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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD

D.A. No. 792 of 1987.

-F.A.T--NO--

DATE OF DECISION

11.4.90

Yadagiri

Petitioner

Shri T.Lakshminarayana,

Advocate for the  
Petitioner(s)

Advocate.

Versus

The General Manager,

Respondent

South Central Railway,  
Secunderabad  
& 2 others.

Shri N.R.Devaraj,  
SC for Railways.

Advocate for the  
Respondent(s)

CORAM

The Hon'ble Mr. J.Narasimha Murthy : Member(Jud1).

The Hon'ble Mr. R.Balasubramanian : Member(Admn).

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice-Chairman on columns 1,2,4 (To be submitted to Hon'ble Vice-Chairman where he is not on the Bench)

No

HJNM  
M(J)

HRBS  
M(A)

(33)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD  
BENCH : AT HYDERABAD

O.A.No.792 of 1987.

Date of Judgment: 11.4.90

Yadagiri

.. Applicant ..

Versus

The General Manager,  
South Central Railway,  
Secunderabad  
& 2 others

.. Respondents

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Counsel for the Applicant : Shri T.Lakshminarayana,  
Advocate.

Counsel for the Respondents: Shri N.R.Devaraj,  
SC for Railways.

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CORAM:

Hon'ble Shri J.Narasimha Murthy : Member(Judl).

Hon'ble Shri R.Balasubramanian : Member(Admn).

I Judgment as per Hon'ble Shri R.Balasubramanian,  
Member(Admn) I

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This is an application filed under section 19  
of the Administrative Tribunals Act by Shri Yadagiri  
against the General Manager, South Central Railway,  
Secunderabad and 2 others.

2. The applicant after filing the petition in  
November, 1987 filed on 12.5.88. The miscellaneous  
applications M.A.No.677/89 and M.A.No.678/89 for  
condoning the delay and bringing the legal representa-  
tives of the deceased applicant on record were allowed.

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3. The applicant joined the South Central Railway at Lalaguda Workshop on 7.2.58 as a Trade Apprentice and had gradually risen to the post of High Skilled Grade-I. The applicant was involved in a criminal case and was placed under suspension on 20.9.80. The criminal case ended in conviction. The applicant was removed from service on 7.11.83. The applicant alleges that for the entire period of suspension from 20.9.80 to 7.11.83 he was not paid subsistence allowance which he <sup>was</sup> entitled to as a matter of right. The authorities insisted on his producing a certificate that he was not employed elsewhere during the period of suspension. It is the applicant's contention that while he was all the time busy fighting a battle with the department there was no need for him to produce such a certificate. He also questions if there is any statutory provision requiring him to produce such a certificate. The applicant had been pursuing this case with the authorities and in response to one of his representations the Chief Workshop Manager vide his letter dated 4.2.87 stated that the payment of subsistence allowance will be considered only after the applicant repays the balance of house building advance outstanding from the applicant. The applicant is aggrieved that the issue of subsistence allowance is linked with the balance of house building advance.

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He <sup>states</sup> says that during the entire period of suspension he had to borrow money at heavy rates of interest to sustain himself and his large family.

4: The applicant also states that his removal was ordered without an enquiry and that he was not given an opportunity to defend himself and that the appeal he preferred was also rejected without a speaking order.

5. The applicant has prayed that:

- (a) he be paid the subsistence allowance due to him, and
- (b) for a direction to set aside the punishment of removal

6. The prayer has been opposed by the respondents.

It is their case that after conviction by the lower court the applicant appealed to the High Court which only reduced the sentence of imprisonment to the extent already undergone and a fine of Rs.1,000/-. They also point out that production of non-employment certificate is a pre-requisite for payment of subsistence allowance. They also point out that it was only as late as <sup>on</sup> 7.8.87 that the applicant chose to give such a certificate. They also point out that the applicant in his representation dated 7.8.87 had sought for adjustment of the balance of house building advance and interest thereon from the subsistence allowance due to him.

7. We have heard the learned counsel for the applicant Shri T.Lakshminarayana and the learned counsel for the respondents Shri N.R.Devaraj. In the course of the hearing the learned counsel for the applicant stated that

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at this stage they would not press the case for setting aside the order of punishment of removal in view of the fact that the conviction of the applicant by the High Court remains and also of the fact that the applicant is no more. He, however, stated that in view of the poor circumstances in which the family is placed the release of the subsistence allowance due to the deceased applicant would be an immense relief.

8. It is true that a certificate of non-employment during the period of suspension is required before the subsistence allowance is paid. The applicant had not furnished such a certificate for a long time till he saw no other way out of the situation. The fact now remains that in the end he had furnished such a certificate on 7.8.87. We, however, feel that the stand of the respondents that subsistence allowance could be released only after the house building advance is repaid is totally unreasonable. The subsistence allowance, as the very name connotes, is given for the bare sustenance of the delinquent official and his family. Before any adjustment out of this amount is attempted, great care and consideration should be given. We do not find any evidence of such consideration and thought on the part of the respondents. However, the applicant himself has offered to get the amount adjusted.

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we, therefore, feel that the amount of subsistence allowance at the due rates for the period 20.9.80 to 7.11.83 should be released by the respondents.

Any dues from the applicant to the respondents may, however, be adjusted out of this amount at this late stage. This payment of subsistence allowance after adjustment must be made by the respondents to the legal representatives of the deceased applicant within a period of two months of this order. There is no order as to costs.

*MS*  
( J. NARASIMHA MURTHY )  
Member (Judg.)

*R. Balasubramanian*  
( R. BALASUBRAMANIAN )  
Member (Admn.)

Dated 11th April 90

*T. Venkatesh*  
DEPUTY REGISTRAR (ADMN.)

To

1. The General Manager, Union of India, S.C.Railway, Secunderabad.
2. The Deputy Chief Mechanical Engineer, S.C.Railway, Secunderabad.
3. The Addl. Chief Mechanical Engineer, Workshop, Lallaguda, Secunderabad.
4. One copy to Mr.T.Lakshminarayana, Advocate, H.No.D-16, New Nallakunt Hyderabad.
5. One copy to Mr.N.R.Devaraj, SC for Rlys, CAT, Hyderabad.
6. One Copy to Hon'ble Mr.R.Balasubramanian, Member (Admn.), CAT, HYD.
7. One spare copy.

*STC/CS  
12/1/88*