

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 29 SEP 1988

APPLICATION NO.

654

/88(F)

W.P. NO.

Applicant(s)

Shri K. Hussain

To

Respondent(s)

V/s

The Divisional Superintendent, South Central
Railway, Hubli & another

1. Shri K. Hussain
C/o Shri G.A. Srikante Gowda
Advocate
No. 39, Laxminivas
Vth Cross, Vasanthanagar
Bangalore - 560 052
2. Shri G.A. Srikante Gowda
Advocate
No. 39, Laxminivas
Vth Cross, Vasanthanagar
Bangalore - 560 052
3. The Divisional Superintendent
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
Friend 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/SPN/ ~~INDETERMINATE ORDER~~
passed by this Tribunal in the above said application(s) on 20-9-88.

Issued
K. R. Rao
29-9-88

Encl : As above

gc
B.V. Gundu
DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE TWENTIETH DAY OF SEPTEMBER, 1988

Present: Hon'ble Shri Justice K.S. Puttaswamy .. Vice Chairman
Hon'ble Shri P. Srinivasan .. Member (A)

APPLICATION NO. 654/1988

Shri K. Hussain
Pointsman, acting as
Shunting Jamadar
Kolhapur
South Central Railway
Divisional Office
Hubli.

.. Applicant

(Shri G.A. Srikante Gowda, Advocate)

Vs

1. Divisional Superintendent
South Central Railway
Hubli.
2. Divisional Railway Manager
South Central Railway
Hubli.

.. Respondents

(Shri K.V. Lakshmanachar, Advocate)

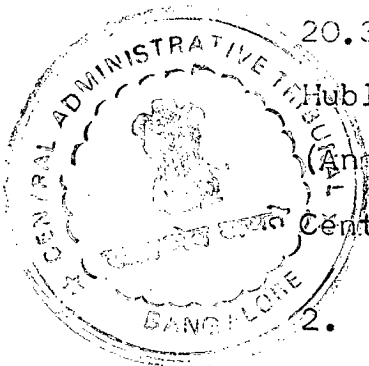
This application having come up
for hearing before the Tribunal today, Hon'ble Shri
Justice K.S. Puttaswamy, Vice Chairman, made the following:

ORDER

In this application made under Section 19
of the Administrative Tribunals Act, 1985 (Act), the
applicant has challenged Letter No. H/T.305/KOP dated
20.3.1987 (Annexure-F) of the Divisional Railway Manager,
Hubli (DRM) and order No. H/T.305/DAR/KOP dated 11.10.1977
(Annexure-C) of the Divisional Superintendent, South
Central Railway, Hubli and Disciplinary Authority (DA).

2. On 11/12.3.1976 the applicant was working
as a Pointsman Acting Shunting Jamadar at the Kolhapur

.....2/-



Railway Station of the South Central Railway (SCR), on which day, there was a theft of 69 bags of sugar from Railway Wagon No.21924, stationed in that Railway Station. On this incident, the DA first kept the applicant under suspension and then issued him a show-cause notice on 27.8.1977 (Annexure-A) under Rule 14 of the Railway Servants Discipline and Appeal Rules, 1968 (Rules), proposing to inflict on him the penalty of removal from service. In response to this the applicant filed his statement on 6.9.1977 before the DA inter-alia urging to await the disposal of the criminal case launched against him. On a consideration of the reply, and the records the DA by his order dated 11.10.1977 (Annexure-C) holding the applicant guilty of the charge inflicted on him the penalty of removal from service with effect from 20.10.1977 (AN). Against this order, the applicant filed an appeal under the Rules on 18.10.1977 before the Chief Operating Superintendent, South Central Railway, Secunderabad and Appellate Authority (AA) who on 10.6.1978 dismissed the same.

3. On 10.6.1978 the order of the AA was communicated to the applicant to his residential address, by Registered Post, which was returned by the postal authorities with an endorsement that the addressee has left that place and his address was not known. On or about 4.11.1978 the applicant made a representation before the AA on his appeal on which he sent him a communication on 29.12.1978.

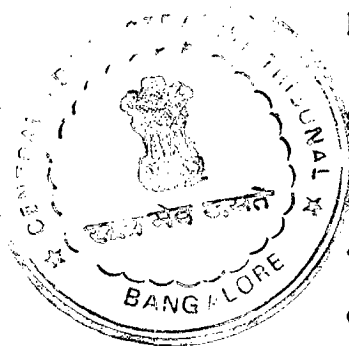
4. Even while the disciplinary proceedings were pending before the ^{the} DA/applicant was prosecuted in the Court of the Chief Judicial Magistrate, Kolhapur, in Criminal case no.6901/76. On 14.2.1986 the learned Magistrate had acquitted the applicant of the charges levelled against him.

5. On the termination of the proceedings before the criminal court, the applicant woke up like a Ripvan Winkel and made representations before the authorities one of which was to the DRM inter alia requesting them to reinstate him to service as done in the case of others who had also been similarly prosecuted and acquitted and extend him all consequential financial benefits. On 20.3.1987 the DRM had rejected the same. Hence, this application.

6. The application is presented before us on 20.4.1988. On computing the period of limitation from the order of the DRM made on 20.3.1987 also there is a delay of 30 days. In IA no.1 the applicant has sought for condoning this delay.

7. Respondents have filed their reply and have produced their records.

8. Shri G.S. Srikante Gowda, Learned counsel for the applicant contends that the facts and circumstances stated in IA No.1 constitutes a sufficient ground for condoning the delay and condoning that delay of 30 days, we should annul the illegal orders which are violative of Article 14 of the Constitution.



and direct the reinstatement of the applicant to service with all consequential benefits.

9. Shri K.V. Lakshmanachar, learned counsel for the respondents contends that the limitation for the application should be computed from the date the AA made his order and communicated the same to him and not from 20.3.1987 as done by the applicant and so reckoned, there was delay of nearly 10 years and this Tribunal had also no jurisdiction to entertain the same as ruled by this Tribunal in V.K. MEHRA V. SECRETARY, MINISTRY OF INFORMATION AND BROADCASTING ATR 1986 CAT 203 and DR.(MRS.) KSHANA KAPUR V. UNION OF INDIA 1987 (4) ATC 329.

10. Shri Gowda is right in maintaining that there is a delay of 30 days, if limitation is computed from the order made by the DRM on 20.3.1987. In that event, we would not even doubt what is stated by him in his affidavit accompanying IA No.1 ^{which} would and/normally condone the delay and deal with the case on merits. But that is not the real position in the case.

11. We have earlier noticed that the statutory appeal of the applicant was dismissed by the AA on 10.6.1978 itself and was communicated to him, which however was returned by the postal authorities. But thereafter on his representation made on 4.11.1978, the AA on 29.12.1978 communicated his order dismissing the appeal to the applicant.

12. On his acquittal, the applicant had made more than one representation for his resinstatement,

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but in none of them, he had not said that his appeal had not been disposed by the AA and he had not received that order. These circumstances applying the oft quoted principle of 'that men may lie but circumstances will not lie' only fortifies our earlier conclusion.

12. What emerges from the above is that the applicant who had received the order of AA communicated on 29.12.1978 is deliberately keeping back the same and is not stating the truth to overcome the bar of limitation.

13. On the foregoing, we hold that the applicant had received the order of the AA dismissing his statutory appeal in any event on or before 29.12.1978. On this it follows that this application made on 29.4.1988 is barred by limitation at least by nine years and is not open to correction by us as ruled in V.K. Mehra and Kshama Kapur cases. In cases of order made before 1.11.1982, as in the present case, the question of condoning delay under Section 21(3) of the Act does not arise.

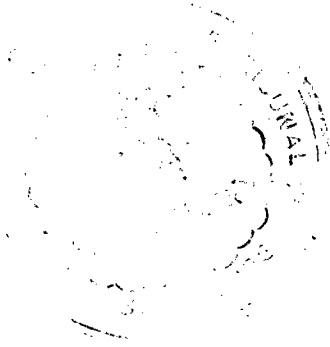
14. The order made on 20.3.1987 by the DRM is only a discretionary order. When we hold that we cannot interfere with the orders removing the applicant from service, we cannot interfere with the discretionary orders of the authorities and direct the reinstatement/applicant.

15. Even otherwise all the facts and circumstances do not justify us to ignore delay and latches and aid the applicant, when we find that the appellate order and the original removal order cannot be interfered by us we cannot by any stretch of imagination interfere with a discretionary order



made by the DRM on 20.3.1987 refusing to reinstate the applicant to service.

16. On any view this application is liable to be rejected. We, therefore, reject this application. But in the circumstances of the case we direct the parties to bear the costs.



Sd/-

JUSTICE K.S. PUTTASWAMY
(VICE CHAIRMAN)

Sd/-

P. SRINIVASAN
MEMBER (A)

TRUE COPY

mr.

RV. Vaseetha Rao
29/9