ramakrishna Rao

Member (J)

Hon'ble Sri P.Srinivasan

Member (A)

APPLICATION No.213/87

S.V.Narayanaswamy,
Sr.Commercial Clerk,
Belgaum Goods Office,
South Central Railway,
Belgaum.

...

Applicant

(Dr.M.S.Nagaraja

...

Advocate)

vs.

1. The Divisional Commercial
Supdt., South Central Railway,
Hubli.

2. The Asst.Divisional Railway
Manager, South Central Railway,
Hubli.

...

Respondents

(Sri M.Srirangaiah

...

Advocate)

This application had come up before the court today.

Hon'ble Sri Ch.Ramakrishna Rao, Member (J) made the following :

ORDER

In this application made under Section 19 of the
Administrative Tribunals Act, 1985, the applicant who is
working as Senior Commercial Clerk in the Belgaum Goods
Office of the South Central Railway at Belgaum, is aggrieved
with order dated 11.12.1985 passed by the Divisional Commer-
cial Supdt., South Central Railway, Hubli (respondent 1)
imposing the penalty of stoppage of one increment on him
and also with the contents of letter dated 17.12.1986
(Annexure N) addressed to him by the Divisional Railway
Manager(DRM), Hubli (Respondent 2) refusing to consider the



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appeal of the applicant dated 25.12.1985 for the reasons stated therein.

2. The facts giving rise to this application are briefly as follows : Initially a Memorandum of charges dated 11.9.1985 for the imposition of a minor penalty was issued to the applicant by Respondent 1. Thereafter Respondent 1, after considering the explanation of the applicant, imposed the penalty of stoppage of one increment for two years by order dated 11.12.1985 (Annexure C). The applicant filed an appeal on 25.12.1985 against this order to the DRM, who felt that the penalty imposed on the applicant was not adequate. He therefore, issued a Memorandum to the applicant on 15.1.1986 stating that an inquiry would be held for imposition of a major penalty. By order of the same day an Inquiry Officer was appointed to conduct the inquiry. However, when the inquiry was still pending, the DRM, Hubli, issued an order on 21.8.1986 giving him notice of retirement under Rule 2046 of the Railway Establishment Code, to take effect after the expiry of three months. Later the DRM, Hubli dropped the inquiry earlier ordered by him for imposition of major penalty in place of the minor penalty already imposed. The dropping of the inquiry was intimated to the applicant by letter dated 7.11.1986 (Annexure K). The applicant filed an application before this Tribunal challenging the order of retirement under Rule 2046 issued to him. This Tribunal by its order dated 14.11.1986 directed that the Review Committee (RC), to which the ^{an} applicant had made a representation, to dispose of the said representation on or before 15.1.1987. It is common ground that the RC decided to withdraw the notice of retirement issued to the applicant and to reinstate him in service. The applicant's retirement



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under Rule 2046 had meanwhile taken effect on 23.11.1986. He was reinstated in service pursuant to the decision of the RC on 18.2.1987. The applicant thereafter addressed Additional DRM, who was the Appellate Authority (AA), to consider his appeal against the order dated 11.12.1985 imposing the minor penalty on him. The AA sent a reply to the applicant dated 17.12.1985 which is reproduced below :-

"Sub: Appeal against the punishment imposed on you in a Vigilance case.

Ref: I. Your appeal dated 25.12.1985
II. -do- 10.12.1985

...

In consideration of your appeal only, a DAR enquiry was ordered for imposing a major penalty. However, this enquiry was dropped, as you were advised vide this office letter of even number dated 7.11.85.

2. In the circumstances, considering your appeal dt.25.12.86, for cancelling your punishment imposed vide this office letter of even number dt.11.12.1985 does not arise.

Please note and acknowledge "

3. Dr.Nagaraja submits that the decision contained in the letter reproduced above is not strictly correct. What was dropped by respondents was the inquiry order for enhancing the punishment imposed by the Disciplinary Authority (DA) which was a minor penalty. Therefore, when the inquiry ordered for imposing enhancement of penalty was dropped, the appeal filed by the applicant against the minor penalty remained to be disposed. The AA was, therefore, not right in assuming that because the inquiry for imposing a major penalty was dropped the question of considering the appeal against the minor penalty did not arise. He, however, limited his claim to ask for a direction to be issued by us to the AA to consider the applicant's appeal dated 25.12.1985 against the order of



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the DA dated 11.12.1985 imposing a minor penalty on him.

4. Sri M.Srirangaiah, learned counsel for the respondents, supported the action of the authorities and contended that dropping of the inquiry by the AA amounted to disposing of the appeal. The AA, in effect, rejected the appeal. Therefore, there was no question of his considering the appeal.

5. Having considered the rival contentions, we are inclined to agree with Dr.Nagaraja. When the applicant filed an appeal against the minor penalty imposed on him by the DA by order dated 11.12.1985, the DA decided to institute an inquiry for imposition of a major penalty. Subsequently, the AA in its wisdom dropped the inquiry, which cannot be said to amount to a disposal of the applicant's appeal against ^{and} the order of the DA. When dropping the inquiry the AA did not specifically state that the applicant's appeal was being dismissed and that the penalty imposed by the DA was confirmed. We are clearly of the view that in the absence of such a specific order, the appeal against the penalty imposed by the DA cannot be treated as disposed of by the AA.

6. We, therefore, direct the AA to consider the appeal of the applicant against the penalty imposed by the DA and pass an order thereon as early as possible and at any rate not later than four months from the date of receipt of this order.

7. In the result the application is disposed of as indicated above. Parties to bear their own costs.

Sd/-

MEMBER (J)

16.9.87

Sd/-

MEMBER (A)

- True Copy -



B.V. Umesh
DEPUTY MEMBER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL MEMBER
BANGALORE