

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 5 AUG 1988

APPLICATION NO.

1008

/ 87(F)

W.P. NO.

Applicant(s)

Shri A. Sudhakar Rao

To

Respondent(s)

V/s The Asst. Engineer (Track), South Central Railway,
Hubli & 3 Ors

1. Shri A. Sudhakar Rao
C/o Shri S.M. Babu
Advocate
No. 242, 'Kanakamandiram'
V Main, Gandhinagar
Bangalore - 560 009

2. Shri S.M. Babu
Advocate
No. 242, 'Kanakamandiram'
V Main, Gandhinagar
Bangalore - 560 009

3. The Assistant Engineer (Track)
South Central Railway
Hubli (Dharwar District)

4. The Divisional Engineer (Central)
South Central Railway
Hubli (Dharwar District)

5. The Divisional Railway Manager
South Central Railway
Hubli (Dharwar District)

6. The Senior Deputy General Manager
South Central Railway
Rail Nilayam
Secunderabad (Andhra Pradesh)

7. Shri M. Sreerangaiah
Railway Advocate
3, S.P. Building, 10th Cross
Cubbonpet Main Road
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 2-8-88.

Encl : As above

DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE SECOND DAY OF AUGUST, 1988

Present: Hon'ble Shri Justice K.S. Puttaswamy... Vice-Chairman
Hon'ble Shri P. Srinivasan... Member (A)

APPLICATION NO. 1008 OF 1987

Sri. A. Sudhakar Rao,
S/o A. Venkoba Rao,
aged 31 years,
R/o Gataprabha,
Belgaum District.

Applicant

(Shri S.M. Babu..... Advocate)

Vs.

1. The Asst. Engineer (Track)
I.O.W.M, South Central Railway,
Hubli.

2. Divisional Engineer (Central),
South Central Railway,
Hubli.

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

4. Sr.Dy. General Manager,
South Central Railway,
Secunderabad, Andhra Pradesh.

Respondents

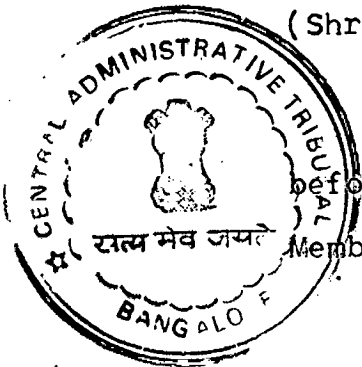
(Shri M. Sreerangaiah..... Advocate)

This application having come up for hearing
before this Tribunal to-day, Hon'ble Shri P. Srinivasan,
Member (A), made the following :-

O R D E R

In this application made under Section 19
of the Administrative Tribunals Act, 1985, the applicant
challenges an order dated 18.2.1987 (Annexure-D to
the application) by which his services were terminated

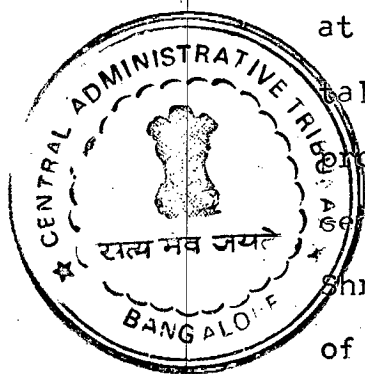
P. Srinivasan



with immediate effect.

2. Shri S.M.Babu, learned counsel for the applicant, made the following submissions:

The applicant joined the South Central Railway (SCR) on 22.9.1978 as Extra Labourer (ELR) on daily wages. On 19.7.1979, he was appointed on monthly basis, instead of on daily wage basis. He continued to be a temporary employee after this date. In 1986, he was sent for a special medical examination and declared unfit on the basis of that examination for all categories of posts in the railway. As a result, the impugned order was passed terminating his services. According to Shri Babu, the applicant had in fact undergone a medical examination on 15.3.1979 itself before he was given the status of a monthly salaried temporary khalasi. He had passed the medical examination at that time. The respondents had initiated disciplinary proceedings against the applicant alleging that he had passed the medical examination held on 15.3.1979 through impersonation, as the left thumb impression taken at the time of the medical examination did not tally with his own left thumb impression. These proceedings were pending when the applicant was sent for special medical examination in 1986. Shri Babu urged that without deciding the charge of impersonation, the applicant should not have been sent for special medical examination and

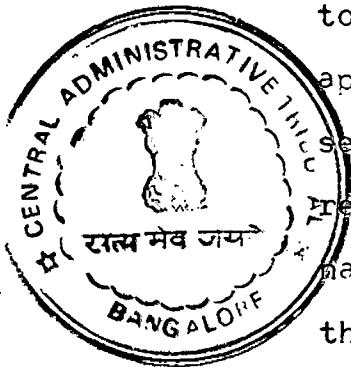


P. J. - 4a

his services ought not to have been terminated as a result thereof. In these circumstances, the termination of the services of the applicant on the alleged ground that he had been declared medically unfit for all categories of posts was violative of Article 311 of the Constitution.

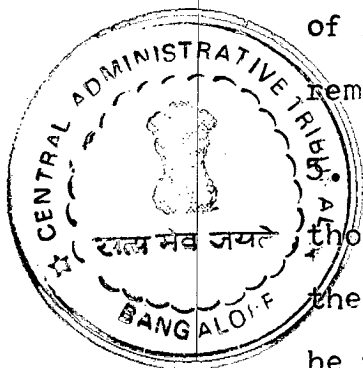
3. Shri M. Sreerangaiah, learned counsel for the respondents, opposed the contentions of Shri Babu. He submitted that when the applicant was found medically unfit for all categories in 1986, the respondents had no other alternative but to terminate his services. Unfortunately, the applicant was not a substantive employee of the Government, and for this reason, he could not be given any benefit like pension and gratuity. So far as the disciplinary proceedings were concerned, it was within the discretion of the departmental authorities to continue with them or to drop them. When the applicant was found medically unfit, and his services had to be terminated for that reason, the respondents saw no point in continuing the disciplinary proceedings, and so dropped them. The fact that the applicant was declared unfit had nothing to do with the charge levelled against him in the disciplinary proceedings, and therefore, the question of violating Article 311 did not arise.

4. We have considered the rival contentions carefully. Shorn of all details, the point at issue here is whether when a person is declared



P. S. - 112

medically unfit for the post he is holding, and for all other posts, he has a right to continue in service. The answer has to be in the negative. The circumstances in which he was subjected to the medical examination are not strictly relevant for the purpose. No doubt, disciplinary proceedings were initiated alleging impersonation at the time of the earlier medical examination in 1979. But, independently, the authorities could certainly order a special medical examination of the applicant if they suspected that he did not fulfil the medical requirements. In order to enable them to send him for a special medical examination, it was not, therefore, necessary that the enquiry into the charge of impersonation should have been first completed. It is trite that if at any time the Head of an organisation feels that an employee may not be medically fit for employment, he can send him for special medical examination, and that is what happened in this case. The question of Article 311 being violated, does not even remotely arise in this case.



Shri Babu made a submission that even though in the medical examination held on 8.4.1986, the applicant was declared unfit for all categories, he was continued in service till 15.10.1986 after which date he was kept under suspension. His

P. Srinivas

services were terminated only on 18.2.1987. We do not see any relevance of this fact to the final decision of this case. If the respondents chose to continue the applicant in service for a short period even after he was medically declared unfit, it does not mean that they should retain him for all time. They were perfectly within their rights to terminate his services on the ground of his being found medically unfit. With all the sympathy towards the applicant, we find nothing illegal in the impugned order terminating the services of the applicant. We have, therefore, no alternative but to dismiss the application.

6. The application is dismissed. Parties to bear their own costs.



Sd/-

(K.S. PUTTASWAMY)
VICE-CHAIRMAN

Sd/-

(P. SRINIVASAN)
MEMBER (A)

TRUE COPY

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