

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
.....

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

Dated: 4-1-88

APPLICATION NO 396 / 87 (F)

W.P.No. _____

APPLICANT

Vs

RESPONDENTS

Narayan Dattatraya Mutalik
To

General Manager, South Central
Railway, Secunderabad

1. Sh Narayan Dattatraya Mutalik,
C/O Smt KD Mutalik,
J.G. Hospital, Ghataprabha,
Distt. Belgaum.
2. General Manager,
South Central Railway,
Secunderabad.
3. Sh Ram M. Apte, Advocate,
1668/3, Ramling Khind,
Belgaum.
4. Sh KV Lakshmanachar, ~~Sh M. Sreerangachar,~~
Railway Advocate,
~~High Court Buildings, Bangalore-1~~
No. 4, SH Block
Brand Square Police Quarters
Mysore Road
Bangalore - 560002

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclbdsd herewith the copy of ORDER/~~XXXX~~

~~INTERIM ORDER~~ passed by this Tribunal in the above said application
on 15-12-1987.

RECEIVED

Diary 1588/K.A.1/87

Date: 7.1.88 AV

Encl: as above.

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
(JUDICIAL) ADDITIONAL BENCH
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE

DATED THIS THE 15TH DAY OF DECEMBER, 1987

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

APPLICATION NO. 396/1987

Shri Narayan Dattaraya Mutalik,
Ex. Rly. employee,
C/o. Smt. K.D. Mutalik,
J.G. Hospital, Ghataprabha,
Dist. Belgaum.

..... Applicant.

(Shri Rama M. Apte, Advocate)

v.

General Manager,
S.C. Railway,
Secunderabad.

..... Respondent.

(Shri K.V. Laxmanachar, Advocate)

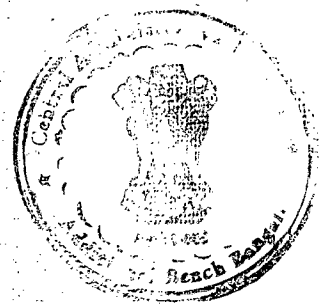
This application having come up for hearing to-day, Vice-Chairman made the following:

ORDER

This is an application made by the applicant under Section 19 of the Administrative Tribunals Act, 1985 ('the Act').

2. The applicant was initially engaged as a "casual labourer" in the office of the Permanent Way Inspector ('PW'), Kudachi unit of Hubli Division of the South Central Railway ('SCR'). He claims that he was asked to perform his duties at the office of PWI, Belgaum from December, 1982 to February 1986, which is denied by the respondents.

3. The respondents, however claim that the applicant absented himself from duty unauthorisedly at Kudachi from 7.2.1986 till 28.8.1986. On this basis, the Assistant Engineer, Belgaum ('AE') by his memo No. STR/8/N.D.M. dated 28.8.1986 (Annexure-8) had declared



that the applicant had ceased to be in service from 8.5.1986 AN. On this order, the applicant made representation to the AE who advised him to file an appeal before the Divisional Engineer, Hubli ('DE'). In pursuance of the same, the applicant filed an appeal before the DE, who on 7.1.1987, had rejected the same. Hence this application challenging the said orders on diverse grounds, which will be noticed and dealt by us in due course.

4. In justification of the impugned orders the respondents have filed their reply to which the applicant has also filed a rejoinder.

5. Shri Ram. M. Apte, learned Counsel for the applicant, contends that the termination of his client by the AE, assuming for purposes of argument that the reasons stated therein were correct, then also the impugned orders without complying with the requirements of the Railway Servants (Discipline & Appeal) Rules, 1968 ('the Rules'), was illegal and invalid on which basis we should quash the impugned orders and direct the authorities to reinstate applicant with all backwages.

6. Shri K.V. Laxmanachar, learned Counsel for the respondents, in justifying the impugned orders, contends that in the absence of the AE and DE, who were necessary parties to the proceedings this application was liable to be dismissed in-limine. In the very nature of things, it is first necessary to examine this preliminary objection of Shri Achar and then the merits, if that becomes necessary.

7. The General Manager ('GM') who had been impleaded as the sole respondent, was the Head of the entire zone and any order made against him can be effectively implemented by him and all his subordinates including the AE and the DE, who have made the impugned orders. Both of them are indisputably subordinates to the GM. If that is so, then it cannot be said that the AE and the DE are necessary parties and in

their absence there cannot be an effective adjudication of the questions that arise on the case. We are of the view that they are only proper parties and not necessary parties to this application. We see no merit in this contention of Shri Achar and we reject the same.

8.. The effective order made by the AE on 28.8.1986 containing the reasons for the removal of the applicant from service, which has been affirmed in appeal/representation made by him reads thus:

" Sub: Unauthorised Absence for more than 90 days.

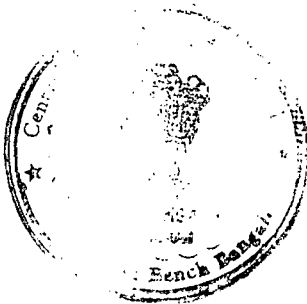
...

You being a temporary employee has remained absent from duty without proper authority from 7.2.86 to till date for a period of more than 3 months, and hence, you are deemed to have ceased to be in Railway Service in terms of Note No.2 below exemption (II) to Rule No.732 of Indian Railway Establishments Code Volume I.

Hence, you ceased to be in the Railway Service under the control of the undersigned in the capacity of C.P.C. Khalasi (the post lastly held by you) and resigned your post with effect from 8.5.1986 A.N.

You have to hand over to PWI/KUD all Railway property if any, in your possession and advise Sr. Divisional Personnel Officer, Hubli as to how you wish to receive the payment of your dues if any, from the Railways.

You have to vacate the Railway Quarters, if any under your occupation and if you fail to vacate the same, you will be treated as tress passes and shall be liable to pay damage to such unauthorised and wrongful occupation of the same."

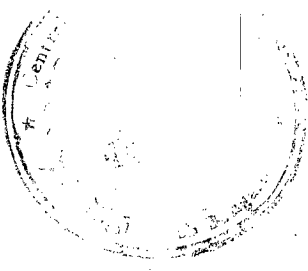


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Before removing the applicant from service for the reasons stated in this order on which we express no opinion, it is crystal clear that there was no inquiry under the Rules. In the reply also, the respondent do not dispute the same. The records only confirm this position.

9. The removal of the applicant was on the ground of an alleged misconduct and was not a termination simpliciter in terms of a contract. In the former Article 311 of the Constitution the Rules and the principles of natural justice require framing of a charge, an inquiry and an order thereto under the rules is now well settled and does not require a reference to authorities.

10. In the circular instructions and the "Note" appended to rule 732 of the Indian Railway Establishment Code (Vol.II) the above legal position, namely that before removing a railway servant, whether temporary or permanent, there should be compliance with the requirements of the Rules is not at all dispensed with. On the other hand, the circular instructions and the Note, if carefully read, reiterate the above legal position and declare that before removing a person, whether temporary or permanent, the requirements of the Rules must be scrupulously adhered to. Without any doubt, the orders made by the AE and the DE which are in contravention of Article 311, the rules and the circular instructions are illegal and liable to be set aside, with liberty reserved to the authority to hold an inquiry, and pass appropriate orders in accordance with law.



11. When once we hold that the orders are liable to be set aside, it follows from the same that we should ordinatorily direct the respondents to reinstate the applicant to his original post.

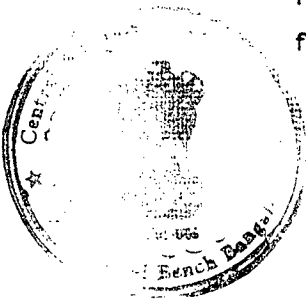
12. Whether the applicant had worked prior to 28.8.1986 at a different place with proper authority thereto as asserted by him or not, has necessarily to be examined and decided by the authority in the very inquiry to be held thereto or in a separate proceeding as the case may be. We cannot obviously decide that question, for more than one reason and we leave that question open.

13. In all cases, wherever public servants have not rendered public duties, this Tribunal has consistently denied salaries to such persons. We see no justification to depart from that salutary principle in the case of the applicant and extend him salaries at any rate from 28.8.1986.

14. Shri Achar prays for atleast one month's time to comply with the direction for reinstatement of the applicant. We are of the view that this request of Shri Achar is fair and reasonable.

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

- (1) We quash order Nos.STR/8/NDM dated 28.8.1986 of the Assistant Engineer, S.C.R., Belgaum, and H/W 571/36/DEN/N/W/1 A dated 7.1.1987 of the Divisional Engineer (N), SCR, Hubli.



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- (2) We direct the respondent and his subordinates to reinstate the applicant to the post he held as on 28.8.1986 at such place as there is a vacancy for such a post with all such expedition as is possible in the circumstances of the case, and in any event, within a period of one month from this day denying him all backwages from 28.8.1986 to the date he is actually reinstated to service.
- (3) We direct the period from 28.8.1986 till he is reinstated to service be treated as 'dies non', without treating the same as a break in service.
- (4) We leave open the claim of the applicant for salary prior to 28.8.1986 to be decided by the competent authority.
- (5) We reserve liberty to the respondent and the competent officer of SCR to initiate and complete disciplinary proceedings against the applicant for his ~~alleged~~ ^{alleged} unauthorised absence in accordance with law and the observations made in this order.



-True Copy-

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

SECRETARY
GENERAL ADIC
ADDITL
BANARAS

Vice-Chairman

sd/-

Member (A)

15/12/87

24 no. 360/J-II/92
29.12

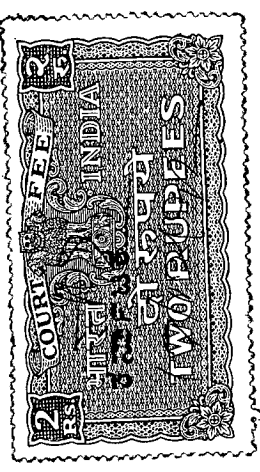
UNDER POSTAL CERTIFICATE

IN THE COURT OF THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT BANGALORE

Case No 396/87, Disposed of 15th December 1987.

1) Shri N.D.Mutalik,
Ex.C.P.C.Khalasi of S.C.Rly
Hubli Division by Shri Ram
M. Apte, Advocate
Belgaum.

Applicants



Vs

1) The General Manager,
South Central Railway,
Secunderbad.

Respondents

2) Divisional Railway Manager,
South Central Railway,
Hubli Division,
Hubli.

Sir,

I the undersigned Shri N.D.Mutalik (Applicants) state
that ,I had filed my case No 396/87 before the Central -
Administrative Tribunal for re-instate of service.

The same case has been disposed at Bangalore on 15th
December 1987. I therefore request your Honour to please
return me all my original documents by V.P.P. All my orig-
inals documents may be sent to my personal address as
given below.

ADDRESS

SHRI N.D. MUTALIK, EX.C.PL C., KHALASI,
NEAR J.G.C.H. HOSPITAL, POST J.G.C.H.
GHATAPRABHA, TO GOKAK DIST BELGAUM.

Hoping that your Honour will do needful by sending the
said original documents as early as possible.

Encl: 2 Rs. Court Stamps and
C.A.T. order (zerox) letter for
your kind reference.

Thanking you,

Date: 17.12.1992

Yours faithfully,

(N.D.Mutalik)
Applicants.

J II
b
22/12
H shown file
R
29/12
So (J II) / bmt P.M.

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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Commercial Complex(BDA),
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Dated: 4-1-88

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3. Sh Ram M. Apte, Advocate,
1668/3, Ramling Khind,
Belgaum.
4. Sh KV Lakshmanachar, Sh M.Sreerangaiah,
Railway Advocate,
High Court Buildings, Bangalore-1

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on 15-12-1987.

Encl: as above.

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
(JUDICIAL)

Dated 30th December, 1992.

XXXXXX

File of O.A.No.396/87(F)

To

Shri N.D.Mutalik,
Ex - C.P.C. Khalesi,
Near JGCH Hospital,
Post JGCH ., Ghataprabha,
Taluk Gokak,
Belgaum District.

Sub: Return of original document filed
in O.A.396/87 - in respect of

Ref: Your letter dated 17.12.1992.

Sir,

With reference to your letter dated 17.12.92
cited above, I write to state as here under

You have requested this Registry to return the
original documents produced by you in above original
application. On going through the file it is seen
that you have only filed the true copies of the
documents, and the original of the said documents
have not been filed. Hence, the question of return
of said documents does not arise. If you so wish,
you may visit this Registry within a month from this
date and inspect the case records on payment of
inspection fee.

Yours faithfully,

o/c



(R.U.BURLI)
SECTION OFFICER(J.II).

To,

Sri. N.D. Mutalik
EX - C.P.C. Khalesi
Near JGCH Hospital
Post JGCH Ghataprabha
Tq, Gokak
Dist Belgaum.

Sir,

Subj: - Return of original
document filed in
OA 396/87 - in respect of

Ref: - Your letter dt 17.12.92
with reference to your letter cited
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to return the original documents
produced by you in above original
Application. ~~While going through~~
the file it is seen that you have only
filed the true copies of the original
documents, and the original of the
said documents have not been filed.
Hence the question of return of said
documents ~~will~~ ^{does} not arise and also
the ~~correspondence~~ ^{request} regarding return
of such documents may be treated as
~~closed~~ cannot be acceded to.

If you so wish, you may visit this Registry within a month
from this date and inspect the ^{case} records on payment of
inspection fee.

Yours faithfully

(R. U. Bhusli)
So (54)

From:

Shri N. D. Melalik

Rt. Po. J. G. C. H. Hospital

Ghaciaprabha,

Tq. Gokak

Dist. Belgaum.

UNDER POSTAL CERTIFICATE

To. The Registrar,
Central Administrative Tribunal
Indira Nagar, B.D.A. Complex
BANGALORE

