

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 1 SEP 1988

APPLICATION NO. S. 548 & 552/87(F) & 602 /88(F)

W.P. NO. _____

Applicant(s)

Shri M.S. Jayakar Rao

To

1. Shri M.S. Jayakar Rao
C/o Shri Srinivasa Rao
Advocate
64, Kumara Park West
Railway Parallel Road
Bangalore - 560 020

2. Shri H. Srinivasa Rao
Advocate
64, Kumara Park West
Railway Parallel Road
Bangalore - 560 020

3. The Senior Divisional Traffic Superintendent
Southern Railway
Bangalore - 560 023

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

Respondent(s)

V/s The Senior Divi. Traffic Supdt., Southern Rly,
Bangalore & 3 Ors

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

6. The General Manager
Southern Railway
Park Town
Madras - 600 003

7. Shri M. Sreerangaiah
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 31-8-88.

Encl : As above

R.V. Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 31ST DAY OF AUGUST, 1988.

PRESENT:

Hon'ble Mr.Justice K.S.Puttaswamy, .. Vice-Chairman.

And:

Hon'ble Mr.L.H.A.Rego, .. Member(A).

APPLICATIONS NUMBERS 548, 552 OF 1987 AND 602 OF 1988.

M.S.Jayakar Rao,
S/o Rajarathnam,
37 years, Former Station Master,
Hindupur, District:Ananthapur,
Andhra Pradesh. .. Common Applicant.

(By Sri H.Srinivasa Rao,Advocate)

v.

1. Senior Divisional Traffic Superintendent,
Southern Railway, Bangalore. .. Respondent-1 in all Applications.
2. Divisional Railway Manager,
Southern Railway, Bangalore. .. Respondent-2
in A.Nos.548 & 552/87
3. Additional Divisional Railway Manager,
Southern Railway,
Bangalore City, Bangalore. .. Respondent-2 in A.No.602/88
4. General Manager,
Southern Railway, Park Town,
Madras. .. Respondent-3 in all Applications.

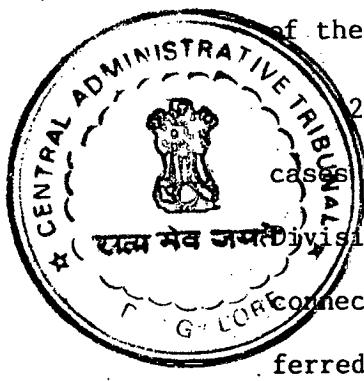
(By Sri M.Sreerangaiah,Advocate)

These applications having come up for hearing, Hon'ble Vice-Chairman made the following:

O R D E R

These are applications made by the applicant under Section 19

of the Administrative Tribunals Act,1985 ('the Act').



2. Sri M.S.Jayakar Rao, who is the common applicant in all these cases was working as a Traffic Inspector at Bangarpet, Bangalore Division of the Southern Railway from May,1982 to June,1984. In connection with an incident that occurred on 9-5-1984, he was transferred from Bangarpet to Hindupur. When working at Hindupur, the

Senior Divisional Traffic Superintendent, Bangalore City ('Superintendent) - respondent No.1 - by his order No. B/T/SPE dated 20-10-1984 (Annexure-A2) placed the applicant under suspension with immediate effect which continued to be in force from that date without any modification till 29-1-1988.

3. When the applicant was working at Bangarpet, he appeared for the Limited Departmental Competitive Examination for Group-B Service under 25 per cent quota and was successful in the written examination. He also appeared for the viva voce test held on 25th July, 1984.

4. On 7-7-1987, the applicant approached this Tribunal in Applications Nos. 548 and 552 of 1987 challenging the Order dated 20th October, 1984 of the Superintendent and for a direction to promote him to group-B post. On 8-7-1987 we admitted these applications and ordered notices to the respondents. On 3-8-1987 the respondents entered appearance. When these cases were pending, the Additional Railway Manager, Bangalore City ('ADRM') made a fresh order of suspension against the applicant on 29-1-1988 (Annexure-A2). In Application No. 602 of 1988 filed on 15-4-1988, the applicant has challenged that order and has sought for appropriate directions.

5. In their common reply, the respondents in justifying the two orders of suspension, have asserted that the applicant had not been selected to Group-B post.

6. Sri H.Srinivasa Rao, learned Advocate appeared for the applicant in all these cases. Sri M.Sreerangaiah, learned Advocate appeared for the respondents in all these cases.

7. We will first deal with the case of the applicant for selection to Group-B post and then deal with the two orders of suspension.

8. Sri Rao urged that with due regard to the performance of the applicant in the written and viva voce test, he should be declared as successful and a direction issued to the respondents to promote him to Group-B post.



9. Sri Sreerangaiah refuting the contention of Sri Rao contends that on an evaluation of his merit, the applicant has not been selected to the post and the same cannot be interfered with by us.

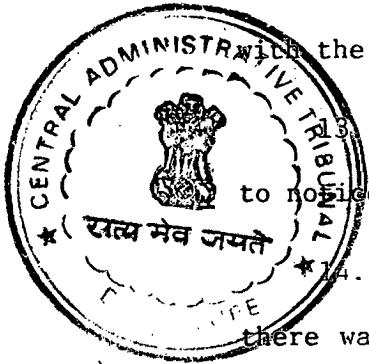
10. In their reply, the respondents have asserted that in the Limited Competitive Examination, the applicant was unsuccessful and certain others who were successful have been duly selected. We have no reason to disbelieve this assertion of the respondents. Even otherwise the records produced before us, establish this fact. If that is so, then, this Tribunal cannot re-examine his non-selection as if a Court of appeal and come to a different conclusion at all. On this conclusion, the claim of the applicant for promotion to Group-B post has necessarily to be rejected. We, therefore, reject the same.

11. Sri Rao urged that on the very terms of the order made by the ADRM on 29-1-1988 (Annexure-A2), we should necessarily hold that the applicant had been placed under suspension retrospectively from 22-10-1984 to 28-1-1988 and that being impermissible and illegal, declare that he was on duty from 22-10-1984 to 28-1-1988 entitling him to all emoluments for the said period and quash the order of suspension on that very ground. In support of his contention Sri Rao, strongly relied on the ruling of the Supreme Court in MOHINDER SINGH GILL AND ANTOHER v. THE CHIEF ELECTION COMMISSIONER, NEW DELHI AND OTHERS (AIR 1978 SC 851).

12. Sri Sreerangaiah refuting the contention of Sri Rao contends that the second order made by the ADRM had only modified the earlier order and on that construction there was no justification to interfere with the impugned orders.

13. In order to appreciate the rival contentions, it is necessary to notice a few more facts which have relevance.

14. When the applicant was working at Bangarpet on 9-5-1984 there was a trap laid on him by the Central Bureau of Investigation.



('CBI'). On account of the same, he was transferred from Bangarpét to Hindupur and was placed under suspension from 20-10-1984.

15. On completing its investigation, the CBI prosecuted the applicant in C.C.No.5 of 1985 in the Court of the Principal City Civil and Sessions Judge, Bangalore City ('Principal Judge') under Section 5(1) of the Prevention of Corruption Act,1947 (Central Act No.2 of 1947) ('1947 Act'). In that case, the applicant was arrested and released on bail on 28-1-1985. On 1-9-1986, the Principal Judge directed the return of the final report and documents to the Public Prosecutor for their presentation to the Special Judge having jurisdiction to try the offence. On that order, the CBI had filed the prosecution before the Second Additional City Civil and Sessions Judge, Bangalore City ('Special Judge') before whom the case is still pending trial.

16. But, so far no disciplinary proceedings have been instituted against the applicant under the Railway Servants (Discipline and Appeal) Rules,1968 ('the Rules') and the same is unlikely to be initiated also till the conclusion of the trial before the Special Judge.

17. With this we will first peruse the two orders of suspension made against the applicant. They read thus:

Standard Form No.3
Standard Form of order of suspension Rule 5(1) of R.S (D & A) Rules,1968.

SOUTHERN RAILWAY

No.B.T/SPE

Divisional Office,
Transportation Branch,
Bangalore-560 023

Dated 20th October,1984.

ORDER

Whereas a disciplinary proceeding against Sri M.S. Jayakara Rao (formerly Traffic Inspector/Bangarpét) now working as Rg.S.M./Hindupur, is contemplated.

Now, therefore, the undersigned, in exercise of the powers conferred by Rule 4/ proviso to Rule 5(1) of the R.S.(D & A) Rules,1968 hereby place the said Sri M.S. Jayakara Rao under suspension with immediate effect.

It is further ordered that during the period this order shall remain in force, the said Sri M.S.Jayakara Rao shall not leave the headquarters without obtaining



the previous permission of the competent authority.

Sd/- Sunil Kumar,
Sr.D.T.S./SBC.

Standard Form No.3

Standard Form or order of suspension Rule 5(1)of R.S.
(D & A) Rules,1968.

SOUTHERN RAILWAY

No.B/T/SPE

Divisional Office,
Transportation Branch,
Bangalore-560 023,
29th January,1988.

O R D E R

Whereas,a case against Shri M.S.Jayakara Rao (Formerly Traffic Inspector/ Bangarpet) now working as Rg.SM/Hindupur, in respect of a criminal offence is under investigation/trial.

Now, therefore, the undersigned, in exercise of the powers conferred by Rule 4 / proviso to Rule 5(1) of the R.S.(D&A) Rules,1968 hereby places the said Sri M.S.Jayakara Rao, under suspension with effect from 22-10-1984.

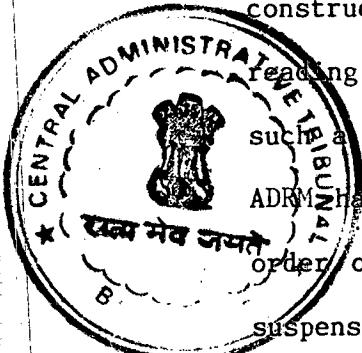
It is further ordered that during the period this order shall remain in force, the said Sri M.S.Jayakara Rao, shall not leave the headquarters without obtaining the prior permission of the competent authority.

This issues in supersession of this office order No. B/T/SPE dated 20-10-1984.

Sd/- M.Ananth,
Additional Divisional Railway Manager,
Bangalore City.

On the basis of the second order made by the ADRM, the applicant is content not to pursue his challenge to the first order.

18. In the second order made on 29-1-1988 it is stated, that the same had been made in supersession of the first order of suspension and the applicant was kept under suspension from 20-10-1984. From what is stated in the second order, the criticism of Sri Rao that the applicant had been placed under suspension retrospectively from 22-10-1984 cannot be said to be altogether imaginary. A literal construction of the second order, supports such a conclusion. But, reading that order in the proper context, we are of the view that such a construction is not called for. On the other hand, what the ADRM had done on 29-1-1988 was that he had only modified the first order of suspension under Rule 5(c) of the Rules and continued the suspension of the applicant pending his trial before the Special Judge. We accordingly hold so.



19. In Mohinder Singh Gill's case the Court was dealing with an order made by the Election Commissioner under the Representation of People Act which affects the public and not a civil servant as in the present case. We are of the view that the principles enunciated by the Supreme Court in GORDHANDAS BHANJI (AIR 1952 SC 16) and reiterated in Mohinder Singh Gill's case (vide: para 8) do not really bear on the point and assist the applicant.

20. On the aforesaid construction of the two orders, it necessarily follows that the applicant cannot claim to be on duty from 22-10-1984 to 28-1-1988 as urged by Sri Rao.

21. Rule 4 Schedules 1 to 3 of the Rules indicate the authorities who are competent to exercise the powers of suspension.

22. Rule 5 of the Rules which is material reads thus:

"5. Suspension. - (1) A railway servant may be placed under suspension-

(a) where a disciplinary proceeding against him is contemplated or is pending; or

(b) where, in the opinion of the authority competent to place a railway servant under suspension, he has engaged himself in activities prejudicial to the interest of the security of the state; or

(c) where a case against him in respect of any criminal offence, is under investigation, inquiry or trial.

(2) A railway servant shall be deemed to have been placed under suspension by an order of the competent authority -

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation.- The period of forty-eight hours referred to in clause (b) of this sub-rule, shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a railway servant under suspension, is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his



• suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a railway servant, is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority on consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement, was originally imposed, the railway servant shall be deemed to have been placed under suspension by the competent authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case.

(5)(a) An order of suspension made or deemed to have been made under this rule, shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a railway servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise) and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the railway servant shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule, may, at any time, be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate."

Firstly this rule confers power of suspension on the various authorities delineated in Rule 4 and Schedules 1 to 3 of the Rules. Secondly, this Rule indicates all the circumstances in which the power of suspension can be exercised by the authorities. The rules also provide for deemed suspension in the circumstances mentioned in sub-rules (2) to (4) of the Rule. Lastly, the rule also confers power on the authorities to modify or revoke an earlier order of suspension. The power of modification and revocation is conferred with the object of restricting suspension for the period which it is necessary and not beyond. When suspension is continued for periods that are not necessary, the same naturally causes harm to the public



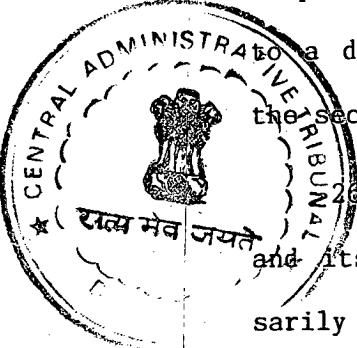
servant and the public interest. The authorities must be ever alive to these considerations and regulate suspension with responsibility and circumspection.

23. We have set out the first order of suspension made against the applicant. In that order, the applicant was placed under suspension pending contemplated disciplinary proceedings against him under the Rules which had not been initiated so far and the same was allowed to stand till 29-1-1988 without any modification.

24. When the CBI launched its prosecution against the applicant under the 1947 Act, the Superintendent or such other competent authority should have examined the case of the applicant for continuance of suspension or otherwise and made a fresh order with due regard to the prosecution launched against him under 1947 ~~xxxkxxxxxxkxxxx~~ Act... But, regrettably that was not done and the matter was allowed to drift. We are distressed at these developments. We are even pained to say that the authorities have been callous and mechanical in dealing with the suspension of the applicant. But, notwithstanding the same, we deem it proper not to interfere with the first order of suspension also.

25. We have also held that the second order of suspension had only modified the first order of suspension and it continued the suspension of the applicant pending trial of the criminal case against him. This the authority was entitled to do. If the authority was competent to do so, then we cannot examine its propriety and come to a different conclusion. On this view, we cannot interfere with the second order of suspension made against the applicant.

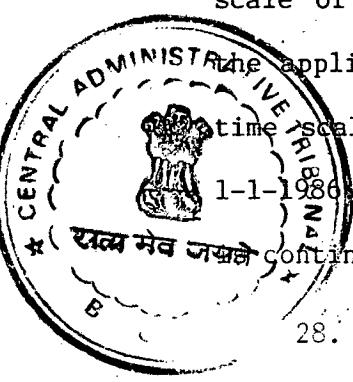
26. The fact that the applicant is facing a criminal prosecution and its trial is pending before the Special Judge, does not necessarily mean that the applicant must be kept and continued under suspension. Whether the suspension should be continued or not is a matter for the authorities to examine and decide. But, in so doing



they have to take into consideration all the facts and circumstances and the possibility of the applicant tampering with the witnesses and interfering with the course of trial before the Special Judge. We are convinced that the ADRM had not taken this into account and had not made a conscious order. In these circumstances, we consider it proper to direct the ADRM to re-examine the case for continuance of the applicant under suspension or otherwise and pass such orders as he deems fit. If the ADRM finds that the continuance of the applicant under suspension pending trial, is necessary then he may make an order to that effect and intimate the applicant. But, if he finds that continuance of the suspension is not necessary, then he may pass an order revoking the suspension and then given an appropriate posting to the applicant, as would not impede his trial before the Special Judge.

27. When the applicant was kept under suspension on 20-10-1984 he was drawing pay and allowances admissible in the then time scale of pay of Rs.700-900. On the Rules and orders made/ pursuant to the recommendations of the Fourth Central Pay Commission the said time scale of pay is stated to have been revised to Rs.2,000-3200 with effect from 1-1-1986. Even while continuing the applicant under suspension also as pointed out by us in H.A.KRISHNA MURTHY v. REGIONAL PROVIDENT FUND COMMISSIONER (A.No.1008 of 1988 decided on 17-8-1988), the applicant is entitled to the benefit of the revised pay scale with effect from 1-1-1986 if he elects to come to the revised time scale of pay. For the very reasons stated in Krishnamurthy's case, the applicant should be given the choice to come over to the revised time scale of pay and the benefits due to him with effect from 1-1-1986. This, the applicant is entitled to, even if his suspension continued. We cannot deny this relief to the applicant.

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



1. We dismiss these applications in so far as they relate to the applicant's claim for promotion to Group-B post on the basis of Limited Competitive Examination.
2. We uphold the two orders of suspension made against the applicant and dismiss these applications to that extent. But, notwithstanding the same, we direct the ADRM to re-examine the case of the applicant for continuance or otherwise of suspension in accordance with law and the observations made in this order with all such expedition as is possible in the circumstances of the case and in any event within a period of 45 days from the date of receipt of this order and pass such orders as he finds necessary in that behalf.
3. We direct the respondents to permit the applicant to exercise his option to come over to the revised scales of pay with effect from 1-1-1988 within one month from this day and if he so elects, then revise his scale of pay with effect from 1-1-1986 and grant him the benefit of such revision even during the period of his suspension with expedition and in any event within a period of 2 months from the date the applicant opts to come over to the revised scale.

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.

30. Let this order be communicated to all the parties within 3 days.



Sd/-
VICE-CHAIRMAN
21/3/1988
TRUE COPY

Sd/-
MEMBER(A) 21-3-88

R. Venkatesh
DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE