REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 29 JUN 1988

REVIEW APPLICATION NO. 3/88
IN APPLICATION NO. 569/87(F)
W.P. NO. /

Applicant(s) | | Respondent(s)
The Secretary, M/o Railways, New Delhi & 3 Ors V/s Shri K.P. Muralidhar

To

1. The Secretary
Ministry of Railways
Rail Bhavan
New Delhi - 110 001

2. The General Manager
Southern Railways
Park Town
Madras - 600 003

3. The Chief Operating Superintendent
Southern Railway
Park Town
Madras - 600 003

4. The Divisional Railway Manager
Southern Railway
Mysore Division
Mysore

5. Shri K.V. Lakshmanachar
Railway Advocate
No. 4, 5th Block
Briand Square Police Quarters
Mysore Road
Bangalore - 560 002

6. Shri K.P. Muralidhar
Tolahunse - 577 514
Davanagere Taluk
Chitradurga District

7. Shri K. Subba Rao
Advocate
128, Cubbonpet Main Road
Bangalore - 560 002

Recd the Respondents (4 & 5) copies (Total 2) (C.G. Krishna) Chief clerk Railway Mys 30-6-88

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 Review application(s) on 24-6-88.

Issued K. Nagaraj 29.6.88

dc

DEPUTY REGISTRAR
(JUDICIAL)

Encl : As above

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE ~~28th~~ 24th DAY OF JUNE, 1988

Present : Hon'ble Sri L.H.A.Rego Member (A)

Hon'ble Sri Ch.Ramakrishna Rao Member (J)

Review Application No.3/88.

1. The Secretary,
M/o Railways,
Rail Bhavan, New Delhi.

2. The General Manager,
Southern Railway,
Park Town,
Madras - 3.

3. The Chief Operating
Superintendent, Southern
Railway, Park Town,
Madras - 3.

4. The Divisional Railway
Manager, Mysore Divn.,
Southern Railway,
Mysore. ... Applicants

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

vs.

K.P.Muralidhar,
R/a Tolahunse Village,
Davangere Taluk,
Chitradurga Dist. ... Respondent

(Sri K.Subba Rao ... Advocate)

This application has come up for hearing today. Hon'ble Sri Ch.Ramakrishna Rao, Member (J) made the following :

O R D E R

Respondents in O.A.No. 569/87(OA) have filed R.A. 3/88 (RA) seeking review of the order passed by this Tribunal on 11.12.1987.

...2/-

2. The target of attack in the OA was the penalty advice dated 4.5.1986 issued by the respondent-4 (R4) therein to the applicant in the OA who was working as Rest-Giving Station Master (RGSM) since 1983. The respondents resisted the application on two grounds : (1) R4 had given reasons as to why it was not reasonably practicable to hold the enquiry; and (2) the conclusion reached by R4 could not be assailed in law by the applicant. This Tribunal disagreed with the conclusion reached by R4 that it was not reasonably practicable to hold the enquiry under rule 14(ii) of the Railway servants (Discipline & Appeal) Rules, 1968 (Rules, for short) which is analogous to the second proviso to Article 311(2)(b) of the Constitution of India. Accordingly, this Tribunal directed the respondents to reinstate the applicant in the OA in the post he was holding at the time of removal from service with immediate effect. Consequential directions for compliance within two months were also issued.

3. The respondents in the OA did not choose to comply with the directions given in the order of this Tribunal. Instead, they filed the RA on 11.1.1988 after a lapse of one month.

4. The sheet-anchor of the argument of Sri K.V.Laxmanachar, learned counsel for the applicants in the RA, is the judgement of the

...3/-

Supreme Court in UNION OF INDIA v. TULSIRAM PATEL (AIR 1985 SC 1460), (hereinafter referred to as the SC decision). According to Sri Laxmanachar, the order of this Tribunal dated 11.12.87, suffers from an 'error apparent on the face of the record' within the meaning of that phrase, as occurring in O.47 R.1 of CPC, which has been made applicable to the proceedings before this Tribunal, inasmuch as the ratio of the SC decision, which is the law of the land as stated in Art.141 of the Constitution, has not been applied to the facts of the present case.

5. Sri K.Subbarao, learned counsel for the respondents in the RA, in a forceful and resourceful argument, refutes the contention of Sri Laxmanachar, thus : The SC decision has no application to the facts of the present case. Alternatively, the SC decision was noticed in SHRIKANT MISRA v. UNION OF INDIA (1987(1) ATJ 179), to which reference was made in the course of the order under review, which, by necessary implication, means, that the Tribunal had taken into account the ratio of the decision of the SC decision. No new proposition of law has been laid down in the SC decision regarding the point raised for consideration in the OA. The law as applied by this Tribunal, in the order dated 11.12.1987 does not suffer from any infirmity so as to call for review.

..4/-

6. We have considered the rival contentions carefully. We are clear in our mind that the SC decision has no application to the facts of the case on hand and presumably for this reason it was not cited by Sri Laxmanachar in the course of his arguments in the OA. The importance of the SC decision consists in over-ruling the decision in D.P.O., Southern Railway vs. T.R. Challappan 1976 S.C.C.(L&S). Even otherwise, the reference in the order of the Tribunal dated 11.12.1987 to the decision earlier rendered by this Tribunal in SHRIKANT MISRA's case cited supra, leads to the irresistible inference that the SC decision was considered sub silentio. In any case, omission to cite the SC decision may amount to an error of law simpliciter, which does not attract O. 47 R.1 CPC. We, therefore, repel the contention of Sri Laxmanachar that the order of the Tribunal dated 11.12.1987 suffers from an error apparent on the face of the record, so as to call for interference.

7. This is sufficient to dispose of the RA. However, since arguments have been advanced touching the applicability of the SC decision to the present case, we shall briefly deal with the same.

8. At the forefront of his argument, Sri Laxmanachar placed considerable reliance on the law enunciated in the SC decision in paragraphs 173 and 174 which read as under :

> In the context of an All-India strike where a very large number of railway servants had struck work, the railway services paralysed, loyal workers and superior officers assaulted and intimidated, the country held to ransom, the economy of the country and public interest and public good prejudicially affected, prompt and immediate action was called for to bring the situation to normal. In these circumstances, it cannot be said that an inquiry was reasonably practicable.
>
> On a careful examination of the facts of these cases and the impugned orders, we find that in each of these cases clause (ii) Rule 14 of the Railway Servants Rules or clause (b) of the second proviso to Article 311 (2) or both, as the case may be, were properly applied. All these matters therefore require to be dismissed.

These observations have no application to the present case since we are not confronted with a situation ~~where~~ a strike of All-India magnitude, paralysing the railway services and holding the country to ransom.

9. Sri Laxmanachar next calls in aid the legal position as set out in para 129 of the SC decision, which reads as follows :

> The next contention was that even if it is not reasonably practicable to hold an inquiry, a government servant can be placed under suspension until the situation improves and it becomes possible to hold the inquiry. This contention also cannot be accepted. Very often a situation which makes it not reasonably practicable to hold an inquiry is of the creation of the concerned government servant himself or of himself acting in concert with others or of his associates. It can even be that he himself is not a party to bringing about that situation. In all such cases neither public interest nor public good requires that salary

...6/ -

> or subsistence allowance should be continued to be paid out of the public exchequer to the concerned government servant. It should also be borne in mind that in the case of a serious situation which renders the holding of an inquiry not reasonably practicable, it would be difficult to foresee how long the situation will last and when normalcy would return or be restored. It is impossible to draw the line as to the period of time for which the suspension should continue and on the expiry of that period action should be taken under clause(b) of the second proviso. Further, the exigencies of a situation may require that prompt action should be taken and suspending the government servant cannot serve the purpose. Sometimes not taking prompt action may result in the trouble spreading and the situation worsening and at times becoming uncontrollable. Not taking prompt action may also be construed by the trouble-makers and agitators as a sign of weakness on the part of the authorities and thus encourage them to step up the tempo of their activities or agitation. It is true that when prompt action is taken in order to prevent this happening, there is an element of deterrence in it but that is an unavoidable and necessary concomitance of such an action resulting from a situation which is not of the creation of the authorities. After all, Clause (b) is not meant to be applied in ordinary, normal situations but in such situations where it is not reasonably practicable to hold an inquiry.

Relying on this passage, Sri Laxmanachar contests the correctness of the view taken in para 6 of the order of this Tribunal that the applicant could have been placed under suspension and enquiry held after normalcy was restored. True, the SC has not viewed with favour the placing under suspension of a government servant until the situation improves. But it should not be forgotten

...7/-

that these observations were made in the context of a situation where the holding of an enquiry itself is not reasonably practicable. In the present case, however, we have pointed out that the so-called tension was only a temporary phenomenon and any apprehension of dilatory tactics which the applicant might adopt is not a valid ground for not holding an enquiry. In other words, we were of the view that the bare apprehension on the part of R-4 regarding the dilatory tactics and intimidation of witnesses is not a cogent ground for dispensing with the enquiry. The observations contained in para 132 of the SC decision, extracted below strengthen the view taken by us :

> It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge-sheet upon the government servant or after he has filed his written statement thereto or even after evidence has been led in part. In such a case also the disciplinary authority would be entitled to apply clause (b) of

.... 8/-

the second proviso because the word 'inquiry' in that clause includes part of an inquiry. It would also not be reasonably practicable to afford to the government servant an opportunity of hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it the government servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority. Therefore, even where a part of an inquiry has been held and the rest is dispensed with under clause (b) or a provision in the service rules analogous thereto, the exclusionary words of the sedond proviso operate in their full vigour and the government servant cannot complain that he has been dismissed, removed or reduced in rank in violation of the safeguards provided by Article 311 (2).

....9/-

Some illustrations have also been given in para 130 of the SC decision where it would not be reasonably practicable to hold the enquiry and we may usefully reproduce the same:

> "..... It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violance or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority."

10. In view of the above, we are satisfied that the view taken by us in para 6 of our order dated 11.12.1987 is sound.

11. Even so, Shri Laxmanachar contends that the twin criteria, to be fulfilled are: (1) the delinquent is prima facie liable to be punished for the misconduct

alleged against him; and (2) the DA should be satisfied for some reason to be recorded in writing that it is not reasonably practicable to hold the enquiry. If these two conditions are fulfilled, this Tribunal is not empowered to sit in judgment over the decision of the DA.

12. Shri Subbarao submits that a limited power of judicial review continues to exist in courts as is clear from the following passage occuring in para 130 of the Supreme Court decision:

> "..... a disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty."

13. After considering the pros and cons, we are satisfied that it is within the competence of this Tribunal to scan the DA's decision (i.e. decision) of R-4 that it was not reasonably practicable to hold the enquiry. This was done in para 6 of the order dated 11.12.1987 and for the reasons enunciated therein, the conclusion of R-4 is vulnerable.

Con....11

14. The crux of the matter is whether it was possible for R-4 to hold the enquiry. It is common ground that the advice penalty dated 14.5.1986 was served on the applicant and if so, we see no force in the submission that the whereabouts of the applicant were not known and the notice regarding the holding of the enquiry could not be served on him. These facts are somewhat reminiscent of the facts in ARJUN CHAUBEY v. UNION OF INDIA (1984 SCC (L&S) page 290). The appellant in that case submitted his further explanation on being called upon to do so but on the very next day, the DCCS passed an order dismissing him without holding an enquiry. This case is referred to in the SC decision.

15. On a review of the facts and circumstances of this case, we cannot escape the feeling that the respondents in the DA acted with great haste and R-4 did not pause to consider whether it was reasonably practicable to hold an enquiry but acted on mere surmise that the applicant in the DA would adopt dilatory tactics and intimidate the witnesses. We are, therefore, satisfied that the order dated 11.12.1987 does not call for review.

16. We shall now proceed to consider the relief which the respondent in the RA is entitled to, based on the following observations in the order of this Tribunal dated 20.1.1988:

" An order of stay will not result in serious injury

and loss
to the respondent as it is open to this Tribunal to regulate the payment of salaries for the period he has been prevented to join service. In these circumstances, we consider it proper to stay the operation of the order made by this Tribunal in A.No. 569/87".

Since the applicants in the RA have not implemented the directions passed in OA, for the obvious reason that they were challenging the order in the RA, this Tribunal made it clear that the respondent in the RA should not suffer on account of his being prevented from joining service.

17. We, therefore, consider that the ends of justice would be met if we direct the applicants in RA to:

(i) take the respondent in the post he was holding at the time of his removal from service within a week; and

(ii) pay the arrears of salary and allowances to the applicant for the period from 11.12.1987 when the order in OA was passed till the date of this order i.e. 24.6.1988 on the basis of pay drawn by the applicant before removal from service with interest at the rate of 12% per annum within two weeks from the date of receipt of the order; and

(iii) pay the exact amount due to the respondent from the date of his removal from service

till the date of his reinstatement as directed in the order dated 11.12.1987 after deducting therefrom, the pay and allowances for the period from 11.12.1987 to 24.6.1988 but not the interest.

18. In the result, the RA is dismissed. Parties to bear their own costs.

Sd/-
MEMBER (A) 24.6.1988

Sd/-
MEMBER (J) 24.6.88

After we pronounced this order, Shri K.V. Laxmanachar, learned counsel for the applicant in RA, filed an application for stay and has also served a copy thereof on Shri Anandaramu, learned counsel for the respondents in RA. He has prayed in the application that the operation of the order dated 11.12.1987 in OA 569/87 be stayed for a period of three months from today to enable the applicants in RA to file SLP in the Supreme Court. Shri Anandaramu opposes the application. We, are however, satisfied that in the interests of justice, the operation of the order dated 11.12.1987 should be stayed for three months from today. Consequently, compliance with directions (i) and (iii) given in paragraph 17 supra shall stand stayed. We do not, however, consider it necessary to stay the operation of the direction (ii) in para 17 since it flows out of the order of this Tribunal dated 20.1.1988. The same shall, therefore, be complied with by the applicants in the R.A.

TRUE COPY

DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

Sd/-
MEMBER (A) 24.6.1988

Sd/-
MEMBER (J) 24.6.1988