

Commercial Complex (BDA)

Indiranagar

Bangalore - 560 038

Dated : 10 MAR 1989

APPLICATION NO (A) 1063 / 88(F)

W.P. NO (S)

Applicant (A)Respondent (S)Shri V.D. Bevinakatti  
To

V/s

The Chief Personnel Officer, South Central Railway,  
Secunderabad & another1. Shri V.D. Bevinakatti  
Bevinakatti Oni  
Near K.S.R.T.C. Bus Stand  
Gadag  
Dharwad District4. The Divisional Superintendent  
South Central Railway  
Hubli2. Shri S.B. Habballi  
Advocate  
52, Madhevanagar  
Bangalore - 560 0015. Shri M. Sreerangaiah  
Railway Advocate  
No. 3, S.P. Building, 10th Cross  
Cubbonpet Main Road  
Bangalore - 560 0023. The Chief Personnel Officer  
Office of the General Manager  
South Central Railway  
Rail Nilayam  
Secunderabad (A.P.)Subject : SENDING COPIES OF ORDER PASSED BY THE BENCHPlease find enclosed herewith a copy of ORDER/~~STAY~~/INTERIM ORDER  
passed by this Tribunal in the above said application(A) on 3-3-89.485ued  
K. N. N. N.  
10-3-89

D/C

DEPUTY REGISTRAR  
(JUDICIAL)

EBBHAM CO.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE.

DATED THIS THE THIRD DAY OF MARCH 1989

Present: Hon'ble Shri Justice K.S.PUTTASWAMY ...VICE CHAIRMAN

Hon'ble Shri L.H.A.REGO

...MEMBER(A)

APPLICATION NO. 1063/88(F)

Y.D.Bevinakatti,  
Near K.S.R.T.C. Bus stand,  
Gadag,  
Dist Dharwad.

... Applicant

(Shri S.B.Habbali .. Advocate)

vs.

1.Chief Personnel Officer,  
Office of the General  
Manager, (Personnel Branch)  
South Central Railway,  
Secundrabad(AP)

2. The Divisional Superintendent,  
South Central Railway,  
Hubli.

... Respondents

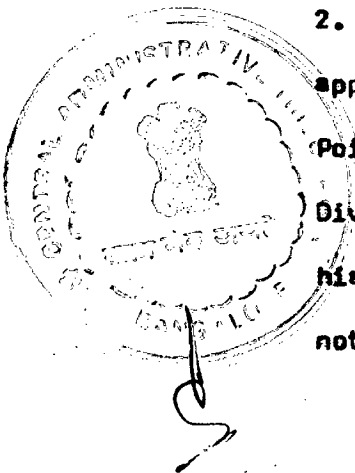
(Shri M.Sreerangaiah .. Advocate)

This application has come up today before this  
Tribunal for Orders. Hon'ble Vice Chairman made the following:

ORDER

This is an application under Section 19 of the  
Administrative Tribunals Act of 1985(Act).

2. Shri Yenkusa Devendra Bevinakatti(Yenkusa), the  
applicant before us, was working as Luggage Reserve Porter/  
Pointsman on 22.4.1972 at the Bagalkot Railway Station, Hubli  
Division, in the South Central Railway. On the performance of  
his duties on that day, the details of which are not necessary to  
notice, the Divisional Superintendent, South Central Railway,



Public and Disciplinary Authority (DA) initiated disciplinary proceedings against the applicant under the Railway Servants Discipline and Appeal Rules 1968(Rules) and by his Order No:H/C.26/BGK/7/72/YDB dated 5.10.1976 (Annexure A4) inflicted on him the penalty of removal from service with effect from 10.10.1976 afternoon. On this Order made by the DA, there were certain proceedings before a Civil Court a detailed narration of which also is not necessary for this case.

3. Against the order of the DA the applicant had also filed an appeal under the Rules before the Chief Operating Superintendent, Secunderabad who was the Appellate Authority(AA) who by his Order made 20.5.1986 dismissed the same. In Application No.1903 of 1986 made under Section 19 of the Act, the applicant challenged the said orders of the AA and DA before this Tribunal. On 11.11.1987 a Division Bench of this Tribunal allowed the same, quashed the order of the AA and directed him to restore the appeal to its original file and dispose of the same in accordance with law. In pursuance of the said order, the AA restored the appeal to its original file afforded the applicant an opportunity of a personal hearing and by his Order No.P.90/D&A/ UBL/YDB/359 dated 26.02.1988 dismissed the same. Hence this application.

4. In justification of the impugned orders, the respondents have filed their reply.

55 Shri S.B.Habbali, learned counsel for the applicant contends that the order made by the AA on the second occasion was not a speaking order and therefore annulling the same on

that ground, we should examine the validity of the order of the DA without over again remitting the case to the AA and annul the same as it suffers from more than one illegality.

6. Shri M.Sreerangiah, learned counsel for the respondents justifying the order of the AA contends that even if the order of the AA was illegal, the proper course was only to set aside that order and remit the case to that authority for a fresh and proper disposal only.

7. In Application No.1903/88, this Tribunal took exception to the first order made by the AA on the ground that it was not a speaking order. In reaching that conclusion this Tribunal relied on the ruling of the Supreme Court in Ramchander v. Union of India AIR 1986 SC 1173. On these findings this Tribunal directed the AA to restore the appeal to its original file and re-determine the same in accordance with law.

8. The order made by the AA reads thus:-

"Shri V.O.Bevinakatti in his appeals dated 18.11.76, 17.7.85 and 17.2.88 has made out the following points:-

- i) that he has been made a scapegoat for the fault of his;
- ii) nothing prevented the Station Master to recheck the cash once again and take action against Shri Bavinakatti;
- iii) that the DAR Enquiry Officer's findings are one sided.

The above points have been examined in great detail by the learned Civil Court Judge in his judgement dated 10.1.85 in RA.No.32/1980. The learned Judge has found that there was no substance in the points made by the ex.employees. I am in entire agreement with the reasonings and findings of the learned Judge.

In the circumstances, I see no reason to set aside the order of the Disciplinary Authority for removal of Shri Bavinakatti from service."

In this order, the AA had not examined the material contentions urged in the appeal before him. Secondly the AA had not examined



the appeal with reference to the three essential factors enumerated in Rule 22(2) of the Rules. Lastly the AA should not have dismissed the appeal by stating brazenly that he agrees with the order of the learned Civil Judge as that was not relevant to the appeal before him. It is distressing that the very <sup>& impediments</sup> ~~impediments~~ which had crept in, in the earlier order of the AA, have <sup>& reoccurred</sup> ~~reoccurred~~ in the present order too, despite explicit direction by this Tribunal.

9. On the very terms of the order of this Tribunal, the order of the AA which is not a speaking order again calls for our interference. Even otherwise the order of the AA which is terse<sup>and</sup> and vacuous calls for our interference for the reasons noticed by us earlier.

10. When we find that the AA had not discharged his duties as enjoined on him by law, then the proper course for us is to set aside his order and direct him to redo the matter in accordance with law. The fact that the AA has lapsed into this <sup>& mistaken</sup> ~~this~~/again, even on remand, which is deprecable is no warrant for us to <sup>& resume</sup> ~~assume~~ his jurisdiction and decide the validity of the order of the DA as if we are <sup>on</sup> ~~the~~ Appellate Authority over the order of the DA. On this view, we decline to examine the order of the DA and leave the same to be examined and decided by the AA in the first instance. We do hope and trust that now atleast there will not be a repetition of the lapse by the AA noticed earlier.

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

- i) We quash Order No: 90/D&A/UBL/YDB/359 dated 26.02.1988 of the AA.
- ii) We direct the AA to restore the appeal filed by the applicant to its original file and redetermine the same in accordance with law and the observations made in this order as also the earlier order of

this Tribunal after affording an opportunity of oral hearing to the applicant with all such expedition as is possible in the circumstances of the case and in any event within a period of 3 months from the date of receipt of this order.

12. Application is disposed of in the above terms. But in the circumstance of the case, parties to bear their own cost.

Sd/-  
VICE CHAIRMAN

Sd/-  
MEMBER (A)

bk.

TRUE COPY,



*[Signature]*  
DEPUTY REGISTRAR (JDL)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE