

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 24 FEB 1989

APPLICATION NO (S) 1895 / 88(F)

W.P. NO (S)

Applicant (s)

Respondent (s)

Shri N.K. Ramani

V/s

The Divisional Electrical Engineer, Southern Railway,
Bangalore Division, Bangalore & 2 Ors

To

1. Shri N.K. Ramani
Head Clerk
Office of the Divisional
Electrical Engineer
Southern Railway
Bangalore Division
Bangalore - 560 023

2. Shri M. Narayanaswamy
Advocate
No. 844 (Upstairs)
17th 'G' Main, V Block
Rajajinagar
Bangalore - 560 010

3. The Divisional Electrical Engineer
Southern Railway
Bangalore Division
Bangalore - 560 023

4. The Additional Divisional Railway Manager
Southern Railway
Bangalore Division
Bangalore - 560 023

5. The Divisional Railway Manager
Southern Railway
Bangalore Division
Bangalore - 560 023

6. Shri M. Sreerangiah
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 a copy of ORDER ~~STAY/INTERIM ORDER~~
passed by this Tribunal in the above said application(s) on 13-2-89.

Handwritten: 42/102
K. H. H. M.
24-2-89

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Handwritten: By *[Signature]*
DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH; BANGALORE

DATED THIS THE 13TH DAY OF FEBRUARY, 1989

PRESENT: HON'BLE SHRI JUSTICE K.S. PUTTASWAMY ...VICE-CHAIRMAN
HON'BLE SHRI L.H.A. REGO ...MEMBER (A)

APPLICATION NO. 1895/88

N.K. Ramani.
S/o. N.V, Krishnamurthy,
Aged 32 years,
Head Clerk,
Office of the Divisional Electrical
Engineer,
Southern Railway,
Bangalore.

Applicant

(Shri M. Narayanaswamy.....Advocate)

Vs.

1. The Divisional Electrical
Engineer,
Southern Railway,
IIInd Floor,
Bangalore-560 023.
2. The Additional Divisional
Railway Manager,
Southern Railway,
I Floor,
Bangalore-560 023.
3. The Divisional Railway,
Manager,
Southern Railway, I Floor,
Bangalore-560 023.

Respondents

(Shri M. Sreerangaiah.....Advocate)



This application having come up for
hearing before this Tribunal to-day, Hon'ble Shri
Justice K.S. Puttaswamy, Vice-Chairman, made the
following :-

.....2/-

O R D E R

In this application made under Section 19 of the Administrative Tribunals Act, 1985 ('the Act'), the applicant has challenged Order No. B/P.227/E 150/I/DAR/NKR dated 14.9.1988 (Annexure-F) of the Divisional Personnel Officer, Southern Railway, Bangalore ('DPO') communicating the decision of the Additional Divisional Railway Manager and Appellate Authority (AA) and Order No. B/E.150/I/DAR/NKR dated 1.7.1988 (Annexure-D) of the Divisional Electrical Engineer, Bangalore and Disciplinary Authority ('DA').

2. On 10.6.1988, the applicant was working as Head Clerk in the office of the DA. On that day he forwarded a representation directly to the Chief Electrical Engineer, Madras ('CEE') by-passing the proper official channel in the matter. On that, the DA in his Memorandum No. B/E.150/I/DAR/NKR dated 16.6.1988 (Annexure-B) initiated disciplinary proceedings against the applicant under Rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968 ('the Rules') on the statement of imputations and charge ('Charge Memo') stated therein. In answer to this charge memo, the applicant filed his statement of defence before the DA. On an examination of the charge memo, the defence statement and the records, the DA by his order made on 1.7.1988 holding the applicant guilty of the charge levelled against him imposed

on him the penalty of stoppage of his next increment due to him on 1.6.1988 for a period of 30 months without cumulative effect. Aggrieved by this order, the applicant filed an appeal before the AA who by his order dated 14.9.1988 had dismissed the same. Hence, this application.

3. In justification of the impugned orders, the respondents have filed their reply and have produced their records.

4. Sri M. Narayanaswamy, learned counsel for the applicant contends that the submission of a representation by his client directly to CEE was not a misdemeanour which can be dealt with and punished under the Rules and, therefore, it was not open to the AA and DA to impose any penalty on his client on the same. In support of his contention Sri Narayanaswamy strongly relies on a ruling of this Tribunal in C.S.MANRAL v. UNION OF INDIA AND OTHERS (ATR 1986 (2) CAT 549).

5. Sri M. Sreerangaiah, learned counsel for the respondents contends that the misdemeanour committed by the applicant could be dealt with and punished under the Rules and that the applicant who had not availed of the legal remedy of a revision under Rule 24 of the Rules, cannot be permitted to challenge the impugned orders. In the very nature of things, we consider it proper to examine this later contention of Sri Sreerangaiah first.



6. We will assume that it was open to the applicant to approach the Chief Electrical Engineer, the revisional authority under the Rules for relief. But that will not make any difference for the reason that revision is not a right given to a party but is only a power conferred on the authority, which that authority may or may not exercise on the facts and circumstances of that case. From this it follows, that this is not a case, in which we can say that the applicant had not exhausted the statutory legal remedies available to him. On this, it follows that we cannot decline to interfere with the orders on the ground that the applicant had, not availed of the remedy of a revision if any available to him under the Rules. We, see no merit in this contention of Sri Sreerangaiah and we reject the same.

7. In the Conduct Rules or any other Rules brought to our notice, there is no specific provision on as to how official correspondence or representations should be routed in any Government office. But notwithstanding the same, the well-established practice in any Government office is that all representations even when made by a civil servant against his immediate superior or other higher officer is, that the same should only be routed through proper channel or through his immediate superior officer. This well-worn and well-established

practice in the present-day working of Government offices, does not seem to have been cavilled at. The mere absence of a specific provision for what is too obvious and well-established a practice, has been evolved and is in vogue in every Government office to maintain the desired discipline and decorum. This cannot be dispensed with on the plea that representations are made against the immediate superior of a civil servant. When representations are made, as above, the immediate superior should not also withhold forwarding the same to his superior with or without comments lest this should result in disarray and lawlessness in Government offices. While we unhesitatingly uphold the right of a civil servant to make representations even against his immediate superior or any other higher authority who is competent to decide on its validity, we have no doubt whatever, that in doing so he cannot violate discipline and decorum.

8. In Manral's case, this Tribunal dealing with somewhat a peculiar situation in regard to the authority not forwarding the representation made by Manral against the disciplinary proceedings instituted against him and his removal from service, observed that: "Any such conduct cannot legitimately form the subject-matter of any disciplinary proceedings much less on the proof of the charge warranting removal of....." We are of the view

that these observations should only be read in the context of the peculiar facts of that case only and not as laying down the very broad and general proposition urged for the applicant before us. We are of the view that these observations do not detract from what we have expressed earlier.

9. On facts there is no dispute that the applicant violated the salutary principles, in regard to which both the DA and the AA authorities are in concurrence. We, therefore, see no reason to disturb their findings on the guilt of the applicant.

10. Sri Narayanaswamy next contends that even if the applicant is found guilty of the charge, then also his indiscreet act did not justify any punishment much less its dis-proportionate severity, by way of stoppage of increment for a period of 30 months.

11. Sri Sreerangaiah in supporting the punishment imposed contends that this Tribunal has no jurisdiction to interfere with the quantum of punishment imposed on the applicant.

12. In more than one case, we have expressed that this Tribunal is competent to modify the punishment. We see no ground to hold otherwise. We see no merit in the contention of Sri Sreerangaiah against our power to modify the punishment, if

the circumstances so justify and we therefore reject the same.

13. The charge levelled against the applicant was one of transgressing the proper channel or making a representation directly to the CEE. We have no doubt that was an indiscreet act on the part of the applicant. But, that indiscreet act at the highest, warranted an irreducible minimum penalty of 'censure' and nothing more. We have no doubt that if the authorities had taken an objective view of the entire matter, they would have imposed only the minor penalty of censure and nothing more. We must therefore modify the punishment accordingly against the applicant.

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

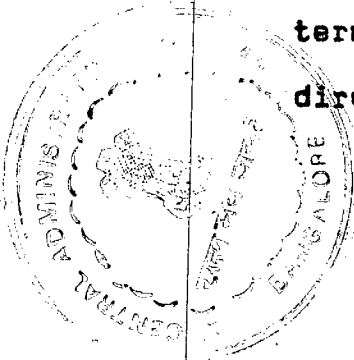
1) We uphold the orders of the DA and the AA to the extent they hold the applicant guilty of the charge levelled against him and dismiss this application to that extent.

We allow this application in part and modify the orders of the DA and the AA only to the extent of imposing punishment on the applicant and in place of the punishment imposed by them



direct that the punishment of 'censure' which is condign in the circumstances of the case shall stand substituted, in the Order dated 1.7.1988 of the DA.

15. 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
12/2/1989
TRUE COPY

Sd/-
MEMBER (A) 13.2.1989

R. V. Lumbale
DEPUTY REGISTRAR (JDL-7412)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE