

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE TWENTIETH DAY OF MARCH, 1987

Present : Hon'ble Shri Ch.Ramakrishna Rao Member(J)

Hon'ble Shri P.Srinivasan Member(A)

APPLICATION NO. 1005/86(T)

R.Madaiah,
No.1848,7th Cross,
Ashokapuram,
Mysore

...

APPLICANT

(Dr.Biligiri Rangaiah

...

Advocate)

V.

Abdul Basith
Inquiring Authority & APO,
Mysore Southern Railways,
Workshop, Ashokapuram,
Mysore.

The Works Manager,
Mysore Southern Railways,
Workshop, Ashokapuram,
Mysore.

The Deputy Chief Personnel Officer,
Personnel Branch, Southern Railways,
Madras-3.

The Asst.Personnel Officer,
(General Personnel Branch),
Southern Railways,
Madras-3.

The General Manager,
Southern Railways,
Madras.3.

...

RESPONDENTS

(Shri A.N.Venugopal

...

Advocate)

This application has come up before the court today.

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

O R D E R

This application was initially filed as a writ petition in the High Court of Karnataka and subsequently transferred to this Tribunal. The facts giving rise to the application are briefly as follows : Memorandum dated 9.1.1981('Memo' for short),



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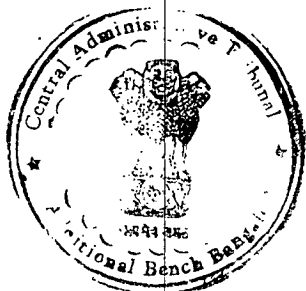
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(Annexure-A) was issued by the Works Manager, Mysore Southern Railway Workshop, Southern Railway(R-2) to the applicant proposing to hold an enquiry under rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1980^{W.A.}(for short, THE RULES). The charge levelled against the applicant in the Memorandum was that on 5.1.1981 at about 1.30 p.m. the applicant, who was at that time working as skilled artisan assaulted the Chargeman Shri N.Hutchaiiah and tore his clothes in the shop premises. The proceedings culminated in an order of removal from service dated 15.4.81 passed by R-2. Against this order, the applicant preferred an appeal to the appellate authority, namely, the Chief Workshop Engineer whose decision rejecting the same was communicated to the applicant by the Deputy Chief Personnel Officer (R-3) by his letter dated 15.10.81. The applicant preferred a revision petition to the General Manager, Southern Railway, who in his order dated 8.3.1982 also rejected the same. Aggrieved by these orders, the applicant has filed this application.

2. Dr.Biligiri Rangaiah, learned counsel for the applicant, raised before us several contentions, but it is sufficient for the disposal of this application to deal with two of them.

3. The first contention of Dr.Rangaiah is that the Enquiry Officer(EO)(R-1) has not acted in conformity with rule 9(12) of the Rules, which reads as follows:-

"(12) The inquiring authority shall, if the railway servant fails to appear within the specified time or refuses or omits to plead, require the 'Presenting Officer', if any, to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the railway servant may for the purpose of preparing his defence give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow for the discovery or production of any documents



W.A.

which are in possession of Railway Administration but not mentioned in the list referred to in sub-rule (6)"(emphasis supplied).

Dr. Rangaiah developed his arguments thus : the EO called upon the applicant to appear before him on 3.3.1981. On that date, the applicant handed over a letter to the Enquiry Officer (EO) which has been extracted in para 4 of the reply on behalf of the respondents in the following terms:

"Due to your Department Enquiry is not satisfy for me, hence I request to you, kindly you are sending the court my case please and oblige".

The EO should have applied his mind to the contents of the letter handed over to him by his client and acted in terms of sub-rule 12 of the Rule which he did not do. The proceedings were, therefore, vitiated.

4. Shri A.N. Venugopal, learned counsel for the respondents, on the other hand, vehemently contends that there has been no violation ^{of} rule 9(12) of the Rules by the EO. According to Shri Venugopal this rule envisages two contingencies, namely (i) failure to appear within the specified time; (ii) refusal or omission to plead on the part of the delinquent; and in these contingencies the rule does not disable the EO from holding the proceedings ex parte and examining the witnesses, as he did in the present case. Shri Venugopal maintains that the EO had only to refrain from passing the order for a period of 30 days within which period it is open to the delinquent to move the EO, if he so desired. In the present case, Shri Venugopal ^{further} maintains, that the Enquiry report was actually submitted by the EO only on 31.3.81 i.e., 28 days after the proceedings commenced. Shri Venugopal also calls in aid Rule 9(23) of the Rules which empowers the EO to hold the enquiry ex parte in circumstances, such as the present case. Shri Venugopal also invites our attention to the note recorded by the EO on 3.3.81



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before setting out the statement of witnesses recorded by him. According to Shri Venugopal, this note should be taken, for all intents and purposes, as application of the mind of the EO to the letter handed over to him by the delinquent and constituting full compliance with the provisions of rule 9 (12) of the Rules.

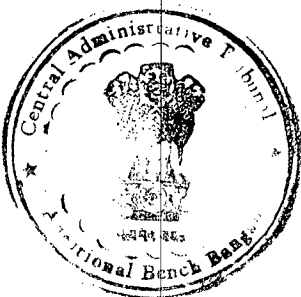
5. We have carefully considered the rival contentions. On a plain reading of rule 9(12), it is manifest that the EO is required to do three things:

- 1) calling upon the presenting officer to produce evidence in support of articles of charge;
- 2) adjourning the case to a later date not exceeding 30 days; and
- 3) ordering that the delinquent may give notice for the discovery and production of documents.

The note recorded by the EO to which our attention has been drawn, is not, in our view, sufficient compliance with the provisions contained in rule 9(12) of the Rules as it makes no mention of any of the three requirements of rule 9(12). In our view, this provision ^{is} ~~to be~~ mandatory because rule 9(1) says in clear terms, *And* that no order imposing any of the penalties shall be made except after holding enquiry in the manner provided for in that rule.

6. The object and purpose of rule 9(12) of the Rules are amply clear from the language and tenor employed. It envisages action on the part of the EO so as to conform to the fundamental rules of natural justices. Further, on the facts in this case, ^{a letter} ~~the~~ was handed over by the applicant to the EO on 3.3.81 disclosing the ground on which he wanted the proceedings to be adjourned, namely, that the matter should be sent to a court of law instead of holding disciplinary proceedings. We have no doubt that it was competent for the EO to take a view in the matter or he could have referred it to higher authorities and sought directions,

And



if he considered it necessary but without disposing of the application a decision on his part to ^{hold with} proceed with the proceedings ^{with} ex parte is clearly in violation of not only of the principles of natural justice but also the specific provision embodied in rule 9(12).

7. Turning to the submission of Shri Venugopal that the EO is competent to hold the proceedings ex parte, there is no doubt whatever that such a power is vested in the EO by rule 9(23), but, as already observed by us, the matter had not gone beyond the stage of preliminaries to the stage of actually conducting the inquiry.

8. The second contention of Dr.Rangaiah is that the disciplinary authority was himself biassed against his client in as much as while passing the order imposing the penalty he imported his personal knowledge of the events alleged to have occurred on 5.1.1981 by observing -
" I have seen him in his torn shirt and banian".

9. Shri Venugopal submits that there was no bias whatever on the part of the disciplinary authority in the observation made by him which was only casual in nature and was not the foundation of the order which was passed on merits. Shri Venugopal strongly contends that the appellate authority, in any case, considered the matter dispassionately and in view of this, the plea regarding the so-called bias raised by the applicant and urged on his behalf by Dr.Rangaiah has lost its validity.

10. We do not intend to examine the merits of the contentions urged on behalf of the applicant, including the second, in the view we have taken on the first contention. We accordingly, allow this application and quash the order of the disciplinary authority dated 15.4.81(Annexure-D), that of the appellate



End

authority dated 15.10.81(Annexure-E) and of the review authority dated 8.3.82(Annexure-Y).

11. In the result, the application is allowed but in the circumstances, we make no order as to costs.



Sd/-
MEMBER(JM) 20.3.87

Sd/-
MEMBER(AM) 20/3/87

- True copy -

B. V. Venkatesh Reddy
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE FIRST DAY OF DECEMBER 1987

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

CONTEMPT OF COURT APPLICATION NO.38/87

R. Madaiah,
NO.1848, 7th Cross,
Ashokapuram, Mysore

.. Complainant

v.

The Asst. Personnel Officer,
Mysore Southern Railway Workshop,
Ashokapuram, Mysore.

The Works Manager,
Mysore Southern Railway Workshop,
Ashokapuram, Mysore.

The Deputy Chief Personnel Officer,
Personnel Branch,
Southern Railway, Madras-3.

The Asst. Personnel Officer,
Central Personnel Branch,
Southern Railway, Madras-3.

The General Manager,
Southern Railway, Madras-3.

.. Contemners

(Shri A.N. Venugopal . Advocate)

This petition came before the Tribunal today for hearing.

Hon'ble Vice-Chairman made the following:

O R D E R

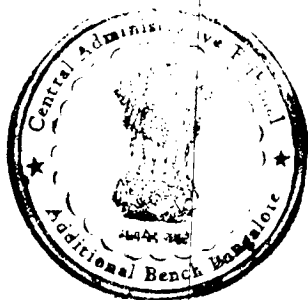
Case called. Petitioner and his learned counsel are absent.
Contemners by Shri A.N.Venugopal.

In this petition made under Section 17 of the Administrative
Tribunals Act, 1985 and the Contempt of Courts Act, 1971 (the Act)
the petitioner has moved this Tribunal to punish the Contemners
for wilful disobedience of the order made by this Tribunal on
20.3.1987 in Application No.1005/86(F).

In the order made on 20.3.1987 this Tribunal quashed orders



passed by the Disciplinary Authority and Appellate Authority imposing the punishment of removal from service on the applicant, which necessarily meant that the Contemners were bound to reinstate him to service. In pursuance of the said order of the Tribunal, which has been affirmed by the Supreme Court on 16-11-1987, the Contemners had with utmost expedition that is on 21-11-1987 had directed the reinstatement of the applicant to service. From this it follows that the order of this Tribunal stands complied. If the order of this Tribunal has been complied, then the question of our further proceedings against the contemners does no longer arise and these contempt of Court proceedings are liable to be dropped. We, therefore, drop these contempt of Court proceedings. But, in the circumstances of the case, we direct the parties to bear their own costs.



Sd/-
VICE-CHAIRMAN+ 1987
11/12

Sd/-
MEMBER(A)

- True copy -

bsv

By *[Signature]*
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
8/12

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 8-12-87

CONTEMPT OF COURT APPLICATION NO 38 /87 ()
IN APPLICATION NO. 1005/86(T)
W.P.No. _____

APPLICANT

Vs

RESPONDENTS

Shri R. Madaiah

To

The Asst. Personnel Officer, Southern Railway,
Mysore & 4 Ors

1. Shri R. Madaiah
No. 1848, 7th Cross
Ashokapuram
Mysore
2. The Assistant Personnel Officer
Southern Railway Workshop
Ashokapuram
Mysore
3. The Works Manager
Southern Railway Workshop
Ashokapuram
Mysore
4. The Deputy Chief Personnel Officer
Personnel Branch
Southern Railway
Madras - 3
5. The Asst. Personnel Officer
Central Personnel Branch
Southern Railway
Madras - 3
6. The General Manager
Southern Railway
Park Town, Madras - 3

7. Shri A.N. Venugopal
Advocate
No. 12, II Floor, S.S.B. Mutt Bldg.,
Tank Bund Road
Bangalore - 560 009

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER ~~xxx~~ / Contempt of Court
~~IN ORDER~~ passed by this Tribunal in the above said application
on 1-12-87

RECEIVED

Diary No. 1482/CL-12

Date: 12-12-87

Encl: as above.

R. Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)