

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
.....

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

Dated:

15 JUL 1988

APPLICATION NO 542 /87 (F)

W.P.No. _____

APPLICANT

Vs

RESPONDENTS

Shri Syed Hussainsab
To

The Divisional Personnel Officer, SC Rlys
Hubli

1. Shri Syed Hussainsab
Cabinman, No. 2300
South Central Railway
Sangli
Sangli District
Maharashtra State
2. Shri R.U. Gouley
Advocate
90/1, 2nd Block
Thygarajanagar
Bangalore - 560 028
3. The Divisional Personnel Officer
South Central Railway
Hubli
Dharwar District
4. 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
on 12-7-88.

Encl: as above.

for *[Signature]*
DEPUTY REGISTRAR
(JUDICIAL)

[Signature]

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 12TH DAY OF JULY, 1988.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy, .. Vice-Chairman.
And
Hon'ble Mr. L.H.A. Rego, .. Member(A)

APPLICATION NO. 542 OF 1987.

Syed Hussainsab,
Major, S/o Madarsab,
Cabinman, No.2300,
Sangli, Dist:Sangli. .. Applicant.

(By Sri R.U. Goulay, Advocate)

v.

Divisional Personnel Officer,
S.C. Railways, Hubli,
District Dharwad. .. Respondent.

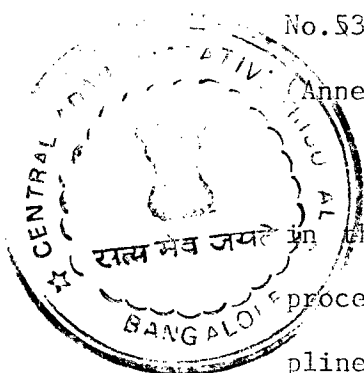
(By Sri Sreerangaiah, Advocate)

This application having come up for hearing to-day, Vice-Chairman made the following:

ORDER

In this application made under Section 19 of the Administrative Tribunals Act, 1985 ('the Act') the applicant has challenged order No. 531/III/CMI/LMI/PMA/Vol.13 (Office Order No. 50/Tfc/87) dated 2/4-6-87 (Annexure-d) of the Divisional Personnel Officer, Hubli ('DPO').

2. Prior to 9-8-1982, the applicant was working as a 'Cabinman' in the then time scale admissible to that post. In a disciplinary proceeding instituted against him under the Railway Servants (Discipline and Appeal) Rules, 1968 ('the Rules'), the Assistant Operating Superintendent (Movement) and the Disciplinary Authority ('DA') inflicted on him the penalty of reduction to lower grade of Pointsman for a period of two years from 9-8-1982 in addition to treating his two years absence as 'LWP'. On that order made by the DA, the appli-



applicant did not actually suffer the punishment imposed on him since he did not join service thereafter. In A.No.1695 of 1986 the applicant challenged that order of the DA and sought for various directions.

3. When that application was taken up for hearing by us on 6-3-1987, the Railway administration had made an order on 12-2-1987 (Annexure-B) in favour of the applicant which reads thus:

SOUTH CENTRAL RAILWAY

Divisional Office
Personnel Branch
Hubli, Dt. 12-2-1987

No.H/P.531/III/CM I/LHI/PMA/Vol.13

OFFICE ORDER NO.12/TFC/87

Sub: Restoration of Sri Syed Hussain Ex.
C/Man/MHSL(SR No.304).

Ref: This office Memorandum No.H/P.227/III
6787 of 9-8-1982.

Sri Syed Hussain, Ex.C/Man/MHSL who was reverted to the post of Pointsman in scale of Rs.200-250 on pay Rs.250/- w.e.f. 9-8-1982 and was remaining absent is now restored to his original post of Cabinman in scale of Rs.225-308 (RS) and transferred and posted as Cabinman/Gr.I SS/SLI against a vacancy.

He is eligible for transfer benefits such as transfer pass and grant etc. He should report for duty on or before 17-2-1987 certain. He should vacate Railway Quarters if in occupation.

(By Orders)

Sd/- 12-2-1987

Senior Divisional Personnel Officer,

Hubli."

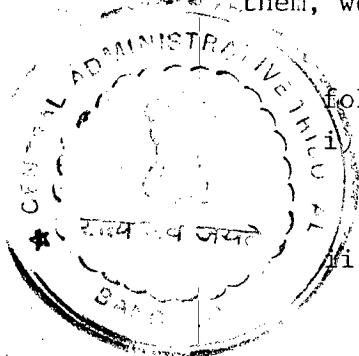
On this order, the applicant gave up his challenge to the order of the DA dated 9-8-1982 and confined his claims to the outstanding matters only. On noticing

them, we made an order on the same day in these terms:

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

i) We dismiss the application in so far as it challenges the order made by the DA on 9-8-1982 (Annexure-E) as not pressed by the applicant.

ii) We direct respondents 2 and 3 to examine the claim of the applicant for pay and allowances for the period from 9-8-1982 till he was given a posting as a Cabinman to Sangli Railway Station, with all such expedition as is possible in the circumstances of the case and in any event within a period of three months from the



the date of receipt of the order of this Tribunal and make him available all such financial benefits as he is found entitled to, in pursuance of their order.

On an examination of this order, the DPO had made an order against the applicant on 2/4-6-1987 (Annexure-D) which reads thus:

CENTRAL RAILWAY
No.531/III/CM/IMI/PMA/Vol.13

Divisional Officer,
Personnel Branch,
Hubli, Dt.2/4-6-1987.

OFFICE ORDER NO. 50/Tfc/87

Sub: Transfer of Sri Syed Hussain, Ex.C.Man/MHSL.

Ref: This office letter of even No. dated
12-2-1987 (O.O.No.12/Tfc/87).

In supersession of this office letter cited above, Sri Syed Hussain, Ex.C.Man/MHSL (SR.No.S.304) who was under orders of reversion to the post of P.Man on pay Rs.250/- in scale Rs.200-250 (RS) vide this office letter No.H/P.227/III scale Rs.200-250 (RS) vide this office letter No.H/P.227/III/6787 w.e.f. 9-8-1982 is transferred and posted as P.Man/BPWTR on pay Rs.931/- in scale Rs.775-1025 (RSRP) against a vacancy for a period of two years (NR) from the date of his joining at WTR.

The fixation of pay in scale Rs.775-1025 (RSRP) is provisional. He is eligible for transfer benefits. He should be relieved immediately on receipt of this letter. He should vacate Railway Quarters if in occupation at MHSL.

(By orders)

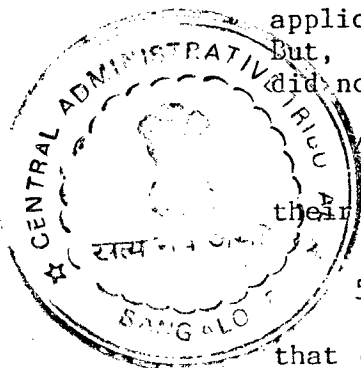
Sd/- 4-6-1987

For Divisional Personnel Officer,
Hubli.

On 3-7-1987 the applicant made this application challenging this order with a prayer for stay. On 7-7-1988 we have admitted this application, however, rejecting the prayer of the applicant for stay. But, notwithstanding our specific refusal for stay, the applicant did not report for duty at Vatar and has not been working.

4. The respondents have filed their reply and have produced their records.

5. Sri R.U.Goulay, learned counsel for the applicant contends that on the very terms of the order made by the DA on 9-8-1982 and the further order made thereon by this Tribunal in Application No.1695 of 1986, the punishment imposed by the DA from 9-8-1982 had expired on 8-8-1984 and that it was not open to the DPO to revert the applicant from the post of Cabinman to the post of Pointsman thereafter and give him a posting to Vatar in a lower grade.



6. Sri M.Sreerangaiah, learned counsel for the respondents rebutting the contention of Sri Goulay, contends that since the applicant had never suffered the punishment imposed on him, which had become final, the impugned order made by the DPO to enforce that punishment was unavoidable, justified and legal.

7. We have earlier noticed that the DA had imposed the punishment of reduction in grade from the post of Cabinman to the post of Pointsman for a period of two years commencing from 9-8-1982. On the very terms of the order of the DA, the punishment imposed on the applicant had commenced to run from 9-8-1982 and had also expired on 8-8-1984. This is the consequence of the punishment imposed by the DA irrespective of the fact whether the applicant had worked or not. On this short ground itself the impugned order cannot be upheld by us.

8. Whether the applicant was given a posting or not had been left open by us in the previous case. We do not propose to re-open the same. Whatever that be, the effect of the order of the DA was that he had suffered the punishment of reduction in rank from 9-8-82 to 8-8-1984. This consequence which is logical and legal, cannot be avoided on the facts and circumstances of the case. But, unfortunately, in the impugned order the DPO had misread the earlier order and had put a gloss on it which is impermissible. On this view also, the impugned order made by the DPO cannot be upheld by us. We must, therefore, necessarily quash the same reserving liberty to the DPO to give a posting to the applicant as Cabinman with expedition.

9. Sri Sreerangaiah has urged that when this Tribunal refused to grant stay, it was the plain duty of the applicant to report himself for duty, join at Vatar and claim all such benefits to which he was entitled to and since he had not done that, we should deny the salaries for the period from which he was posted for Vatar till he is given a posting as Cabinman, for which a reasonable time be allowed to the Railway administration. Sri Goulay opposes this request of

Sri Sreerangaiah and contends that on principle and authority the applicant was entitled for salaries as if he had worked as a Cabinman all along.

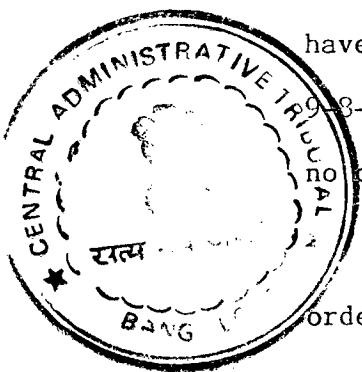
10. We have undoubtedly taken exception to the impugned order. But, that does not necessarily mean that the applicant who has not preformed his duties either in the post of a Cabinman or Pointsman to which he was posted should also be paid salaries. We are clearly of the view that there is merit in this submission of Sri Sreerangaiah. We, therefore, uphold the same.

11. We consider it proper to give a reasonable time to the Railway administration to give a posting to the applicant as Cabinman. We are of the view that having regard to all the facts and circumstances of the case, it is reasonable to grant time to the Railway administration till 31-7-1988 for giving a posting to the applicant as a Cabinman.

12. We have earlier noticed the nature of the order made in the earlier application. Whatever be the order now made on the impugned order, we should not be understood to have departed from that order in any way in particular on the matter of absences of the applicant which we have left open. In their reply, the respondents have stated that in pursuance of our earlier order, the period from 1-8-1982 had been treated as 'LWP'. On this aspect also, we express no opinion.

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

1. We quash Order No.531/III/CMI/LMI/PMA/Vol.13 (Office Order No.50/Tfc/87 dated 2/4-6-1987 (Annexure-D) of the DPO. But, notwithstanding this, all salaries due to the applicant from 4-6-1987 and onwards till he is given a posting as a Cabinman are denied to the applicant.
2. We direct the respondent to give a posting to the appli-



applicant as a Cabinman at such place as is found necessary in the public interest with all such expedition as is possible in the circumstances of the case and not later than 31-7-1988 and then regulate the same, in accordance with law.

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

15. Let this order be communicated to the parties immediately.

Sd/-
VICE-CHAIRMAN. 12/7/88

Sd/-
MEMBER (A) 12/7/88

np/

TRUE COPY

face
DEPUTY REGISTRAR (JD1)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE