

REGISTERED

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

Dated : 4 NOV 1988

APPLICATION NOS. 367 & 1109 /88(F)

- W.P. NO. \_\_\_\_\_

Applicant(s)

Shri M.N. Savanur

To

Respondent(s)

V/s

The Senior Divisional Mechanical Engineer (Loco)  
South Central Railway, Hubli & another

1. Shri M.N. Savanur  
C/o Shri R.U. Goulay, Advocate  
90/1, II Block, Post Office Road  
Thyagaraj Nagar  
Bangalore - 560 028
2. Shri R.U. Goulay  
Advocate  
90/1, II Block, Post Office Road  
Thyagaraj Nagar  
Bangalore - 560 028
3. The Senior Divisional Mechanical Engineer (Loco)  
South Central Railway  
Hubli  
Dharwad District
4. The Divisional Railway Manager  
South Central Railway  
Hubli  
Dharwad District
5. Shri K.V. Lakshmanachar  
Advocate  
No.4, 5th Block  
Briand Square Police Quarters  
Mysore 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 25-10-88.

Encl : As above

SECTION OFFICER  
~~REGISTRY~~  
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE

DATED THIS THE 25TH DAY OF OCTOBER, 1988

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

APPLICATION NOS. 367 AND 1109/1988

Shri M.N. Savanur,  
S/o Narasu,  
Aged 57 years,  
clerk, O/o the Carriage  
wagon Supervisor,  
Castlerock, Dharwar.

.... Common  
Applicant.

(Shri R.U. Goulay, Advocate)

v.

1. Senior Divl. Mechanical  
Engineer (Loco), S.C. Railways,  
Hubli, Dist. Dharwar.

2. Divl. Railway Manager,  
S.C. Railways, Hubli,  
District, Dharwar.

.... Common  
Respondents.

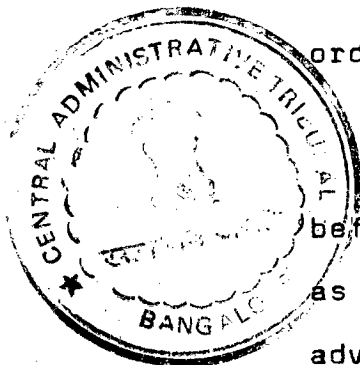
(Shri K.V. Laxmanachar, Advocate)

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

O R D E R

As the parties in these cases are common and the  
questions which arise for determination are inter-  
connected, we propose to dispose of them by a common  
order.

2. Shri M.N. Savanur, who is the common applicant  
before us, born on 15.10.1929 joined service on 7.8.1958  
as a Khalasi in the Indian Railways and then made certain  
advances in his carrer, the details of which are not very  
necessary to notice for these cases.



3. From 14.11.1982 and 1.4.1982, the applicant absented himself to duty without permission. On this the competent Disciplinary Authority under the Railway Servants (Conduct & Appeal) Rules, 1969 (Rules) initiated regular disciplinary proceedings against the applicant who by his order made on 15.11.1983 imposed on him the the penalty of removal from service. Against this order of the DA, the applicant filed an appeal before the competent Appellate Authority (AA), under the Rules who by his order made on 7.3.1984 directed the applicant to be reappointed as a "fresh entrant". In pursuance of this and the consequent order issued thereto, the applicant reported for duty on or about 12.4.1984 and was working from that time.

4. As in the past, the applicant again remained absent from duty from 15.4.1985 and onwards. On this absence, the DA again initiated regular disciplinary proceedings against the applicant under the Rules, who by his order made on 4.1.1987 (Annexure C in A.No.367/88) found him guilty of the charge and imposed on him the penalty of removal from service from 5.1.1987. Against this order, the applicant filed an appeal before the AA who on 5.2.1988 (Annexure-D) had dismissed the same.

5. In these applications made under Section 19 of the Administrative Tribunals Act, 1985 (Act), the applicant has challenged the orders made against him in the two disciplinary proceedings and has sought for a direction to reinstate him to service with all consequential reliefs flowing from the same.

6. In both cases, the Respondents have filed their separate replies and have produced their records.

7. We will first examine A.No.1109/88, which deals with the first disciplinary proceeding and then A.No. 368/88 which deals with the second disciplinary proceeding against the applicant.

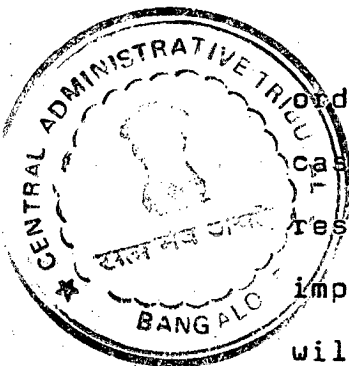
8. In filing A.No.1109/88 there is a delay of 821 days. In I.A. No.1 the applicant has sought for condonation of this delay.

9. In their objections to I.A.No.1, the respondents have opposed the same.

10. Shri R.U. Goulay, learned Counsel for the applicant contends that the facts and circumstances stated in I.A. No.1 constitute a sufficient cause for condoning the delay and deal with the application on merits.

11. Shri K.V. Laxmanachar, learned Counsel for the respondents, contends that the facts and circumstances stated in I.A. No.1 which were not true and correct, do not constitute a sufficient cause for condonation of delay.

12. In A.No.368/88 the applicant has challenged the order made in the second disciplinary proceeding. In this case, at the hearing one of the objections raised by the respondents was that even if we were to set aside the impugned orders in that case, then also the applicant will not gain anything at all. On that, the applicant, in order to overcome the technical objections raised by the respondents has filed this application on 11.3.1988.



From this it follows that on the very pleas urged by the respondents, the facts and circumstances narrated by the applicant in I.A. No.1 will constitute a sufficient cause for condoning the delay. We, therefore, allow I.A. No.1 and condone the delay in making A.No. 1109/88.

13. Shri Goulay, contends that on the very terms of the order of the AA directing reinstatement of the applicant as a 'fresh entrant', which was not one of the punishmentsspecified in the Rules, we should annul the same and direct his reinstatement with all consequential benefits.

14. Shri Laxmanachar refuting the contention of Shri Goulay sought to support the order of the AA.

15. We have perused the order of the AA which is vague and not clear on any point. But notwithstanding all these infirmities in the same, we read it as AA, really holding the applicant not guilty of the charge and calling for sympathy and reinstatement to service to enable him to turn a new leaf in life. On these conclusions only, the AA directed appointment of the applicant as a junior clerk as a 'fresh entrant'. Whether this was permissible or not is the only question that now survives for our examination. The rules donot authorise imposition of this penalty on a Railway servant. The authorities can impose one or other punishment contemplated in Rule 6 of the Rules and cannot invent a new punishment as done by the AA in the present case. From this it follows that the order of the AA to the extent of imposing punishment only, calls

for our interference with appropriate directions. On this it also follows that we must quash the order of the AA to the extent of imposing punishment and declare that reinstatement of the applicant already effected in pursuance of the order of the AA shall stand ensuring his continuity in service. With this we now pass on to examine the orders made in the second disciplinary proceedings against the applicant.

16. Shri Goulay contends that the orders made in the second proceeding, suffers from certain incurable illegalities and irregularities and in any event calls for modification in punishment to one of compulsory retirement from service on terms, that are just and reasonable in the circumstances.

17. Shri Laxmanachar refuting the contention of Shri Goulay contends that this Tribunal should decline to interfere with the orders and the punishment also.

18. We have carefully examined the second disciplinary proceeding. We find that the applicant who has been in the habit of absenting himself from duty without permission now and then, had repeated the same for the period in question also. On that, the DA had rightly initiated the disciplinary proceeding and had found him guilty of the charge levelled against him with which the AA had concurred. We see no illegality or irregularity in the proceedings or findings of the authorities. We find no ~~ground~~ ground to interfere with the findings of the authorities on the guilt of the applicant.



19. We have earlier noticed that the applicant who was born on 15.10.1929 joined service on 7.8.1958. On these facts and also taking into account that the service record was without blemish, the applicant would have attained superannuation and retired from service on 31.10.1987. When the applicant was removed from service, he had rendered about 29 years of service. An order of removal disables the applicant from getting any pension and other terminal benefits for his previous service, which without any doubt will cause him undue hardship in his old age, when he cannot find any other gainful employment. With due regard to all these facts and circumstances, we are of the view that the punishment of removal from service imposed on the applicant should be converted into one of compulsory retirement from service on terms.

20. We have noticed that the applicant used to absent himself from duty, unauthorisedly now and then. We are of the view that those periods for which he was absent except those that had already been earlier regulated, should only be treated as extraordinary leave without pay and allowances. In other words no payment need be made for those periods except for computation of pension and other terminal benefits without even considering his case for any promotion till the date of his retirement.

21. In the light of the above discussion we make the following orders and directions:

- i) We quash appellate order No.HP/90/1983 dated 7.3.1984 of the AA

referred to in the order dated 12.4.1984 of the Divisional Personnel Officer (Respondent No.2 in A.No.1109/1988) (Annexure-D) as against the applicant only. With this we also declare and direct that the applicant had been reinstated in service in pursuance of the said order with continuity of service without any punishment imposed on him.

ii) We uphold the finding of guilt of the applicant in the second disciplinary proceeding culminating in the impugned orders dated 5.2.1988 and 4.1.1987 (Annexure-C and D respectively in A.No.367/1988) of the AA and the DA.

iii) We allow Application No.367/88 in part and modify the punishment of removal from service imposed on the applicant in the order dated 4.1.1987 of the DA and affirmed in the order dated 5.2.1988 of the AA to one of compulsory retirement from 5.1.1987.

iv) We direct the respondents to regulate the pension and other terminal benefits due to the applicant on the basis of our order in Sub-Para (iii) supra with all such expedition as is possible in the circumstances of the cases and in any event within a period of three months from the date of receipt of this order subject to the following -

a) The periods of absence of the applicant from duty shall only be treated as extraordinary leave without pay and allowances without payment of pay and allowances for those periods, however counting the same only for computation of pension and other terminal benefits admissible under the Rules.



b) The applicant shall not be promoted to any higher post till 5.1.1987 and shall be deemed to have retired from service from 5.1.1987 without any more benefits except those that are allowed to him in this order.

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

Sd/-  
VICE-CHAIRMAN 25/1

Sd/-  
MEMBER (A) 1/11/88



TRUE COPY

*P. Thy* 4/11/88  
SECTION OFFICER  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE