

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 15 FEB 1988

APPLICATION NO 857 / 87(F)

W.P. NO. _____

Applicant

Shri Amiruddin Sarwar

To

Respondent

V/s The Divisional Railway Manager, South Central
Railway, Hubli

1. Shri Amiruddin Sarwar
Deputy Station Superintendent
8, Opposite Railway Station
Bijapur - 586 101
2. The Divisional Railway Manager
Divisional Office
South Central Railway
Hubli
Dharwad District
3. Shri M. Sreerangaiah
Railway Advocate
3, S.P. Buildings, 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 ~~SENT BY THE BENCH~~ ORDER
passed by this Tribunal in the above said application on 5-2-88.

RECEIVED

Diary No. 1711/SR/85

Date: 16.2.88

Encl : As above

DEPUTY REGISTRAR
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE

DATED THIS THE 5TH DAY OF FEBRUARY, 1988

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

APPLICATION NO. 857/1987

Shri Amiruddin Sarwar,
S/o Shaikh Muhammad Sarwar,
Station Superintendent,
South Central Railway,
Bijapur.

.... Applicant.

v.

The Divl. Railway Manager,
Divisional Office,
South Central Railway,
Hubli.

.... Respondent.

(M. Sreerangaiah, Advocate)

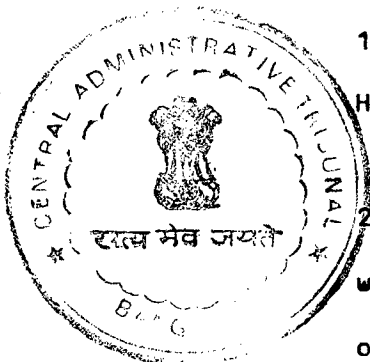
This application having come up for hearing to-day, Vice-Chairman made the following:

O R D E R

In this application made under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged order No.H/P 94/630 dated 24/26.6.1987 (Annexure-E 1) of the Divisional Railway Manager, S.C.R., Hubli ('DRM') and Order No. H/T 348/II/BJP/80 dated 12/29.8. 1986 (Annexure D) of the Divisional Operating Superintendent, S.C.R., Hubli ('DOS').

2. On the material date, i.e., 22.6.1986, the applicant was working as Deputy Station Superintendent at Bijapur Railway Station of S.C.R. On that day, Train No.3403 A was stated to have detained at that railway station for 155 minutes.

3. In that connection the DOS commenced disciplinary proceedings against the applicant under Rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968 ('Rules'), and served on him a statement of imputations (Charge) on 1.7.1986, which reads thus:



" On 22.6.86, while you were working as ASM at BJP station T.No. 3403 A Goods suffered a detention of 155 minutes at BJP station for shunting. The time taken for shunting is excessive."

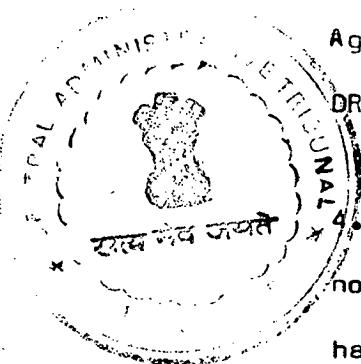
In answer to this charge, the applicant filed his detailed representation or statement on 19.7.1987 before the DOS, inter-alia, contending (i) that he was not responsible for the delay, if any, in the shunting operation of the train., (ii) that alternatively the time taken for shunting operation was unavoidable and inevitable. On the grounds urged therein the applicant urged the DOS to drop the disciplinary proceedings against him.

3. On an examination of the charge, the reply and the statement of imputations, the DOS on 12/29.8.1986 (Annexure-D) inflicted the penalty of withholding of his increment for a period of 3 months. Aggrieved by this order, the applicant filed an appeal before the DRM, who on 24/26.6.1987 had dismissed the same. Hence this application.

4. Shri Amiruddin Sarwar, the applicant contends that the DOS had not applied his mind to the grounds urged by him in his statement and had made an arbitrary and mechanical order in contravention of the Rules and the principles of natural justice and such a defect in that order should not have been upheld by the DRM.

5. Shri M. Sreerangaiah, learned counsel for the respondents, sought to support the impugned orders.

6. In answer to the charge levelled against him, the applicant filed his detailed statement urging more than one ground in support of his case. But the DOS rejected them by one word 'not accepted',

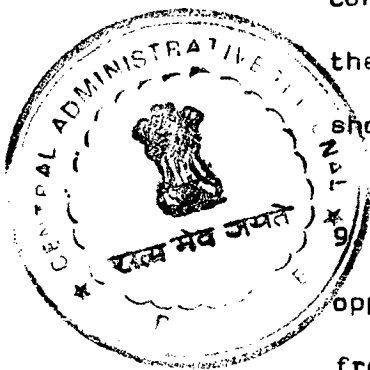


that too, using a cyclo-styled form. Without any doubt, the DOS ^{made} had his order without application of ~~his~~ mind, arbitrarily and mechanically. Even otherwise also the DOS in not examining any one of the grounds urged by the applicant and recording his findings thereon, had not made a speaking order as is mandatorily required under the rule 11 of the Rules and the principles of natural justice, the true scope of which has been explained by the Supreme Court in a large number of cases.

7. When the order made by the DOS was not a speaking order and was arbitrary, the DRM should have normally remitted the matter to the original authority without examining the matter as if he was the original authority. We are also of the view that the DRM had not also adequately dealt with all the contentions urged by the applicant in support of his appeal.

8. On the case pleaded in the charge and the defence urged by the applicant thereto, the matter undoubtedly calls for a detailed examination by the DOS in the first instance. This requirement is all the more necessary in imposing a minor penalty which does not contemplate a regular inquiry as in major penalties. We are, therefore, of the view that this is a fit case in which the matter should be remitted to the DOS for a fresh determination.

Under the Rules, the applicant is not entitled for an opportunity of oral hearing. But the Rules do not prohibit the DOS from affording an opportunity of oral hearing. By giving such an opportunity of oral hearing to the applicant, the interests of justice would only be advanced and would not be defeated. Whether such an opportunity of oral hearing should be given or not is a matter for the DOS to examine and decide.



10. In the light of our above discussion, we allow this application, quash the impugned orders and direct the DOS to restore the proceedings to its original file and re-determine the case in accordance with law, and the observations made in this order.


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

Sd/-
Vice-Chairman
5/2/1962

Sd/-
Member (A)

bsv/Mrv.

TRUE COPY


DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE