

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

Dated : 15 FEB 1989

APPLICATION NO (S) 708 / 88(F)

W.P. NO (S) \_\_\_\_\_ /

Applicant (s)

Shri T.C. Govindaswamy  
To

V/s

Respondent (s)

The Secretary, Ministry of Railways,  
New Delhi & 3 Ors

1. Shri T.C. Govindaswamy  
C/o Shri S.S. Hittagi  
Shivabasava Nagar  
Haveri  
Dharwad District
2. Shri K. Subbarao  
Advocate  
128, Cubbonpet Main Road  
Bangalore - 560 002
3. The Secretary  
Ministry of Railways  
Rail Bhavan  
New Delhi - 110 001
4. The General Manager  
Southern Railway  
Park Town  
Madras - 600 003
5. The Divisional Railway Manager  
Southern Railway  
Mysore Division  
Mysore
6. The Senior Divisional  
Operating Superintendent  
Southern Railway  
Mysore Division  
Mysore
7. Shri A.N. Venugopal  
Advocate  
No. 12, 2nd Floor  
SSB Mutt Building  
Tank Bund Road  
Bangalore - 560 009

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/EXAMINER ORDER  
passed by this Tribunal in the above said application(s) on 10-2-89.

Issued 11.12.1989  
15-2-89

dc

Dr. Venkatesh  
DEPUTY REGISTRAR  
(JURIDICAL)

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 10TH DAY OF FEBRUARY, 1989.

PRESENT:

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

And

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

APPLICATION NUMBER 708 OF 1988

T.C.Govindaswamy,  
S/o T.G.Chinnaswamy,  
Aged about 35 years,  
Working as Assistant Station Master,  
Haveri, Mysore Division,  
Southern Railway and residing at  
C/o S.S.Hittagi, Shivabasava Nagar,  
Heveri.

.. Applicant.

(By Sri K.Subbarao, Advocate)

v.

1. The Union of India,  
represented by the Secretary  
to the Ministry of Railways,  
Rail Bhavan, New Delhi.
2. The General Manager,  
Southern Railway,  
Park Town, Madras.
3. The Divisional Railway Manager,  
Southern Railway, Mysore.
4. The Senior Divisional  
Operating Superintendent  
Southern Railway, Mysore  
Division, Mysore.

.. Respondents.

(By Sri A.N.Venugopal, 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.Y/TGL/Agtn./SM-ASM/May 86/9 dated 12/19th April,1983 (Annexure-M) of the Divisional Railway Manager, Southern Railway, Mysore and the Disciplinary Authority ('DA').

2. At the material time, the applicant was working as Station Master ('SM') of Bhageshpur Railway Station of Mysore Division, Southern Railway. When he was so working, he was said to be absent from duty from 6-5-1986 to 15-5-1986. On that, the DA initiated disciplinary proceedings against the applicant under the Railway Servants (Discipline and Appeal) Rules, 1986 ('the Rules') in his Memorandum No.T/Y/TGL/Agtn./SM-ASM/May 86/9 dated 26-5-1986 (Annexure-A) in which the said authority by his order made on 19-4-1983 (Annexure-M) inflicted on him the penalty of removal from service. On 3-5-1988 the applicant approached this Tribunal challenging the said order of the DA on a large number of grounds.

3. In their reply, the respondents in justifying the impugned order, have urged, that this Tribunal should decline to interfere with the same, solely on the ground, that the applicant had not availed of the legal remedy of appeal available under the Rules.

4. Shri A.N.Venugopal, learned counsel for the respondents, at the threshold contends, that since the applicant had not availed of the legal remedy of appeal available under the Rules both on questions of fact and law, before the Chief Operating Superintendent, Southern Railway, Madras and the Appellate Authority ('AA'), this Tribunal should decline to interfere with the impugned order solely on that ground. In support of his contention, Sri Venugopal strongly relies on a Division Bench ruling of this Tribunal in CHARAN SINGH v. UNION OF INDIA AND OTEHRS (ATR 1986 (2) CAT 643. On this preliminary objection we first heard Shri K.Subba Rao, learned counsel for the applicant and indicated to him that it was a fit case in which the applicant should first exhaust the legal remedy of appeal available to him under 'the Rules.

5. On what we indicated, the applicant has filed a memo, which reads thus:-

" The applicant begs to submit as under:-

1. It is submitted that the applicant is agreeable to file a departmental appeal against the penalty of removal from service subject to his appeal being considered by the Appellate Authority, on merits within the time, to be stipulated by this Hon'ble Tribunal and to be disposed of the same in accordance with law.

2. Regarding the pay and allowances, the Appellate Authority shall regulate the same under Rule 2044 (FR 54) of the Indian Railways Establishment Code Volume II.

3. During the pendency of this appeal the applicant be permitted to withdraw a sum of Rs.5,000/- being his own contribution to the Provident Fund without prejudice to his rights, for the purpose of his maintenance subject to the final result of the Appellate order or any other final order that may be passed in the appeal that he proposes to file and also subject to the final determination of the proceedings that may be instituted in respect of the order of termination passed against the applicant."

We have heard both sides on this memo.

6. In para 1 of the Memo, the applicant has agreed to file an appeal if the same were to be decided on merits.

7. The Rules provide for 45 days' time for filing an appeal before the AA.

8. When the applicant approached this Tribunal, believing that the remedy before us was the proper remedy, the limitation for filing his appeal before the AA had not expired. We have admitted this application and for various reasons that are not necessary to notice, we could not hear this application earlier. These and all other factors justify us to accede to the request of the applicant at para 1 of his memo, for which purpose, he will also make a formal application for condonation of delay before the AA.

8. We will now deal with what is stated in para 3 and then what is stated in para 2 of the memo.

9. In para 3, the applicant has sought for a direction to the respondents to pay him a sum of Rs.5,000=00 from out of the Provident Fund amount, at his credit. We are of the view that this request of the applicant, if he has that amount at his credit, is reasonable

and should be granted.

10. In para 2, the applicant has requested that his pay and allowances for the period of his absence should be regularised by the Railway Administration in terms of Rule 2044 (FR 54) of the Indian Railways Establishment Code, Vol.II. Sri Subba Rao urges to make an order in terms of para 2.

11. We have earlier noticed, that the applicant without availing of the effective legal remedy of an appeal available to him under the Rules had rushed to this Tribunal. When that is so, the reasons for the delay in the disposal of this application must squarely be laid at his door only and not on others at all. If that is so, then there is no justification whatsoever, to direct the Railway Administration to make payment of salaries to the applicant from 27-5-1988 on which day the interim order was vacated, till his appeal is decided by the AA, for which we propose to fix a maximum period of three months from the date of this order.

12. In deciding the appeal, as ruled by the Supreme Court in RAMCHANDER v. UNION OF INDIA (AIR 1986 SC 1173) the AA is under a legal obligation to provide the applicant an opportunity of oral hearing, which we have no doubt, will be complied with by him.

13. On the view we have taken, we leave open the validity of the impugned order and all the grounds urged against the same which will have to be examined and decided by the AA in accordance with law.

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

- a) We permit the applicant to file an appeal against the impugned order before the AA under the Rules within 3 weeks from this day with an application for condonation of delay. When that is done, we direct the AA, to dispose of that appeal on merits, with all such expedition as is possible in the circumstances of the case and in any event, within a period of three months

from this day, in accordance with law and the principles enunciated by the Supreme Court in Ramchander's case.

- b) We direct respondent No.3 to make payment of a sum of Rs.5,000=00 from out of the Provident Fund of the applicant at his credit, within a week from the date he makes an application before him for the same, subject to its recovery, if any, in accordance with law.
- c) We direct the respondents not to make payment of salary to the applicant for the period from 28-5-1988 till the AA decides his appeal or for a period of three months whichever is earlier, which fact however shall not weigh with him in deciding the appeal and in passing order to be made thereon. But, in the event of reinstatement of the applicant, he will not be denied the benefit of service for the aforesaid period.

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

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

Sd/-

VICE-CHAIRMAN.

Sd/-

MEMBER(A)



Kms/np-

10/28/88  
COPY

PAROMALA DEO  
DEPUTY REGISTRAR (JD)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE  
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