

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : **6 MAY 1988**

APPLICATION NO

568

/ 88(F)

W.P. NO.

Applicant

Shri Norman David Fernandez

To

Respondent

V/s The General Manager, South Central Railway,
Secunderabad & 2 Ors

1. Shri Norman David Fernandez
No. 316-A, Brock Road
Railway Quarters
Hubli
2. Shri R.L. Patil
Advocate
No. 11, Jeevan Buildings
Kumara Park East
Bangalore - 560 001
3. The General Manager
South Central Railway
Rail Nilayam
Secunderabad (A.P.)
4. The Controller of Stores
South Central Railway
Hubli
5. The District Controller of Stores
South Central Railway
Gadag Road
Hubli
6. Shri K.V. Lakshmenachar
Railway 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/~~REPLY/REMARKS~~ ORDER
passed by this Tribunal in the above said application on 22-4-88.

*Officed
W. M. D.
9-5-88*
Encl : As above

AP
SECTION OFFICER
~~REPLY/REMARKS~~
(JUDICIAL)

(J.C.)

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 22ND DAY OF APRIL, 1988.

PRESENT:

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

.. Vice-Chairman.

And:

Hon'ble Mr.P.Srinivasan,

.. Member(A)

APPLICATION NUMBER 568 OF 1988

Norman David Fernandez,
S/o Thomas Fernandez,
Depot Stores Keeper Grade-II
Residing at No.316-A, Brock Road,
Hubli.

.. Applicant.

(By Sri R.L.Patil, Advocate)

v.

1. Union of India
represented by General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. The Controller of Stores
South Central Railway,
Hubli.
3. The District Controller of Stores
South Central Railway,
Gadag Road, Hubli.

.. Respondents.

(By Sri K.V.Lakshmanachar, Advocate.)

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

O R D E R

This is an application made by the applicant under Section 19 of the Administrative Tribunals Act, 1985.



2. Prior to 2-4-1987 the applicant was working as Depot Store Keeper Grade-II in the office of the District Controller of Stores, South Central Railway, Hubli (DCS). On 2-4-1987, the DCS had placed the applicant under suspension pending contemplated disciplinary proceedings against him under the Railway Servants (Discipline and Appeal) Rules, 1968 ('Rules'). On 27-7-1987, the DCS had served the

articles of charge on the applicant which he had denied. On that view the DCS had appointed an Inquiry Officer (IO) to hold a regular inquiry and submit his report. The IO had not commenced the inquiry.

3. Before the IO, the applicant moved the DCS to permit him to engage the services of a professional lawyer to assist him in the inquiry. On 24-9-1987, the DCS had rejected the same (Annexure-E).

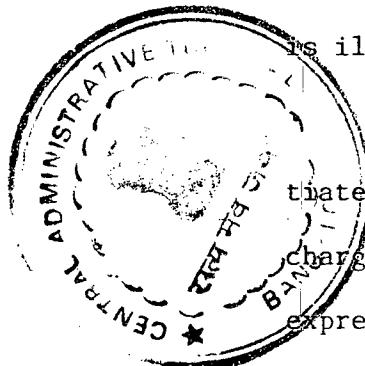
4. In this application, the applicant has challenged the order dated 2-4-1987 of the DCS placing him under suspension, the order dated 24-9-1987 of the DCS refusing permission to engage the services of a professional lawyer and had sought for various other reliefs.

5. Sri R.L.Patil, learned counsel for the applicant, contends that the order of suspension made by the DCS and the order rejecting his request to engage services of a professional lawyer are illegal, improper and unjust.

6. Sri K.V.Lakshmanachar, learned counsel for the respondents, sought to support the impugned orders.

7. The challenge to the suspension order is based on the ground that more than 12 months had elapsed in completing the disciplinary proceedings. We will assume this fact to be correct. But, that by itself is hardly a ground to hold that the order of suspension is illegal and calls for our interference.

8. We find that regular disciplinary proceedings had been initiated with expedition and are still pending before the IO. The charge against the applicant on the truth or otherwise of which we express no opinion is a serious one. When that is so, we cannot also interfere with the order of suspension.

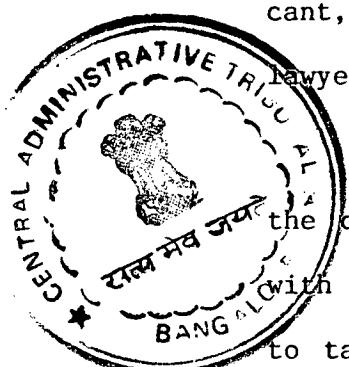


9. Sri Patil next contends that even if we do not interfere with the order of suspension, there was every justification to direct the authorities to review the claim of the applicant for enhancement of subsistence allowance.

10. Sri Achar does not rightly oppose this contention of Sri Patil.

11. The Rules provide for a review of the subsistence allowance earlier granted on the expiry of a particular period stipulated in the rules by the competent authority. Without any doubt, that period had expired in the case of the applicant. If that is so, then the authority was bound to review the case of the applicant for enhancement of subsistence allowance and pass appropriate orders as the circumstances so justify. We consider it proper to direct the DCS to review the case of the applicant for enhancement of subsistence allowance within one month from the date of receipt of this order.

12. The prayer of the applicant to engage the service of a professional lawyer has been rejected by the DCS on the ground that the department was not represented by a professional lawyer. When the department is not represented by a professional lawyer, the applicant, as of right, ^{cannot} seek to engage the services of a professional



13. Even otherwise the authority on a consideration had rejected the claim of the applicant. We see no justification to interfere with the order of the DCS. But, this does not prevent the applicant to take the assistance of a co-employee by nominating such person in whom he has confidence. When that is done, the authority is bound to consider that request and pass appropriate orders. We have no doubt he will do so.

14. Sri Patil lastly contends that the disciplinary authority should be directed to complete the inquiry with utmost expedition and in any event within a period of four months.

15. Sri Achar opposes the request of Sri Patil.

16. We have earlier noticed that the disciplinary authority had served the articles of charge on the applicant and had also appointed an IO. We do not find any unreasonable delay in the completion of the disciplinary proceedings. Even otherwise, we cannot fix any time limit for the completion of disciplinary proceedings. We, therefore, reject this prayer of Sri Patil. But, notwithstanding this, we do hope that the authorities will complete the disciplinary proceedings with all such expedition as is possible in the circumstances of the case, which is in the interest of both sides.

17. In the light of our above discussion, we make the following orders:

1. We dismiss this application in so far as it challenges the order of suspension (Annexure-A) and the order of the DCS rejecting the prayer of the applicant for engaging the services of a professional lawyer.
2. We direct the DCS to review the case of the applicant for enhancement of the subsistence allowance under the relevant rules regulating the same 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.

18. 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

22/4/88 (CSE)

TRUE COPY

Sd/-

MEMBER(A)



APRIL 6/5/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH NO. 1
BANGALORE