

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

Dated : 16 DEC 1988

APPLICATION NO.

1062

/ 88(F)

W.P. NO.

Applicant(s)

Smt D. Chinnalakshamma & 4 Ors  
To

1. Smt D. Chinnalakshamma
2. Kum D. Krishna Leela
3. Shri D. Krishna
4. Shri D. Arjuna
5. Kum D. Ereamma

(Sl Nos. 1 to 5 -

House No. 70, Gandhiwada  
Gadag Road, Jopadi  
Hubli)

6. Shri S.M. Babu  
Advocate  
242, V Main, Gandhinagar  
Bangalore - 560 009

7. The Chief Works Manager  
South Central Railway  
Hubli (Dharwad District)

Respondent(s)

V/s The Chief Works Manager, South Central Rly,  
Hubli & 4 Ors

8. The Divisional Railway Manager  
South Central Railway  
Hubli (Dharwad District)

9. Smt Paddalakshamma

10. Shri D. Chinnachinnaiah  
(Sl Nos. 9 & 10 -

R/o Opposite to Railway Kannada School  
Vinobenagar  
Gadaga Road  
Hubli (Dharwad District)

11. Shri Paddachinnaiah  
Foreman  
Diesel/Loco-shed  
South Central Railway  
Ghorpure  
Pune (Maharashtra)

12. Shri M. Sreerangaiah  
Railway Advocate  
3, S.P. Building, 10th Cross  
Cubbenpet Main Road  
Bangalore - 560 002

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAX/INTERIM ORDER~~  
passed by this Tribunal in the above said application(s) on 29-11-88.

*[Signature]*  
SECTION OFFICER  
~~SECTION OFFICER~~  
(JUDICIAL)

Encl : As at

DATED THIS THE 29TH DAY OF NOVEMBER, 1988

Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman  
and  
Hon'ble Shri L.H.A. Rego, Member (A)

APPLICATION NO.1062/1988

1. Smt. D. Chinnalakshamma,  
W/o late Chennaiah, 45 years.
2. Kum. D. Krishna Leela,  
20 years.
3. Shri D. Krishna,  
14 years.
4. D. Arjuna,  
8 years.
5. Kum. D. Eraamma,  
6 years.

(Sl. Nos. 2 to 5 are sons and daughters of late Chennaiah.

(Sl. Nos.3 to 5 are minors by their natural guardian at Sl.No.1 above - natural mother.

(All are residing at H.No.70, Gandhiwada, Gadag Road, Jopadi, Hubli.)

.... Applicants.

(Shri S.M. Babu, Advocate)

v.

1. The Chief Works Manager,  
South Central Railway,  
Hubli.
2. The Divl. Railway Manager,  
South Central Railway,  
Hubli.

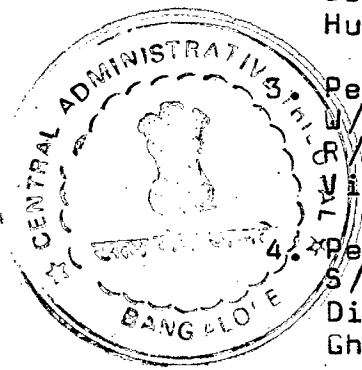
Peddalakshamma, major,  
W/o Chennaiah,  
R/o Opp. Railway Kannada School,  
Vinobhanagar, Gadafe Road, Hubli.

4. \*Peddachinnaiah, 42 years,  
S/o Chennaiah, Foreman,  
Diesal/Loco-shed, S.C. Railway,  
Ghorpure, Pune, Maharashtra.

5. D. Chinnachinnaiah, 35 years,  
S/o Chennaiah,  
R/o Opp. to Railway Kannada  
School, Vinobha Nagar,  
Gadafe Road, Hubli.

.... Respondents.

(Shri M. Sreerangaiah, Advocate for Respondents 1 and 2)



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

O R D E R

This is an application <sup>made</sup> under Section 19 of the Administrative Tribunals Act, 1985 (Act).

2. Smt. D. Chinnalakshamma, applicant no.1 before us, claims to be the wife of one late D. Chennaiah, to whose career, we will refer at a later stage. Applicants 2 to 5 claim to be the children of applicant no.1 and the late Chennaiah. One Smt. Peddalakshamma, arrayed as respondent no.4 is stated to be the senior wife of Chennaiah. Sriyuths Peddachinnaiah and Chinnachinnaiah arrayed as respondents 4 and 5 are stated to be sons of respondent no.3 and Chennaiah.

3. Shri D. Chennaiah born on 10.3.1923 initially joined service in the Indian Railways on 18.6.1943. For reasons, with which we are not now concerned, he resigned from that service on 4.11.1963.

4. But on a later application made by Chennaiah, he was re-appointed from 18.9.1970, inter alia, on the condition that the previous service rendered by him shall not count for pension. While continuing in service on such fresh appointment, Chennaiah was involved in a disciplinary proceeding under the Railway Servants (Discipline and Appeal) Rules, 1963, (CCA Rules) in which he was compulsorily retired from service on 28.2.1981. In the said disciplinary proceeding, Shri Chennaiah was under suspension from 25.2.1980 to 6.11.1980.

5. On such compulsory retirement of Chennaiah, the Railway Administration had not settled the pension and other retiral benefits due to him and therefore, he approached the High Court of Karnataka in writ petition No.16952/83 for appropriate reliefs which was transferred to this Tribunal and was registered as Application No. 1231/86(T). On 9.2.1987, a Division Bench of this Tribunal consisting of Hon'ble Shri P. Srinivasan and Hon'ble Shri Ch. Ramakrishna Rao disposed of the same with the following direction:

"This is a matter of detailed verification which can be done by the officials of the Respondents. We would, therefore, direct the applicant to approach the Respondents explaining how he had the necessary qualifying service for earning pension. We direct the Respondents to give him a hearing, verify his claim and thereafter determine whether he had the requisite qualifying service for being paid pension. If his claim is found to be correct pension due to him may be paid from the date of his compulsory retirement. We would direct the respondents to do all this as expeditiously as possible and in any case before the end of six months from the date of the applicant makes his application to them."



In compliance with these directions, the Railway Administration, had examined the case of Shri Chennaiah and the Chief Works Manager, Hubli (CWM) by his order No. L/6500/C5/2277/68/81-82 dated 22.7.1987 made an order

against him and communicated the same to him which he received on 31.7.1987. That order made by the CWM reads thus:

"You were under suspension for the period from 25.2.80 to 6.11.80. This period has been regularised, as leave due to you, vide this office letter No.E.319/M/2277 of 19.3.81 as under:-

<u>From</u>	<u>To</u>	
1. 25.2.80 (II period)	05.4.80 (I period)	= 40 days LAP
2. 05.4.80 "	25.4.80 "	= 20 " LHAP
3. 25.4.80 "	06.11.80 "	= 195½ " LWP

The period from 25.2.80 to 25.4.80 being leave to your credit, is taken as qualifying service, for your pensionary benefits excluding the period from 25.4.80 (II period) to 6.11.80, being leave without pay (LWP) as you had no leave to your credit on 25.4.80 (II period).

Thus, following are the particulars of non qualifying service (NQS) as verified from your SR & GL-14:-

	<u>Year</u>	<u>Month</u>	<u>Days</u>
1. Suspension/LWP.	0	6	15½
2. Total absence during entire service.	0	3	½
Total NQS	0	9	16

Therefore, the calculation of qualifying service, for pensionary benefits is as under:-

	<u>D</u>	<u>M</u>	<u>Y</u>
1. Date of retirement (Comp)	28	2	1981
2. Date of appointment as Fresh Central.	18	9	1970
Total service:-	10	5	10
3. Less non qualifying service, as above	16	9	0
	24	7	9

Therefore, the total qualifying service is 9 years 7 months and 24 days, which is less than 10 years in terms of para 102 of M.O. PR 1950."

On the very next day, i.e., on 1.8.1987, Chennaiah died leaving behind him his LRs noticed earlier.

6. On 11.7.1988, the applicants have made this application challenging the order dated 22.7.1987 of the CWM and for a direction to the respondents to make payment of pension and other retiral benefits due to <sup>the</sup> ~~late~~ Chennaiah.

7. In resisting this application, respondents 1 and 2 have filed their reply and have produced their records. Respondents 3 to 5 who have been duly served, have remained absent and are unrepresented.

8. Shri S.M. Babu, learned counsel for the applicants contends that on true construction of all the relevant rules regulating payment of pension to Railway servants, it was not open to the CWM to treat the period of suspension as anything other than duty and thus deny the benefit of the period of suspension for counting the qualifying service admissible under the Rules.

9. Shri M. Sreerangaiah, learned counsel, for respondents 1 and 2 refuting the contention of Shri Babu and justifying the order of the CWM, contends that the application was barred by time. In the very nature of things, it is first necessary to examine this preliminary objection of Shri Sreerangaiah first and then deal with the merits if that becomes necessary.

10. The order made by the CWM on 22.7.1987 was served on Chennaiah when he was alive on 31.7.1987 who however died on the very next day itself leaving behind



him the applicants and respondents 3 to 5 as his LRs. If we compute the period of limitation either from the date of the order or from the date of service of the order on Chennaiah, then this application made on 11.7.1988 is well in time. We therefore see no merit in the objection of Shri Sreerangaiah and reject the same.

11. From 25.2.1980 to 6.11.1980 Chennaiah was under suspension. He was thereafter reinstated in service and compulsorily retired by an order dated 28.2.1981.

12. We have perused the original order inflicting the penalty of compulsory retirement from service on Chennaiah. In that order, the disciplinary authority had not regulated the period of suspension.

13. But in Memorandum No.E 319/M/2277 dated 19.3.1981 the Additional CME, Hubli, has treated the period from 25.2.1980 to 6.11.1980 as leave admissible to Chennaiah. In this order, the Additional CME had not treated the period from 25.4.1980 to 6.11.1980 which is now excluded by the CWM as leave without pay. Even if we assume that this order made by the Additional CME was a legal order, then also the period spent by Chennaiah under suspension cannot be excluded for counting as qualifying service under the Rules.

14. We have read every one of the Rules relied on by Shri Sreerangaiah to defeat the claim of Chennaiah and the applicants before us. We are of the view that the Rules relied on by Shri Sreerangaiah do not support the contention that the period spent from 25.2.1980 to 6.11.1980

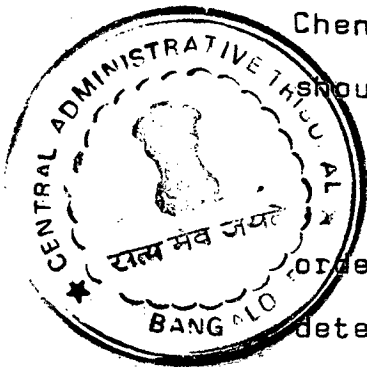
under suspension cannot be treated as spent on duty. In any event, the Rules do not support exclusion of the crucial period from 25.4.1980 to 6.11.1980 treated as leave without pay for determining the qualifying service.

15. We also find that Chennaiah had at all stages co-operated in the completion of disciplinary proceedings and had not created any obstacle thereto. In the normal circumstances, the disciplinary proceedings should have been completed with a period of three months as set out in the various guidelines issued by Government. But, that was not done and the period of suspension was unnecessarily prolonged. Besides suspension was revoked later. In these circumstances, we find no justification to exclude the period of suspension for determining the qualifying service admissible under the Rules.

16. We will even assume that on a very technical construction of the Rules the period from 25.4.1980 to 6.11.1980 had to be excluded. But, on the facts and circumstances of this case, it is unreasonable and unjust to exclude that period and deny pension to be paid to the LRs of the late Chennaiah. On any view this is a fit case in which we should uphold the claim of the LRs.

17. On the foregoing we should necessarily quash the order dated 22.7.1987 of the CWM and direct the CWM to determine the pension admissible to Chennaiah and arrange for payment of the same to his LRs in accordance with law.

18. Shri Sreerangaiah informs us that a sum of Rs.3,688.75 had been paid to Chennaiah on 22.1.1981 on the assumption that he was not entitled to pension and other





retiral benefits. He, therefore, submits that in making the payments now admissible to the LRs of the late Chennaiah the authorities have to deduct that amount from out of the amount payable to the LRs. We are of the view that this submission of Shri Sreerangaiah is well founded.

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



TRUE COPY

- 1) We quash Memo No. L/6500/CS/2277/68/81-82 dated 22.7.1987 (Annexure-D).
- 2) We declare that the period from 25.2.1980 to 6.11.1980 should be treated as spent on duty except for payment of subsistence allowance already paid to Chennaiah and direct that reckoning that period as qualifying service the authorities should determine the pension and other retiral benefits due to late Chennaiah and make payments admissible there-to to the LRs of Chennaiah deducting a sum of Rs. 3688-75 from out of the same in accordance with law.

*[Signature]* 16/12/88  
SECTION OFFICER  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE

20. 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

29-11-1987

Sd/-

MEMBER (A)



D.NO. 4784/89/SC/Sec-IVA  
SUPREME COURT OF INDIA  
NEW DELHI.

Dated 4th January, 1990

FROM: The Additional Registrar,  
Supreme Court of India.

To The Registrar,  
Central Administrative Tribunal  
at Bangalore

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 15870 OF 1989

Petition under Article 136 of the Constitution of India for  
Special Leave to Appeal to the Supreme Court from the judgment  
& Order dated 29-11-88 of the ~~High Court of~~  
Central Administrative Tribunal at Bangalore in Application  
No.1062 of 1988.

Chief Works Manager and Anr.

....Petitioners

Vs.

Smt.D.Chinnabakshamma

....Respondent

Sir, I am to inform you that the petition above mentioned  
for Special Leave to Appeal to this Court was filed in behalf  
of the Petitioner above-named from the judgment and Order  
Central Administrative Tribunal, at Bangalore  
of the ~~High Court~~ noted above and that the same was ~~was~~ listed  
before the Court on 21.12.89 when the Court  
was pleased to pass the following order.

"Delay condoned.

This is not a fit case for interference under Article  
136. However, we express no opinion on this question.  
The Special Leave Petition is therefore dismissed."

Yours faithfully,  
*[Signature]*  
for Addl. Registrar.

Sec-IV-A.