

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA),
Indiranagar
Bangalore - 560 038

Dated : 6 SEP 1988

APPLICATION NO. 34 / 88(F)

W.P. NO.

Applicant(s)

Shri S. Nagaraj
To

V/s

Respondent(s)

The General Manager, Southern Railway,
Madras & 3 Ors

1. Shri S. Nagaraj
No. 34, Railway Quarters
Yelahanka
Bangalore - 560 064
2. Shri N.R. Naik
Advocate
211, Sri Rama Road
2nd Block, Thyagarajanagar
Bangalore - 560 028
3. The General Manager
Southern Railway
Park Town
Madras - 600 003
4. The General Manager
Wheel & Axle Plant
Yelahanka
Bangalore - 560 064

5. The Deputy Chief Mechanical Engineer(W)
Wheel & Axle Plant
Yelahanka
Bangalore - 560 064
6. The Works Manager (Wheel)
Wheel & Axle Plant
Yelahanka
Bangalore - 560 064
7. 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 ~~/STAY/INTERIM ORDER~~
passed by this Tribunal in the above said application(s) on 1-9-88.

Encl : As above

DEPUTY REGISTRAR
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 1ST DAY OF SEPTEMBER, 1988.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy,

.. Vice-Chairman.

And:

Hon'ble Mr. L.H.A. Rego,

Member(A).

APPLICATION NUMBER 34 OF 1988

S. Nagaraj,
Ex-Shop Khalasi (Temporary Status),
Hindu Major,
S/o Sri Sitaramaiah,
C/o No. 34, Railway Quarters,
Yelahanka, Bangalore-560 064.

.. Applicant.

(By Sri N.R. Naik, Advocate.)

v.

1. Union of India,
represented by General Manager,
Southern Railway,
Park Town, Madras.
2. The General Manager,
Wheel & Axle Plant, Yelahanka,
Bangalore-560 064.
3. The Deputy Chief Mechanical Engineer (W),
Wheel Axle Plant, Yelahanka,
Bangalore-560 064.
4. The Works Manager (Wheel),
Wheel & Axle Plant, Yelahanka,
Bangalore-560 064.

.. Respondents.

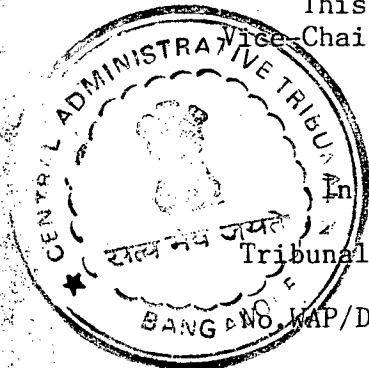
(By Sri M. Sreerangaiah, Advocate).

--

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

ORDER

In this application made under Section 19 of the Administrative Tribunals Act, 1985 ('the Act'), the applicant has challenged Order No. WAP/DAR/SN/41/1600 dated 7-9-1987 (Annexure-E) of the Deputy Chief Mechanical Engineer (Wheel) and the Appellate Authority ('AA') - respondent No. 3 - and Order No. WAP/PF/DAR/SN/41/4812 dated 3-3-1987



(Annexure-B) of the Works Manager (Wheel), Wheel & Axle Plant, Yelahanka Bangalore and the Disciplinary Authority ('DA').

2. On 6-3-1979, the applicant was appointed as casual labourer on daily wages basis in the Wheel & Axle Plant, Yelahanka, Bangalore ('Plant'), an unit of the Indian Railways. On 1-1-1981 he was appointed as a Khalasi on a temporary basis in which capacity he was working from that date.

3. On 31-12-1985, the applicant was stated to be carrying three Aluminium stars belonging to the Plant. On that basis, the DA kept the applicant under suspension and initiated disciplinary proceedings against him under the Railway Servants (Discipline and Appeal) Rules, 1968 ('Rules') and served on him a charge memo dated 2-1-1986 to which he did not file any statement of defence. On that, the DA appointed one Sri E.Muthukrishna, SS (Melting) as the Inquiry Officer ('IO') to inquire into the truth or otherwise of the charge and submit his report to him. On this the IO held an inquiry in which the applicant did not participate and submitted his report on 21-1-1987 holding him guilty of the charge.

4. On an examination of the report of the IO and the records, the DA by his order dated 3-3-1987 imposed on the applicant the penalty of removal from service. Aggrieved by this order, on 24-3-1987 the applicant filed an appeal before the AA who by an order made on 27-8-1987 which is not available, in reality and substance sent aside the order of DA, appointed one Sri R.V.Chavan, Assistant Works Manager (Melting) as the new Inquiry Officer, hold a fresh inquiry into the charges and submit his report. On this, the new IO held an inquiry in which the applicant participated and submitted his report on 2-7-1987 to the AA. On an examination of that report of the IO and the records, the AA by his order dated 27-8-1987 communi-

cated on 7-9-1987 had confirmed the removal from service of the applicant made by the DA. Hence, this application.

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

6. Sri N.R.Naik, learned counsel for the applicant, contends that the fresh inquiry held by the IO and the order made thereon by the AA as if he was the DA was illegal.

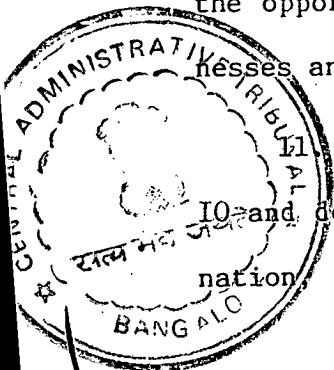
7. Sri M.Sreerangaiah, learned counsel for the respondents, sought to support the order of the AA.

8. With all the earnest efforts made by us and both sides, we are unable to locate any written order made by the AA directing a fresh inquiry in the case. We do find an order made by the AA appointing Sri Chavan as the IO in pursuance of which only he held a fresh inquiry against the applicant. We are simply amazed at the way the whole matter had been dealt by the AA. We are of the view that the procedure followed by the AA is contrary to the Rules, unknown to law and is only innovative. On this short ground itself, the order of the AA calls for our interference.

9. Sri Naik next contends that the applicant had not been afforded a reasonable opportunity to defend before the IO, in particular he had not been afforded an opportunity to cross-examine the material witnesses and the same vitiates the inquiry and the impugned orders.

10. Sri Sreerangaiah contends that the applicant did not avail the opportunity afforded to him and had failed to cross-examine witnesses and therefore, there was no merit in this contention.

11. We have carefully examined the proceedings before the new IO and deposition of the witnesses recorded by him. On such an examination, we are unable to say whether the applicant was present on



the dates the material witnesses were examined and whether he was afforded an opportunity to cross-examine those witnesses. In these circumstances, we are inclined to accept the case of the applicant and direct an opportunity to be afforded to him in the manner indicated by the Supreme Court in STATE OF MYSORE AND OTHERS v. SHIVABASAPPA SHIVAPPA MAKAPUR [AIR 1963 SC 375 = 1963(2) SCR 943]. On this view, it is open to the department to further examine material witnesses if it so decides. From this, it follows that the impugned orders of the AA and DA are liable to be set aside except the orders of the AA appointing Sri R.V.Chavan as the IO.

12. Sri Naik contends that the respondents had illegally withheld the payment of subsistence allowance from the very date the applicant was placed under suspension i.e., 31-12-1985 and we should direct the payment of the same till he is continued under suspension.

13. Sri Sreerangaiah contends that the applicant who was only a casual labourer was not entitled for payment of subsistence allowance.

14. We have earlier noticed that the applicant, who commenced his career on daily wage basis, had been appointed on a temporary basis. If that is so, then he cannot be denied the subsistence allowance at all. Even otherwise, when the proceedings are initiated and continued under the Rules, then under the very Rules, the applicant is also entitled for subsistence allowance under those Rules. We see no merit in the defence of Sri Sreerangaiah on this point.

15. On what we have held earlier, the applicant is entitled for all the arrears of subsistence allowance and its payment thereof till the proceedings are completed by the DA.

16. We find that the applicant had been kept under suspension from 31-12-1985 which continued to be in force till the orders of removal from service were passed against him. As we are setting aside

the impugned orders on technical grounds in terms of Rule 5(4) of the Rules, the applicant had to continue under suspension till the completion of the disciplinary proceedings under the Rules.

17. In terms of the charge memo and the orders made thereon from time to time, the applicant is entitled to engage a defence assistant of his choice who can be any one working in the Plant and not an outsider with due intimation to the DA and his permission under the Rules. We direct the applicant to nominate a defence assistant of his choice subject to what we have expressed earlier and intimate the same to the new IO well before 28-9-1988.

18. We must draw the attention of the DA to the decision of the Full Bench of the New Bombay Bench of this Tribunal in PREMNATH K.SHARMA v. UNION OF INDIA AND OTHERS (T.A.No.2/88 decided on 6-11-1987) which inter alia directs that a copy of the report of the IO should be furnished to the delinquent official before imposing the penalty under the Rules. We direct the DA to comply with this requirement.

19. We have earlier noticed that the matter has been dealt with by the authorities in a perfunctory manner. On this view, we consider it proper to direct the applicant to appear before Sri Chavan on 28-9-1988 at 10-00 a.m. at his office situated in the Wheel and Axel Plant, Yelahanka, Bangalore and take further orders from him for the further progress of the inquiry. We have informed this to the applicant in English and Kannada languages.

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

We quash the orders dated 27-8-1987 of the Deputy Chief Mechanical Engineer (Wheel), AA communicated to the applicant on 7-9-1987 and the order dated 13-9-1987 of the DA. We, however, uphold the order

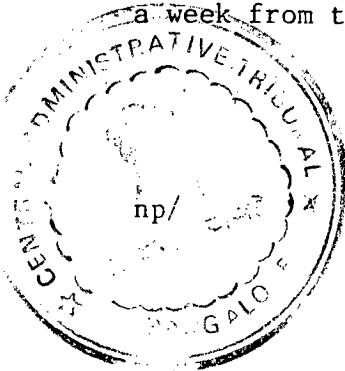


of the AA appointing Sri R.V.Chavan as the new Inquiry Officer to inquire into the charges levelled against the applicant.

- (2) We direct the new IO to supply the depositions of witnesses already recorded to the applicant, tender those witnesses for their cross-examination by the applicant or his defence assistant as is the case record the same including all further evidence that may be placed by both sides, complete the inquiry in accordance with law and then submit his report to the Disciplinary Authority for further action by him in accordance with law.
- (3) We direct the respondents to make payment of subsistence allowance for the current month within 15 days from the date of receipt of this order and the arrears of subsistence allowance from 31-12-1985 to 31-8-1988 within 90 days from the date of receipt of this order.

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

22. Let this order be communicated to all the parties within a week from this day.



Sd/-
VICE-CHAIRMAN.

Sd/-
MEMBER(A).

TRUE COPY

R.V. Chavan
DEPUTY REGISTRAR (IO)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE
8/9/88