

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 30 MAR 1989

APPLICATION NO (S) 73 /89(F)

W.P. NO (S) _____

Applicant (s)

Respondent (s)

Shri Mohd. Sardar Ahmed Ali Khan V/s
To

The Divisional Railway Manager, Transportation
Branch, South Central Railway, Hubli & 2 Ors

1. Shri Mohd. Sardar Ahmed Ali Khan
Assistant Station Master
South Central Railway
Machnai - 586 102
Bijapur Division

2. Shri Ranganatha S. Jois
Advocate
36, 'Vagdevi'
Shankarapuram
Bangalore - 560 004

3. The Divisional Railway Manager
South Central Railway
Transportation Branch
Hubli

4. The Divisional Operating Superintendent
South Central Railway
(Transportation Branch)
Hubli

5. The Traffic Inspector
Transportation Branch
Railway Divisional Office
South Central Railway
Hubli

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

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/~~STAY~~/~~INTERIM ORDER~~
passed by this Tribunal in the above said application(s) on 23-3-89.

4.3.89
K. V. Jais
31-3-89

O/c
R. V. Lakshmanachar
DEPUTY REGISTRAR
(JUDICIAL)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

BANGALORE

Dated this the 23rd day of March 1989.

PRESENT

THE HON'BLE MR.JUSTICE K.S.PUTTASWAMY .. VICE-CHAIRMAN

THE HON'BLE MR.P.SRINIVASAN ... MEMBER (A)

APPLICATION NO.73/1989

Mohd.Sardar Ahmed Ali Khan,
S/o. Avdul Gaffar Khan,
aged about 31 years,
Asst.Station Master,
Miochual,
BIJAPUR Dn, 586 102.

... APPLICANT

(Shri R.S.Joia, Advocate)

vs.

The Divisional Railway Manager,
Transportation Branch,
Hubli.

2. The Divisional Operating Superintendent,
South Central Railway,
(Transportation Branch),
HUBLI.

3. The Traffic Inspector,
Transportation Branch,
Railway Divisional Officer,(S.C.R.)
HUBLI.

... RESPONDENTS

(Shri. K.V. Lakshmana Char, Advocate)

This application coming on for hearing this
day, Hon'ble Mr. Justice K.S.Puttaswamy, Vice-
Chairman made the following :

ORDER

This is an application made under Section 19



of the Administrative Tribunals Act of 1985 (the Act).

2. Shri Mohad. Sardar Ahmed Alikhan the applicant before us at present is working as Assistant Station Master (ASM) in Minchnal Railway Station, Hubli Division, of South Central Railway. (SCR). On noticing certain alleged omissions and commissions in performance of his duties as ASM of another Railway Station, the Divisional Operating Superintendent-(Transport Branch), Hubli (DOS) - Respondent No.2. had initiated disciplinary proceedings against the applicant under the Railway Servants (Discipline & Appeal) Rules, 1968 on the charges appended to his charge Memo dated 28.10.1988 (Annexure-A4).

3. As the applicant had denied the charges levelled against ^{& him, &} the DOS, SCR, had appointed one Shri K.H.Kulkarni, Traffic Inspector, Hubli as the Inquiry Officer (IO) to inquire into the truth or otherwise of the charges and submit his report, before whom the inquiry is still pending.

4. In the said inquiry one of the witnesses for the Department had been examined in part. On that the applicant apprehending that the IO himself

would be a witness had approached this Tribunal on 18.1.1989 for diverse reliefs. But at the hearing Shri S. Ranganatha Jois, learned counsel for the applicant confined the case to two grounds only which will be noticed and dealt by us in due course.

5. In resisting this application, the respondents have filed their reply and have produced their records.

6. Shri Jois contends that Shri Kulkarni who had been appointed as Inquiry Officer, was likely to be a witness in the inquiry and therefore, it was necessary for this Tribunal to direct the disciplinary authority or higher authority to change him and appoint another officer as Inquiry Officer.

7. Shri K.V.Lakshmanachar, learned counsel for the respondents opposes the change of Shri Kulkarni as Inquiry Officer on any ground.

8. The applicant has asserted that Shri Kulkarni who is the I.O. is likely to be a witness in the inquiry held against him. We cannot say at this stage that the said apprehension is fanciful and is unfounded. When the applicant has that reasonable apprehension, then it would be against all principles



of natural justice, as recognised by Government in the circulars issued by it extracted on page 60 of Swamy's Compilation of CCS CGA Rules, 15th Edition and M.L. JAND on the Railway servants and Discipline of 1968 11nd edition at page 15 that Sri Kulkarni should continue as the I.O. On this score our interference is called for ~~and this stage itself is interven-~~

9. Shri Jois next contends that the DSO and disciplinary authority who had initiated the disciplinary proceedings against the applicant, is likely to be a witness in the inquiry and therefore, it is ~~not~~ necessary for us to change that authority also and direct another equivalent or higher officer as is found necessary to be the disciplinary authority in the case.

10. Shri Lakshmanachar opposes this prayer of the applicant also.

11. The applicant has asserted that the present disciplinary authority who had initiated the disciplinary proceedings against him, was likely to be a witness in the inquiry. We cannot say that this apprehension of the applicant is fanciful and is not well founded.

12. Every one of the reasons on which we have accepted the case of the applicant for changing the

present I.O. equally apply for accepting the case of the applicant for change of the present disciplinary authority also and direct either a equivalent or higher officer to be the disciplinary authority on the proceedings already initiated against the applicant.

13. We have examined as to who should be the authority. On an examination of all the fact situations, we are of the view that the Divisional Railway Manager, Transportation Branch, Hubli (DRM) who is higher in rank to the DOS should be such authority. When DRM becomes the disciplinary authority, it goes without saying that the appeal if any against his order has to be filed to the authority higher in rank to the DRM.

14. We are informed by both sides that one Shri D.Sampson has been examined in chief and his cross examination had not been done by the applicant. Shri Jois does not dispute that the applicant who was present at the examination in chief of Sri Sampson, had been supplied with a copy of his deposition. If that is so then on the change of the I.O., the applicant should only continue with his cross examination unless the department further examines in chief ^{& which it} ~~which~~ it is undoubtedly entitled to do.



15. In his application, the applicant has sought for various other reliefs. But at the hearing of this application, they are not rightly pressed and therefore we reject all them.

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

- 1) We maintain the charge memo issued by the DOS, on 28.10.1988. But we direct that he shall not act as the Disciplinary Authority hereafter and that the DRM, Hubli-Respondent-1 shall act as the Disciplinary Authority on that charge Memo issued to the applicant.
- 2) We direct the DRM, Hubli, to nominate another officer other than Shri Kulkarni -Respondent-3 as the Inquiry Officer who is free to hold the inquiry from the stage the proceedings were interrupted and complete the same and submit his report in accordance with law to the DRM.
- 3) We reject other reliefs sought by the applicant as not pressed by him.

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



Sd/.

VICE-CHAIRMAN 84

Sd/.

MEMBER(A)

TRUE COPY

R. V. Venkatesh
DEPUTY REGISTRAR (JD)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE