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

Dated : 29 NOV 1988

APPLICATION NO. 1586/88(F)

W.P. NO.

Applicant(s)
S.V. Raman

Respondent(s)
Senior Dinl. Mechanical Engineer SCRly

To

1) Sh. S.V. Raman.
Railway Driver (Goods)
South Central Railway.
Hubli.

2) Sh. M.R. Achar,
Advocate
1074 & 1075, 4th Cross,
Srinivasanagar II Phase,
Banashankari I Stage
Bangalore-50.

3) The Senior Divisional Mechanical Engineer,
South Central Railway,
Hubli.

(4) The Divisional Railway Manager,
South Central Railway
Hubli.

(5) Sh. K.V Lakshmana Achar
Advocate
4, 5th Block,
Briand Square,
Police Quarters,
Mysore Road,
Bangalore-2

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 22-11-88.

o/c for DEPUTY REGISTRAR
(JUDICIAL)

Encl : As above

late Authority ('AA') under the Rules. On 3-9-1988 (Annexure-E) the AA on concurring with the findings of the DA and the IO on the guilt of the applicant reduced the punishment imposed on him as here-under:-

> 1.10. However, considering his age, residual service and family composition in conjunction with the magnitude of indiscipline and provocative action demonstrated by the delinquent employee in this case, the punishment is modified as under:-
>
> 1.11. He should be reduced to the status of a Fire-man-II in grade Rs.825-1200 (RSRP) and fixed at pay Rs.1180/- (Recurring) with loss of seniority.
>
> 2. Accordingly, the penalty of removal from service with effect from 30-9-1982 imposed on you vide penalty advice quoted vide reference (1) above, is reduced to that of reversion to the status of II Foreman in scale Rs.825--1200 (RSRP) on pay Rs.1180/- (Recurring) with loss of seniority.

Aggrieved by the orders of the AA and DA, the applicant has made this application before us on 3-10-1988 under Section 19 of the Act, challenging them on more than one ground.

5. In justification of the orders made, the respondents have filed their reply and have produced their records.

6. Sri M.Raghavendrachar, learned counsel for the applicant strenuously contends that the finding of the guilt recorded by the AA, DA and the IO are based on 'no evidence' and therefore, the orders of the AA and DA are illegal, improper and unsustainable.

7. Sri K.V.Laxmanachar, learned counsel for the respondents refuting the contention of Sri Raghavendrachar sought to support the orders of the authorities.

8. We have carefully examined the orders of the AA, DA and the report of the IO and the material evidence placed before the IO in support of the charge. On such examination, we find that the findings of the IO with which the DA and AA have concurred are based on admis-sible evidence. We cannot, therefore hold that the findings of the authorities are based on 'no evidence'.

9. In more than one case, we have pointed out that the power conferred on this Tribunal, at any rate, in disciplinary proceedings is one of judicial review only and not that of appeal. We are also of the view that the findings of the authorities are not so perverse that no reasonable man would have ever reached those conclusions. If that is so, then we cannot re-appreciate the evidence and come to a different conclusion as a court of appeal. From this it follows, that the finding of guilt recorded by the IO with which the DA and AA have concurred, cannot be interfered with by us.

10. Sri Raghavendrachar next contends that even the modified punishment imposed by the AA on the applicant was far too disproportionate and at the highest only called for imposition of 'censure' and we should so modify the same.

11. Sri Laxmanachar refuting the contention of Sri Raghavendrachar contends that the modified punishment imposed by the AA does not call for any modification on any ground.

12. We have earlier set out the charge levelled against the applicant which stands proved. The act complained of was one of indiscreet and improper behaviour in or around a public office and did not involve moral turpitude. By this, we are not commending the action of the applicant, but only emphasising the fact that the same should be viewed in the proper perspective punishment proportionate to the gravity of the charge imposed on the applicant, which should also be exemplary and deterrent.

13. While the DA imposed the extreme penalty of removal from service which was totally unjustified, the AA modified the same as set out by us earlier. But, in modifying the punishment we notice that the AA has not moderated the punishment commensurate with the guilt of the applicant but has used the sledge-hammer to swat a fly! We are of the view that on the very reasons by the AA, and

those noticed by us earlier and all other relevant factors, the punishment of stoppage of one increment with cumulative effect in the post he held from the date of punishment imposed by the DA would be condign in the circumstances of the case.

14. We are informed by Sri Laxmanachar that in pursuance of the order of the Appellate Authority, the applicant has not reported for duty and has applied for leave. We consider it proper to direct the competent authority to grant all such leave available at the credit of the applicant and take him on duty with all such expedition as is possible in the circumstances of the case and in any event not later than 1-12-1988.

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

1) We dismiss this application to the extent the impugned orders holds the applicant guilty of the charge levelled against him.

2) We allow this application in part and modify Order No.H/P.648/IV/103 dated 3-9-1988 of the AA as also of the DA by substituting the punishment of withholding one increment with cumulative effect from 30-9-1982. We direct the respondents to regulate the payments including recoveries and adjustments and future increments on the basis of this modified order.

3) We direct the respondents to reinstate the applicant to service at such place as considered appropriate in public interest, with all such expedition as is possible in the circumstances of the case and in any event not later than 1-12-1988.

4) We direct the competent officer to treat the absence of the applicant from 3-9-1988 to 30-11-1988 as leave admissible to him under the Rules.

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

Sd/-
VICE-CHAIRMAN.

TRUE COPY

Sd/-
MEMBER(A)

22.12.88

np/

29/11/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 22ND DAY OF NOVEMBER,1988.

Present;

Hon'ble Mr.Justice K.S.Puttaswamy, .. Vice-Chairman.

And

Hon'ble Mr.L.H.A.Rego, .. Member(A).

APPLICATION NUMBER 1586 OF 1988

Sri S.V.Raman,
Major, S/o Srinivasa Raju,
Railway Driver (Goods),
South Central Railway, Hubli. .. Applicant.

(By Sri M.Raghavendrachar,Advocate)

v.

1. Senior Divisional Mechanical Engineer, South Central Railway, Hubli.
2. Divisional Railway Manager, South Central Railway,Hubli. .. Respondents.

(By Sri K.V.Laxmanachar,Advocate)

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This application having come up for hearing this day, Hon'ble Vice-Chairman made the following:

O R D E R

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

2. Sri S.V.Raman, the applicant before us, born on 16-11-1938 joined service in the Indian Railways on 5-8-1962 as an Engine Cleaner. On so joining the service, the applicant advanced in his career and was holding the post of 'Driver-C' as on 9-6-1981 at Gadag Railway Station. On that day, the applicant is stated to have burst crackers in front of Assistant Loco Foreman's (Running) Office of the Loco Shed, Gadag thereby disturbing the serene atmosphere of

that office. On this incident, the Senior Divisional Mechanical Engineer, Hubli and the Disciplinary Authority ('DA') initiated regular disciplinary proceedings against the applicant under Rule 9 of the Railway Servants (Discipline and Appeal) Rules,1968 ('the Rules') on the following charge:

> That the said Shri S.V.Raman, Driver-C, Gadag bursted the crackers in front of ALF(R)'s office in the Loco Shed/-Gadag on 9-6-1981 at 9-00 hours, disturbing the normal working in the shed and distracting the attention of the workmen from their work, and thus committed serious misconduct thereby violating Rule 3(1)(iii) of the Railway Services (Conduct) Rules,1966.

As the applicant denied this charge, the DA appointed one Sri M.A.Swamy, Senior Loco Inspector, Hubli as Inquiry Officer ('IO') to inquire into the truth or otherwise of the charge and submit his report. In pursuance of the same, the IO held a regular inquiry and submitted his report to the DA holding the applicant guilty of the charge levelled against him.

3. On an examination of the report of the IO and the evidence on record, the DA concurring with the report of the IO by his order No.H/M.Con/SVR/81 dated 16/26-9-1982 (Annexure-B) inflicted on the applicant the penalty of removal from service with effect from 30-9-1982.

4. Without availing the legal remedy of an appeal available under the Rules, the applicant challenged the aforesaid order of the DA in the High Court of Andhra Pradesh in Writ Petition No.7047 of 1982 which was transferred to the Hyderabad Bench of this Tribunal, where it was registered as Transferred Application No.459 of 1986. On 7-10-1987 (Annexure-C) the Hyderabad Bench disposed of the same with a direction to the applicant to avail of the remedy of appeal available under the Rules within 6 weeks thereof. In pursuance of the same, the applicant filed an appeal on 16-11-1987 before the Divisional Railway Manager, South Central Railway, Hubli who is