

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH  
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Commercial Complex(BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 17 MAR 1988

APPLICATION NO 19 / 87(F)

W.P. NO. /

Applicant

Shri M. Ramachandra Rao

To

Respondent

V/s The Sr. Divisional Operating Supdt,  
Transportation Br, Southern Rly, Bangalore  
& another

1. Shri M. Ramachandra Rao  
C/o Dr M.S. Nagaraja  
Advocate  
35 (Above Hotel Swagath)  
1st Main, Gandhinagar  
Bangalore - 560 009

2. Shri S.K. Srinivasan  
Advocate  
35 (Above Hotel Swagath)  
1st Main, Gandhinagar  
Bangalore - 560 009

3. The Senior Divisional Operating  
Superintendent  
Transportation Branch  
Southern Railway  
Bangalore - 560 023

4. The Divisional Personal Officer  
Personnel Branch  
Southern Railway  
Bangalore - 560 023

5. 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 ~~SENT BY THE BENCH~~  
passed by this Tribunal in the above said application on 16-3-88.

Encl : As above

DEPUTY REGISTRAR  
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE

DATED THIS THE SIXTEENTH DAY OF MARCH, 1988

Present : Hon'ble Sri L.H.A.REGO

MEMBER (A)

Hon'ble Sri Ch. RAMAKRISHNA RAO

MEMBER (J)

APPLICATION NO. 19/1987(F)

M.Ramachandra Rao,  
C/o Dr.M.S.Nagaraja,  
Advocate, No.35, II Floor,  
(Above Hotel Swagath),  
1st Main, Gandhinagar,  
Bangalore - 9.

Applicant

( Sri S.K.Srinivasan ... Advocate )

vs.

1. Senior Divisional Operating  
Superintendent, Transportation  
Branch, Southern Railways,  
Bangalore - 23.

2. Divisional Personal Officer,  
Personnel Branch, Southern Railway,  
Bangalore - 23.

Respondents

( Sri M.Srirangaiah ... Advocate )

This application has come up before the court today.

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

ORDER

The applicant is a Station Master in the Southern Railway, Bangalore. A memorandum dated 6.2.1986('memo', for short) was issued by the Senior Divisional Operating Superintendent, Bangalore(R1) under Rule 9 of the Railway Servants(Discipline and Appeal) Rules, 1968('Rules', for short) levelling against him the following charges relating to his service as Assistant Station Master at Whitefield, Bangalore from 15.9.1970 to 4.4.1982 :

"Sri M.Ramachandra Rao, while working as Assistant Station Master/Whitefield, Bangalore during the period from 15.9.1970 to 4.4.1982, failed to maintain devotion to duty in that-



*af*

"He re-booked three EG wagons of coal from Whitefield to Malur on 23.9.1981 which were originally booked from Tumkur to Whitefield, Bangalore without obtaining previous permission from Divisional Office contravening Rule no. 153(7) of the Indian Railway conference (IRCA) Goods Tariff evidently with a motive to help the consignee".

He denied the charge in his reply dated 20.3.1986. Thereafter an inquiry was held. The Inquiry Officer(10) submitted his report dated 31.3.1986 wherein he held that the charge was established. On the basis of this report R1 passed an order dated 18.6.1986 imposing on the applicant penalty of reduction of his pay from Rs.675/- to 630/- per mensem for a period of three years and postponing future increments on restoration. The applicant preferred an appeal to the Divisional Personnel Officer, Bangalore (R2) who confirmed the penalty imposed by R1. Aggrieved by the orders of R1 and R2, the applicant has filed this application.

2. Sri M.Srirangaiah, learned counsel for the respondents, raised a preliminary objection regarding the maintainability of the application. Sri Srirangaiah invited our attention to Section 20 of the Administrative Tribunals Act, 1985(Act) which places an embargo on the admission of an application by this Tribunal unless the applicant has availed of all the remedies provided under the relevant service rules as to redressal of grievance. According to Sri Srirangaiah, Rule 25 of the Rules provides for revision <sup>and</sup> ~~and~~ <sup>and</sup> review by the Divisional Railway Manager, Southern Railway against the order passed by R2 and the same has not been availed of by the applicant and therefore Section 20 of the Act operates as a bar to the maintainability of this application.

3. Sri S.K.Srinivasan, learned counsel for the applicant, submits that his client has the option to avail of the remedies of revision and review for which is made in Part VI of the Rules <sup>provision</sup> ~~at~~ which is not to be treated <sup>at</sup> par with the remedy of appeal.

According to Sri Srinivasan the embargo operates only in respect of the remedy of appeal but not the remedies of revision and review.

4. We do not consider it necessary for the purpose of this case to consider the question whether the applicant should exhaust the remedy of review and revision before approaching this Tribunal for relief since Section 20 of the Act only says : "an application shall not be 'ordinarily' admitted". It is implicit in the language of Section 20 of the Act that if special circumstances are present in a particular case this Tribunal has the discretion to admit the appeal. We notice from the memo that the gravamen of the charge is regarding re-booking of three BG wagons of coal on 23.9.1981 by the applicant. Since the incident is more than six years old, we do not consider it expedient to prolong the career of the proceedings by directing the applicant to exhaust the remedy of revision. We, therefore, overrule the preliminary objection raised by Sri Srirangaiah.

5. Sri Srinivasan strenuously contended that the charge levelled against his client in the memo has no basis. He developed his argument thus : Rule 153(7) of the IRCA envisages sanction from the District/Divisional Officer being obtained under any circumstances before re-booking the wagon loads. Previous sanction does not necessarily mean previous written permission. The applicant had taken permission on telephone from the Divisional Officer before rebooking wagon loads and he used to adopt this method even on earlier occasions without any objection being raised. The memo was issued in 1986 long after the occurrence of the incident in 1981 and the inquiry was conducted in a perfunctory manner. R1 & R2 were not, therefore, justified in acting on the report of the IO and imposing on him the penalty in the manner they did.



6. Sri Srirangaiah refutes the contentions of Sri Srinivasan as follows : The applicant was bound to act in conformity with Rule 153(7) of IRCA and obtain sanction in writing from the Divisional Officer before rebooking the wagon loads. There is nothing on record to show that the applicant had obtained oral permission on telephone before wagons were rebooked and got it ratified later. The fact that the incident relates to 1981 does not in any way disable R1 from issuing the memo. The procedure outlined in the Rules for holding an inquiry has been followed and there is no violation of any of the provisions contained in the Rules. The application, therefore, deserves to be dismissed.

7. We have considered the rival contentions carefully. The bare circumstance that the incident referred to in the memo relates to the year 1981 does not in any way vitiate the holding of proceedings under the Rules. We, therefore, see no substance in this submission of Sri Srinivasan.

8. The controversy in this case centres round the scope and content of Rule 153(7) of IRCA and the precise connotation of the phrase "previous sanction". The meaning of sanction as given in Chamber's 20th Century Dictionary, 1983 edition, in so far it is relevant for the present discussion, is : 'act of ratifying or giving authority; confirm; support; permission; countenance-v.t. to give validity to; to authorise; to countenance'. It is thus clear, that obtaining of oral permission on the phone by the applicant was not objectionable but the same <sup>had</sup> ~~will have~~ to be, however, confirmed or ratified by the competent authority is, the Divisional Officer. In other words ex post facto sanction to permission already granted orally is countenanced by Rule 153(7) of IRCA. In the present case, no material has been placed before the IO, to substantiate the conten-

*had*

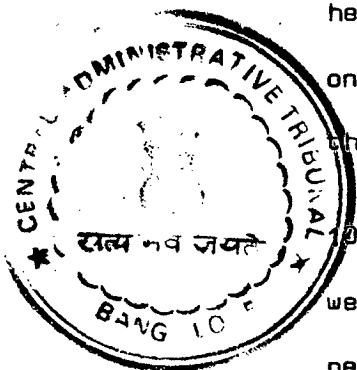
tion that permission had been obtained on phone by the applicant which was later ratified by the competent authority. In the absence of anything to demonstrate the act of ratifying, the bare assertion of the applicant that he obtained permission on the telephone is not acceptable and will not amount to sufficient compliance with the provisions contained in Rule 153(7) of IRCA. We, therefore, confirm the finding of the IO, which was acted upon by R1 and R2.

9. Sri Srinivasan pleads, in the end, for reduction of penalty on three grounds. The first is, the endorsements on the RR to which the IO had referred in his report <sup>which reads</sup> as follows : *Ans*

"The perusal of records, ie., the relevant RR, Inv.No.1 dated 23.9.81, it is seen that Sri M. Ramachandra Rao, the then ASM/WFD while rebooking the said wagons to MLO, had clearly made an endorsement on the RR as follows "Originally booked under Inv.1 and 2, RR Nos. 135730 and 135731 of 10.9.81 ex. TK to WFD. Rebooked to MLO as per party's request. Original RRs collected here."

The omission to obtain the written permission of the Divisional Officer was not, therefore, deliberate but was the result of ignorance of the procedure. The second is that no financial loss has been attributed to his client, flowing out of the omission on the part of his client. The third is that in so far as the charge related to the motivation on the part of his client to help a consignee, it has not been established. Sri Srirangaiah on the other hand submits that the penalty is commensurate with the gravity of the charge.

10. After careful consideration of the rival contentions, we are of the view that the ends of justice would be met if the penalty of reduction of pay of the applicant from Rs.675/- to 630/- per mensem recurring for a period of three years from 1.7.1986 is modified without postponing future increments on restoration at the end of the aforesaid period. Accordingly, we modify and reduce the penalty.



11. In the result the application is disposed of on the lines indicated above. Parties shall bear their own costs.

Sd/-

MEMBER (A)

V. 16-3-988

Sd/-

MEMBER (J)

16-3-88

an.

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*B. V. Venkatesh*  
DEPUTY REGISTRAR (JDL)  
CENTRAL ADMINISTRATIVE TRIBUNAL 17/3  
BANGALORE