

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

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Commercial Complex (BDA)
 Indiranagar
 Bangalore - 560 038

Dated : 22 AUG 1988

APPLICATION NOS.

536, 537 & 709

/ 87(F)

W.P. NO.

Applicant(s)

Shri H.B. Nagaraja & 2 Ors

To

1. Shri H.B. Nagaraja
 No. 109/G, Wheel & Axle Plant Colony
 Yelahanka
 Bangalore - 560 064

2. Shri H. Mallikarjuna
 No. 110-K, Wheel & Axle Plant Quarters
 West Colony
 Yelahanka
 Bangalore - 560 064

3. Shri K.R. Jayaramu
 S/o Shri K.R. Ramakrishna
 K.R. Extension
 Near Commercial Tax Office
 Madhugiri
 Tumkur District

4. Shri Ranganatha S. Jois
 Advocate
 36, 'Vagdevi'
 Shankarapuram
 Bangalore - 560 004

5. Shri M.S. Anandaramu
 Advocate
 128, Cubbonpet Main Road
 Bangalore - 560 002

Respondent(s)

v/s

The Secretary, M/o Railways, New Delhi & 3 Ors

6. The Secretary
 Ministry of Railways
 Rail Bhavan
 New Delhi - 110 001

7. The General Manager
 Wheel & Axle Plant
 Yelahanka
 Bangalore - 560 064

8. The Works Manager
 Wheel & Axle Plant
 Yelahanka
 Bangalore - 560 064

9. The Deputy Chief Mechanical Engineer
 Wheel & Axle Plant
 Yelahanka
 Bangalore - 560 064

10. Shri M. Sreerangaiah
 Railway 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(s) on 9/10-8-88.

grossed
K. R. Raju
22.8.88
 Encl : As above

R. S. Venkatesh
 DEPUTY REGISTRAR
 (JUDICIAL)

(J.C.)

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 9/10TH DAY OF AUGUST, 1988.

PRESENT:

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

And.

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

APPLICATION NUMBERS 536, 537 AND 709 OF 1987

1. H.B.Nagaraja,
S/o Beeragowda,
r/o No.109/G, Wheel & Axle Plant Colony,
Yelahanka,
Bangalore-64. .. Applicant in A.No.536/87.
2. H.Mallikarjuna,
S/o H.Chandrahasa,
No.110-K, WAP Quarters,
West Colony, Yelahanka,
Bangalore-64. .. Applicant in A.No.537/1987.
3. K.R.Jayaram,
S/o K.R.Ramakrishna,
Aged about 26 years,
Wheel Unit Operator,
Wheel and Axle Plant,
Yelahanka, Bangalore 560 064,
residing at K.R.Extension, near
Commercial Tax Office,
Madhugiri, Tumkur District. .. Applicant in A.No.709/1987.

(By Sri R.Ranganath Jois, Advocate for Applicants in
A.Nos.536 and 537 of 1987 and Sri M.S.Anandaramu, Advocate
for Applicant in A.No.709 of 1987).

v.

1. The Union of India,
represented by the Secretary
Ministry of Railways, NEW DELHI. .. Respondent-1 in A.No.709/87.
2. The General Manager,
Wheel & Axle Plant,
Yelahanka, Bangalore-64. .. Respondent-1 in A.Nos.
536 & 537/87 and Respondent-2 in A.No.709/87.
3. The Works Manager,
Wheel and Axle Plant, Yelahanka,
Bangalore-64. .. Respondent-2 in A.Nos.536 & 537/87
and Respondent-4 in A.No.709/87.
4. The Deputy Chief Mechanical Engineer,
Wheel and Axle Plant,
Yelahanka, Bangalore-64. .. Respondent-3 in A.No.536 & 537/87
and A.No.709/87.

(By Sri M.Sreerangaiah, Advocate for Respondents).



These applications having come up for hearing, Vice-Chairman made the following:

ORDER

These are applications made by the applicants under Section 19 of the Administrative Tribunals Act,1985 ('the Act'). As the questions that arise for determination in these cases are either common or interconnected, we propose to dispose of them by a common order.

2. Sri H.B.Nagaraj, applicant in Application No.532 of 1987 was appointed as 'Fitter (Maintenance)' on 19-10-1983 in the Wheel and Axle Plant of Yelahanka, Bangalore ('Plant'), an unit of the Indian Railways owned by Government of India. He was working in that capacity in the Plant on 15-5-1985.

3. Sri H.Mallikarjuna, applicant in Application No.537 of 1987 was appointed as a 'Wheel Unit Operator' in the Plant on 4-2-1984. He was working in the same capacity on 15-5-1985.

4. Sri K.R.Jayaram, applicant in Application No.709 of 1987 was appointed as a 'Wheel Unit Operator' in the Plant on 22-7-1983. He was working in the same capacity on 15-5-1985.

5. On 15-5-1985 there were certain incidents and developments in the moulding room of the wheel establishment of the plant. In connection with that incident, the Assistant Works Manager-II, Wheel and Axle Plant, Yelahanka ('AWM') one of the Disciplinary Authorities (D.P.A.T) by separate but identical memoranda initiated disciplinary proceedings under the Railway Servants (Discipline and Appeal) Rules, 1968 ('the Rules') against the applicants and 2 others with whom we are not now concerned on the charges framed against them as set out in the respective memoranda served on them. On receipt of the charge sheet, the applicants filed their separate written statements not admitting the charges levelled against them. On that the DA



appointed a Board of Inquiry ('Board') consisting of Sriyuths D.G.V.V. Ramakrishna Murthy ('Murthy') AWM-V and K.Madhava Rao ('Madhava') APO-W to inquire into the truth or otherwise of the charges levelled against them and submit its reports thereto. In pursuance of that authorisation the Board conducted the examination of the witnesses and had concluded the same. But, before that Board could evaluate that evidence and submit its reports, one of its members Sri Madhava was transferred from the Plant to Hubli. On that development, the DA by his order made on 18-2-1986 appointed one Sri P.V.G.Rao ('Rao') APO(W) as a member of the Board in place of Madhava. On this basis, the Board consisting of Murthy and Rao considered the evidence recorded and submitted its separate reports against the applicants to the DA holding them guilty of the charge/s levelled against each of them.

6. On a consideration of the reports of the Board, the evidence on record and the records, the Works Manager, Wheel and Axle Plant, Yelahanka, Bangalore ('WM') who is also one of the Disciplinary Authorities under the Rules concurred with the reports of the Board and made orders inflicting on the applicants the penalty of dismissal from service. Aggrieved by the orders of the WM, the applicants filed appeals before the competent Appellate Authority ('AA') under the Rules who, by separate orders, dismissed them, whose validity were challenged by the applicants before this Tribunal in Applications Nos. 1602, 1666 and 1711 of 1986. This Tribunal allowed those appeals in part, set aside the orders of the AA and remitted the cases to the AA for fresh disposal.

7. In pursuance of the remand orders of this Tribunal, the AA restored the appeals filed by the applicants to their original files, afforded them an opportunity of oral hearing and again dismissed them. Hence, these applications under the Act.

8. The applicants have challenged the orders made against them on a large number of grounds. We will notice and deal with them in



due course. In justification of the impugned orders, the respondents have filed their replies and have produced their records.

9. Sri R.Ranganath Jois, learned Advocate has appeared for the applicants in Application No.536 and 537 of 1987. Sri M.S.Anandaramu, learned Advocate has appeared for the applicant in Application No.709 of 1987. Sri M.Sreerangaiah, learned Advocate has appeared for the respondents in all the cases.

10. Sriyuths Jois and Anandaramu contend that the removal of the applicants by the WM, who was lower in rank to the Deputy Chief Personnel Officer (DCPO) of the Plant who had appointed them, was in contravention of Article 311(1) of the Constitution, the Rules and was illegal.

11. Sri Sreerangaiah contends that the WM being competent to appoint the applicants was competent to remove them under the Rules and therefore their removal were legal and valid.

12. We consider it proper to first ascertain as to who in fact appointed the applicants to the posts they held as on the date of their removal from service.

13. On the selection of the applicants and others, the orders of appointments had been issued by the DCPO. This is not disputed by the respondents. On the very terms of appointment orders, there cannot be any doubt on the fact that the appointing authority of the applicants was at any rate the DCPO and not the WM.

14. We have carefully examined all the relevant original files leading to the issue of appointment orders of the applicants by the DCPO. On such an examination, we find that the approval for the appointments of the applicants was accorded by the then Additional Chief Mechanical Engineer ('ACME') and on such approval by such authority only the appointment orders to the applicants were issued by the DCPO. If approval was accorded by the ACME, then notwithstanding

the fact that the DCPO had issued the formal appointment orders or that the WM was then and is even now competent to make appointments to the posts held by the applicants, the ACME in reality was the appointing authority of the applicants. The ACME who approved the appointments of the applicants was higher in rank to the DCPO and WM. This position is not rightly disputed by Sri Sreerangaiah.

15. In D.D.PRASAD v. AIR MARSHAL AND ANOTHER (A.NO.331 of 1986 decided on 21/22-4-1988) we had occasion to examine whether Prasad, who had been appointed by the Air Officer, an authority higher than the Commandant could be removed from service by the Commandant in a disciplinary proceeding under the Central Civil Services (Classification, Control and Appeal) Rules,1965 which are analogous to the Rules. On an examination of that question, we expressed thus:-

"32. Article 311(1) of the Constitution which is a guarantee to civil service and is material reads thus:

"No person who is a member of a civil service of the Union or an All India Service or a Civil Service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed."

This article stipulates that no civil servant shall be dismissed or removed by an authority subordinate to that by which he was appointed. This is a constitutional mandate and prohibition. The prohibition in this Article is absolute and peremptory and cannot be defeated by sub-ordinate rules or artifices also. In deciding this question, the inquiry must be on who had, as a matter of fact, appointed the concerned civil servant to the post and not on who could have legitimately appointed that civil servant to that post then or thereafter."

In reaching this conclusion, we relied on the rulings of the Supreme Court. This decision has been affirmed by the Supreme Court rejecting Special Leave Petition No.7363 of 1988 filed by the respondents in that case.

16. As noticed earlier, the WM who had removed the applicants is lower in rank to the ACME and DCPO. The legal position in these cases is similar to the legal position in Prasad's case. On the principles enunciated in Prasad's case that squarely governs the question, we hold that the removal of the applicants was illegal.

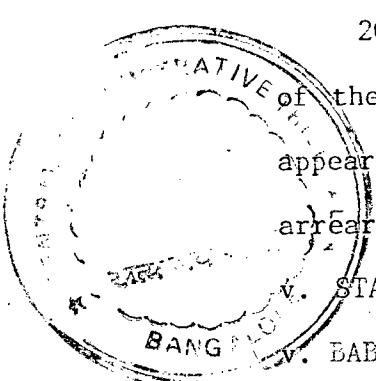


17. Unfortunately, this objection urged by the applicants before the AAs had not been properly appreciated by them and those authorities had reached erroneous conclusions both on facts and law.

18. On what we have expressed earlier, it is not necessary for us to examine all other questions except a few which we now pass on to examine.

19. Under the Rules both AWM and WM are disciplinary authorities. In this view, the initiation of the disciplinary proceedings against the applicants, their continuance and completion including the order appointing Sri Rao in place of Madhava were in order, legal and valid. On this, as pointed out by us in Prasad's case (vide para 61) it is open to the ACME, or any one of his equal or higher rank, to complete the proceedings against the applicants. Whether that should be done or not is for the authorities to decide. If any of the competent authorities so decide to pursue them, it is undoubtedly open to the said authority to complete the proceedings on the basis of the evidence already recorded and the reports of the Board. But, before doing so, it is only proper for that authority to issue a show cause notice, afford an opportunity of oral hearing to the applicants, consider all their contentions and pass a speaking order thereto.

20. Sriyuths Jois and Anandaramu contend that with the quashing of the orders, the suspensions of the applicants automatically disappear and they are entitled to be reinstated to service with all arrears of salary as ruled by the Supreme Court in OM PRAKASH GUPTA v. STATE OF U.P. (AIR 1955 SC 600) and UNION OF INDIA AND ANOTHER v. BABU RAM LALLA [1987 (Supp.) Supreme Court Cases 71].



21. In the Rules [vide Rule 5(4) of the Rules] there is a specific deeming provision for continuing the suspension if the authority decides to continue the inquiry. On this, the ratio in Om Prakash Gupta's case does not bear on the point. This order cannot and

does not prevent the authority from continuing the applicants under suspension under Rule 5(4) of the Rules on the competent authority deciding to continue the inquiry.

22. In the Indian Railways there are specific provisions to regulate the absences of employees. The absences of the applicants has necessarily to be regulated by the authority in accordance with those provisions. The ruling in Babu Ram Lalla's case, therefore, does not bear on the point.

23. In the light of our above discussion, we allow these applications in part, quash the orders impugned in all these cases. But, this does not prevent the competent authority from continuing and completing the disciplinary proceedings against the applicants or their suspensions till such time in accordance with law.

24. Applications are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.

Sd/-
VICE-CHAIRMAN
10/8/1971

Sd/-
MEMBER(A)
10/8/1971

TRUE COPY

By *[Signature]*
DEPUTY REGISTRAR (JDL) *[Signature]*
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

