

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Dated: 1 MAR 1995

APPLICATION NO: 1345 of 1994.

APPLICANTS:- Sri.G.Srinivasa Gouda,
V/S.

RESPONDENTS:- The Assistant Divisional Railway Manager,
Bangalore Division, Southern Railway, and another.

To

1. Sri.H.L.Sridhara Murthy, Advocate,
No.61, Secodn Cross, Gavipuram Extn.,
Bangalore-560 019.
2. Mrs.M.V.Nirmala, Advocate,
No.53, N.S.Iyengar Street,
Seshadripuram, Bangalore-20.

Subject:- Forwarding of copies of the Order passed by the
Central Administrative Tribunal, Bangalore.

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Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/ passed by this Tribunal in the above
mentioned application(s) on 15th February, 1995.

Issued on
01/03/95

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for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

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CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE BENCH: BANGALORE

ORIGINAL APPLICATION NUMBER 1345 OF 1994

WEDNESDAY, THIS THE 15TH DAY OF FEBRUARY, 1995.

Mr. Justice P.K. Shyamsundar,

Vice-Chairman.

Mr. T.V. Ramanan,

.. Member(A).

G.Srinivasa Gouda,
Aged about 34 years,
S/o Gopal, Dalasanur Village,
Kasaba Hobli, Srinivasapur Taluk,
Kolar District.

.. Applicant.

(By Advocate Shri H.L. Sridhara Murthy)

v.

1. The Assistant Divisional Railway Manager,
Bangalore Division,
Southern Railways, Divisional
Office, Personnel Branch,
Bangalore-23.

2. The Divisional Operating Manager,
Southern Railways, S.B.C.,
Divisional Office, Transpor
tation Branch, Bangalore-23.

.. Respondents.

(By Standing Counsel Smt. M.V. Nirmala)

O R D E R

Mr. T.V. Ramanan, Member(A):-

Heard both sides.

2. The applicant herein was working for the Southern Railways as Pointsman. By an order of the Special Court for Economic Offences, Bangalore dated 4-12-1992, he was convicted for the offence of unlawful possession of railway property and sentenced to a fine of Rs.300/- in default of payment of which he was to undergo a sentence of imprisonment for three weeks. Based on the aforesaid order of conviction, the Appointing Authority of the applicant in the Railways decided to proceed against the applicant under Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968 (for short 'the Rules'). The said Rule



reads as under:-

14. **Special procedure in certain cases** - Notwithstanding anything contained in Rules 9 to 13 -

(i) where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules;

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this Rule."

The Appointing Authority issued a show cause notice dated 5-1-1993 (Annexure-R1) to the applicant proposing to impose on him the penalty of removal from service in terms of the powers conferred by Rule 14(i) of the Rules. This notice was sent to the officer supervising the work of the applicant. It is not known when this notice was delivered to the supervisory officer, but the respondents state that the applicant remained absent from his office from 18-1-1993 and as such the notice could not be served on the applicant personally, but on the orders of the supervisory officer the notice was put up on the notice board of the office in which the applicant normally worked on 2-3-1993 and the signatures of two witnesses were obtained to establish that the notice was displayed on the notice board. Subsequently, respondent-2, the competent authority, passed a penalty order dated 17-6-1993 (Annexure-A) by which the penalty of removal from service was awarded to the applicant i.e., the applicant was removed from service with effect from 12-6-1993.

Subsequently, the applicant having come to know about the aforesaid order, which he says, he came to receive only on the 16th of March, 1994, he preferred an appeal on 5-4-1994 to the Appellate Authority which happens to be respondent-1. The appeal so filed was disposed of by the Appellate Authority by rejecting it on 2-6-1994 as at Annexure-A2.

3. The main grouse of the applicant is that he was denied the opportunity of representation by not being served with the notice purported to have been issued on the 5th of January, 1993. If only he had been given that opportunity, he would have put forth his case before the competent authority and possibly the order of removal from service dated 17-6-1996 would not have been issued.

4. The learned counsel for the applicant refers us to Rule 26 of the Rules which reads as follows:-

26. Service of orders, notices etc. - Every order, notice and other process made or issued under these rules, shall be served in person on the Railway servant concerned or communicated to him by registered post."

There is no dispute about the necessity of service of a notice before passing final orders in respect of a matter covered under Rule 14(i) of the Rules. In fact, learned Standing Counsel produces before us the copy of letter No.B/P.227/T.DAR/MKJ/91 dated 21-10-1991 issued by the Divisional Office, Personnel Branch, Southern Railway, Bangalore to the Senior Divisional Safety Officer, Bangalore in the context of another case. The said letter reads as follows:-

Southern Railway
No.B/P.227/T.DAR/MKJ/91.

Divisional Office,
Personnel Branch,
Bangalore-23,
Dated: 21-10-1991.

Sr.DSO/SBC

Sub: Departmental action under DAR to be initiated



against Shri A.Nagaraja, pointsman/MKJ now working at PKD as Gatekeeper and Shri B.Aswathanarayana, Pointsman/MKJ for having convicted on a criminal charge by Court of law.

Ref: Your letter No.B/T.DAR/MKJ/91 dated 3-10-1991.

Instruction cited in Board's letter No.E-55 RG 6-1 of 18-7-1957 towards the action to be taken in cases where the Railway Servant is convicted by a Court of Law on criminal charge is reproduced below for kind information and necessary action -

"When the Railway servant is convicted by a Court of law on criminal charge and action to dismiss, remove or reduce him is to be taken on the basis of his conduct leading to conviction. In such a case even the issue of charge sheet is not necessary and the penalty may be imposed straight away. Now, a show cause notice is necessary before imposing a penalty."

However, a copy of show cause notice required to be served against the accused Railway Servant in terms of Rule 14(i) of RS(D&A)Rules,1968, is enclosed for guidance, in the event of the Disciplinary Authority feels to impose any penalty on accused Railway Servant on the merits of the case for which he was convicted by the Court of law.

Sd/- DPO/SBC."

Obviously, in the light of the instructions earlier issued by the Railway Board, the competent authority here i.e., respondent-2 had issued the show cause notice before taking any final action in terms of Rule 14(i) of the Rules. Now in the light of the provision contained in Rule 26 of the Rules it is mandatory that service of the notice issued in terms of Rule 14(i) of the Rules should be in person on the Railway Servant concerned or communicated to him by registered post. However, from the narration of the case made above, it is evident that neither of these courses was resorted to by the respondent-Administration. The notice dated 5-1-1993 which was supposed to have been served on the applicant in person could not be served on him owing to alleged absence of the applicant from 18-1-1993. The respondents have not been able to establish as to why they failed to serve the notice on the applicant between 5-1-1993 and 18-1-1993 that is the date on which the applicant allegedly

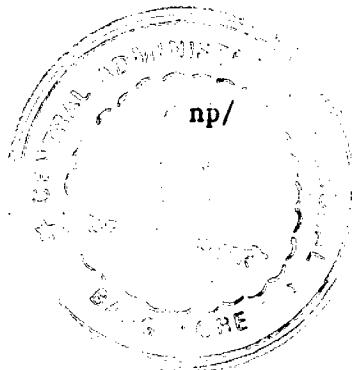
absented himself i.e., when the applicant was available in the office between 5-1-1993 and 18-1-1993. In any case, even if it had failed to effect personal service on the applicant in accordance with Rule 26 of the Rules, the administration should have taken recourse to sending the notice by registered post to the address of the applicant. Instead of doing this, the administration proceeded to display the notice on the notice Board simply by taking the signature of two witnesses. Prima facie the provision contained in Rule 26 of the Rules has not been observed by the Railway administration. In this view of the matter, the display of the notice on the notice board of the office in which the applicant was working cannot be taken as service in accordance with the provisions contained in Rule 26 of the Rules and as such the order dated 17-6-1993 passed after assuming that proper notice of show cause had been given is bad in law and cannot be maintained. For this reason alone, we quash the order dated 17-6-1993 (Annexure-A) removing the applicant from service. The applicant may be reinstated and granted all consequential benefits. The respondent-Administration is, however, allowed liberty to proceed against the applicant in accordance with law. No costs.

Sd/-

MEMBER(A)

Sd/-

VICE-CHAIRMAN.



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Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore