

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 23 SEP 1988

APPLICATION NOS 134 & 182 / 88(F)

W.P. NO. _____

Applicant(s)

Shri A.N. Subramanian

To

Respondent(s)

V/s

Chief Commercial Supdt. Southern Railway,
Bangalore & 3 Ors

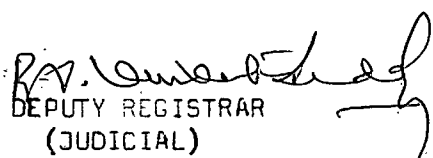
1. Shri A.N. Subramanian
118, 5th Cross Road
Someshwarpur
Ulsoor
Bangalore - 560 008
2. Shri M. Madhusudan
Advocate
1074-1075, Banashankari I Stage
Sreenivasanagar II Phase
Bangalore - 560 050
3. The Chief Commercial Superintendent
Southern Railway
Bangalore City Railway Station
Bangalore - 560 023
4. The General Manager
Southern Railway
Park Town
Madras - 600 003

5. The Senior Divisional Accounts Officer
Southern Railway
Bangalore Division
Bangalore - 560 023
6. The Divisional Personnel Officer
Southern Railway
Bangalore Division
Bangalore - 560 023
7. Shri M. Sreerangiah
Railway Advocate
3, S.P. Building, 10th Cross
Cubbonpet
Bangalore - 560 002

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 9-9-88.

Encl : As above


DEPUTY REGISTRAR
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 9TH DAY OF SEPTEMBER, 1988

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

APPLICATION NOS. 134 AND 182/88

Shri A.N. Subramanyan,
S/o Shri A. Natesh Pillai,
Major, Retd. Pensioner,
No.118, 5th Cross Road,
Someshwarpur, Ulsoor,
Bangalore.

.... Common
Applicant.

(Shri Madhusudan, Advocate)

v.

1. Chief Commercial Superintendent,
Bangalore City Railway Station,
Bangalore.

2. The General Manager,
Southern Railway,
Bangalore.

.... Respondents in
A.No. 134/88

3. Sr. Divisional Accounts Officer,
Southern Railways,
Bangalore Division,
Bangalore.

4. Divl. Personnel Officer,
Southern Railways,
Bangalore Division,
Bangalore.

.... Sl. No. 3 and 4 are
Respondents in
A.No. 182/88

Shri. M. Sreerangaiah, Advocate)

These applications having come up for hearing to-day,
Vice-Chairman made the following:

ORDER

As these applications are by one and the same applicant
and are inter-related we propose to dispose of them by a
common order.



2. Shri A.N. Subramanian, the common applicant before us, was working as Enquiry Cum Reservation Clerk (ECRC) in the Bangalore City Railway Station of the Southern Railway. On 29.2.1984 which is material, he was also the Central Vice-President of Southern Railway Mazdoor Samithi (Union). On that day the Union was stated to have published a printed pamphlet, making scurrilous allegations on the Railway Administration of Bangalore Division. On that pamphlet, the Divisional Commercial Superintendent, Bangalore Division (DCS) and one of disciplinary authorities (DA) under Rule 9 of the Railway Servants (Discipline and Appeal) Rules 1965 (Rules) corresponding to Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, by his Memorandum dated 17.4.1984, commenced disciplinary proceedings against the applicant on the charge levelled against him which reads thus:-

- 1) he had issued a pamphlet on 29.2.1984, subscribing his own name and using abusive, defamatory, derogatory and filthy language and making personal and baseless allegations against DME, DCS, DEE and DPO of the Bangalore Division and distributed the pamphlets with a view to spreading discontentment and incite workers so as to cause labour unrest and also to promote illegal subversive activities.
- 2) he had in the process misused his official position in the Reservation Office and appropriated freely the Railway material for the above purpose by using the reservation chart Form No. T411 for publishing the pamphlet in question.

In answer to this, the applicant filed his statement of defence on 9.5.1984 denying the charges levelled against him.

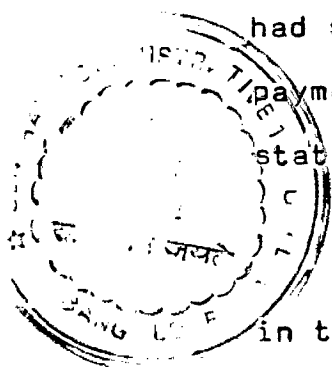
On this the DA appointed one Shri R. Krishnamurthy, who was then working as Enquiry Inspector (Vigilance), Southern Railway, Madras, as the Inquiry Officer (IO) under the Rules to inquire into the truth or otherwise of the charges and submit his report.

3. With the authority so conferred on him; the IO, held a regular inquiry into the charges and submitted his report to the DA on 25.6.1985 holding the applicant guilty of the charges levelled against him. On an examination of the report of the IO and the evidence on record the Chief Commercial Superintendent, Southern Railway, Madras (CCS) by his order made on 28.1.1986 (Annexure-A) concurring with the findings of the IO, inflicted on the applicant the penalty of compulsory retirement from service. Aggrieved by this order of the CCS, the applicant filed an appeal before the General Manager, Southern Railway and the appellate authority (AA) who by his order made on 5.8.1987 (Annexure-B) had dismissed the same. In A.No.134/88, the applicant has challenged the order of the AA & CCS and had sought for appropriate directions. In A.No.182/88 he had sought for a direction to refix his pension and for payment of arrears of pension and security deposit amounts stated to be due to him.

4. The respondents have filed their separate replies in the two cases and have produced their records.

5. We will first deal with A.No.134/88.

6. Shri M. Madhusudan, learned counsel for the applicant, contends that the removal of the applicant by an authority other than GM who alone was competent to remove him, was



illegal as ruled by a Full Bench of this Tribunal in
GAFOOR MIA AND OTHERS v. DIRECTOR DMRL AND OTHERS T.A.
NO. 47/86 AND OTHERS.

7. Shri M. Sreerangaiah, learned advocate appearing for the respondents contends that the applicant had not raised this plea in his application and cannot be permitted to urge the same at the hearing and that even otherwise, the applicant having been appointed by the then Divisional Superintendent of the erstwhile Bombay Division, who was very much lower in rank than the CCS, had been validly removed by the latter.

8. In his application, this ground, which properly falls within the meaning of a mixed question of law and fact, has not been urged. This was also not urged before the railway authorities concerned. If that is so, then we will not be justified in permitting the applicant to urge this ground at the hearing. On this view, we must reject this contention of the applicant.

9. Even otherwise, we have seen that the applicant had been appointed not by the GM but by the Divisional Superintendent, Bombay who is equal in rank to the DA who is ~~very~~ far inferior in rank to the CCS. The appointing authority and his superiors have always the power to remove an employee. On this view also, there is no merit in this contention of Shri Madhusudan. The ratio in Lafoor Mias's case does not bear on the point. We therefore reject this contention of Shri Madhusudan.

10. Shri Madhusudan contends that the witness had not been examined in the presence of the applicant and the same vitiates the inquiry and the orders made against the applicant.

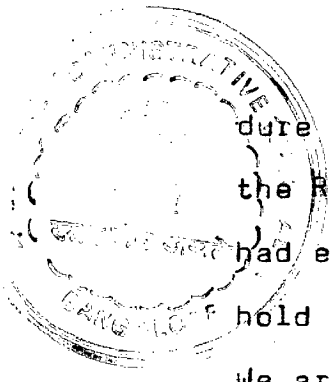
11. Shri Sreerangaiah contends to the contrary.

12. We have carefully examined the deposition of all the witnesses recorded by the IO and the proceedings before him on different dates.

13. We find that on every date of inquiry the applicant and his defence assistant were present and all the witnesses had been examined in their presence only. We see no merit in this contention urged by Shri Madhusudan and we reject the same.

14. Shri Madhusudan next contends that the IO had acted as a prosecutor and a Judge and the same vitiates the inquiry and the orders.

15. Shri Sreerangaiah contends to the contrary.



16. We find that the IO had followed the usual procedure prescribed for holding disciplinary proceedings in the Railways. The fact that the IO had put questions and had elicited answers to them, cannot itself be a ground to hold that he had acted as a prosecutor as well as a Judge. We are convinced that the IO had really acted as an IO and a Judge only.

17. Shri Madhusudan contends that the findings of the IO, CCS and AA are based on no evidence or on inadmissible evidence and are thus vitiated.

18. Shri Srirangaiah contends to the contrary.

19. We find that the IO on a critical evaluation of the voluminous, oral and documentary evidence placed before him, had found that the applicant was the real author of the impugned pamphlet^{by} and had distributed the same.

20. The findings of the IO are based on admissible evidence. The CCS and AA concerned with the IO. If that is so, then as pointed out by us in more than one case, it is not open to us to reappreciate^{to} the evidence and come to a different conclusion.

21. On any view it is impossible to hold that this is a case in which the findings of the authorities are based on no evidence or on inadmissible evidence. We see no merit in this contention of Shri Madhusudan and therefore we reject the same.

22. Shri Madhusudan lastly contends that the punishment imposed on the applicant was disproportionate and excessive and calls for substantial reduction.

23. Shri Sreerangaiah opposes any interference with the punishment imposed by the authorities.

24. When we uphold the impugned orders in so far they as relate to guilt, then we should not normally interfere with the quantum of punishment imposed by the authorities. We find that on a proper appreciation of all the circumstances and in particular^{to the} long length of service, though

not entirely without blemish, and the impending retirement of the applicant on superannuation, the CSS had taken a very lenient view and had imposed the penalty of compulsory retirement without depriving the applicant the retirement and other terminal benefits due to him. If anything, the authorities have only erred on the side of leniency and compassion. We see no grounds to interfere with the quantum of punishment imposed by the authorities.

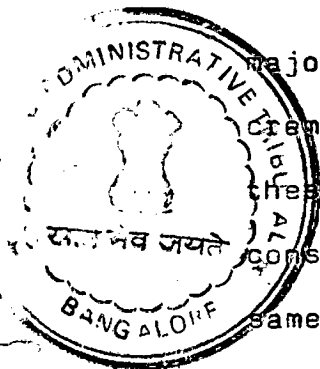
25. On the foregoing discussion we hold that Application No.134/88 calls for dismissal. With this we now pass on to deal with A.No.182/88.

26. In their reply, the respondents had asserted that all benefits due to the applicant including the benefit of revision of pay scales and revised pension had been extended to the applicant. Shri Sreerangaiah has also produced the relevant orders in support of this assertion which have been perused by Shri Madhusudan.

27. We find that the respondents had settled all the major claims of the applicant except the payment of incremental arrears. Shri Sreerangaiah informs us that even these amounts will be settled with expedition. We, however, consider it proper to direct the respondents to settle the same within a reasonable time.

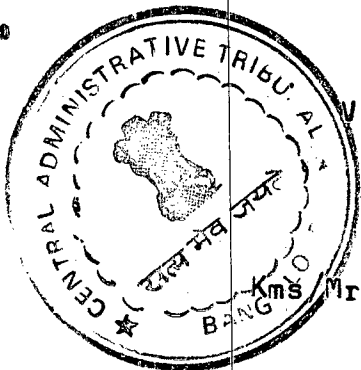
28. In the light of our above discussion we make the following orders and directions:-

1. We dismiss A. No.134/88 in its entirety;



2. We dismiss A. No.182/88 except to the extent it relates to the claim of incremental arrears. We direct the respondents to make payment of incremental arrears due to the applicant with all such expedition as is possible in the circumstances of the case and in any event within a period of one month from the date of receipt of this order.

29. Applications are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.



Sdl-
VICE-CHAIRMAN 9/9/91

TRUE COPY

Sdl-
MEMBER (A) 9.10.1988

[Signature]
DEPUTY REGISTRAR (JDL) 23/9/91
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE