

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. 1411/1999

New Delhi this the 29th day of October, 2007

**HON'BLE MR. JUSTICE M. RAMACHANDRAN, VICE CHAIRMAN (J)
HON'BLE MRS. NEENA RANJAN, MEMBER (A)**

Sunil Prashar,
S/o Shri J.P. Sharma,
Working as Junior Engineer,
Progressive Planning Inspection
Organisation (PPIO),
Tuglakabad Railway Station,
Western Railway, (Kota Division). ... Applicant.

(By Advocate Mrs. Priyanka Bhardwaj proxy for Shri M.K.
Bhardwaj)

Versus

1. General Manager,
Western Railway,
Church Gate, Mumbai.
2. Divisional Railway Manager,
Western Railway,
Kota.
3. Senior Divisional Electrical Engineer,
Electrical Loco Shed,
Tuglakabad, Western Railway. ... Respondents.

(By Advocates Shri A.K. Srivastava)

O R D E R (ORAL)

Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J).

This Original Application had been earlier disposed of by an order of the Tribunal dated 01.02.2001, and the applicant being aggrieved by the order, had filed a writ petition (WP (C) No. 725/2005). The Hon'ble Delhi High Court has set aside the order and also the order in the review application, which had been filed in the Tribunal. The O.A. has been

remitted back for fresh consideration on merits.

2. We had heard Mrs. Priyanka Bhardwaj, proxy counsel for the applicant and Shri A.K. Srivastava, counsel appearing on behalf of the respondents.

3. We find that the penalty sought to be imposed on the applicant by Annexure-1 order dated 16.10.1998 requires to be set aside, after appreciating the question of law and facts that have been raised before us, as also on principles of proportionality. We may refer to the issues highlighted.

4. The applicant while working as Junior Engineer under the respondents had in his name addressed a letter to the Editor, Dainik Jagran and the letter had been published on 27.4.1998, which was titled as "Rail Mantri Se Guhar". He had referred to the harassment he had to suffer from the hands of the superior authority and also apparently he wanted the Railway Minister to bestow his attention on the subject. After such publication, what he received, however, was Annexure-4 charge sheet issued by the Senior Divisional Electrical Engineer, on 07.05.1998. The statement of imputation of misconduct in support of the charge sheet showed as following :

"You have published an article in "Dainik Jagran" of dt. 27.4.98 by name of Sr. DEE/ELS/TKD, which is absolutely wrong according to Railway Service Conduct Rules as under: -

No Government servant shall in any radio broadcast, telecast through any Electronic media or in any document published in his own name or anonymously, pseudonymously or in the name of any other person or in any communication to the press or any public utterance make any statement of fact or opinion :-

- i) which has the effect of an adverse criticism of any current or recent policy or action of the Central Govt. or State Govt.

Why you should not be responsible for that”.

5. It is seen that the applicant had justified himself, and invited by Annexure-6 the grievances he had on the subject. He maintained that it was an appeal to the Hon'ble Railway Minister and, therefore, further action may not be taken. But, however, an inquiry had been arranged to be held in the matter and after a formality of proceedings, Annexure-I has been imposed whereby three increments with cumulative effect have been barred as a penalty. An appeal filed is seen disposed of by the Assistant Divisional Railway Manager, Kota by observing as following :-

“I have gone through the appeal given by the party. I have also seen the Railway Service Conduct Rules. Shri Parasar has violated the Railway Service Conduct Rules, which state that no Railway servant, except with the prior sanction of the Government or of competent authority, participate in a radio broadcast or contribute an article or write a letter to a newspaper or periodical.

Provided that no such sanction shall be required –

- (i) If such publication is through a publisher and is of a purely literary, artistic or scientific character, or

If such contribution, broadcast or writing is of a purely literary, artistic or scientific character.

On the basis of above, I find that Shri Parasar has violated the Service Conduct Rule. The punishment given by the Disciplinary Authority is sustained”.



6. Counsel submits that the allegations in the charge sheet are markedly different from the findings, as endorsed by the appellate order (extracted above). It is pointed out that a harassed employee finding that he did not receive justice from his superiors, had appealed to the highest authority, but as a result he has been subjected to deeper harassment. The conduct rules are a set of rules, for general guidance, and, according to the applicant, a relaxed standard is almost always adopted. Our attention had been invited to the subsidiary rules issued by the Board as E (D&A) 89 GS I-11 dated 24.10.1989 (Railways Establishment Rules and Labour Laws - Bahri - 2005 Edition, page 639) where it is provided that if permission sought is not forthcoming, it is presumed that permission is granted. According to the counsel, it is sufficient to indicate that rigor of the rules is not in any case as attempted to be canvassed by the respondents. Counsel had also referred to the prohibition in the matter of receiving gifts, insolvency, indebtedness, etc., highlighting that what was expected was a course of conduct and non observance was not normally considered as subject of disciplinary action as such, without anything more.

7. On the other hand, the respondents submit that the applicant was a person, who was indisciplined and the number of charge sheets and warnings issued to him speaks about his attitude. The letter to the Editor was unauthorized and no permission had been sought for before sending such letter, and it was necessary that such conduct was seriously noticed in the interest of discipline. Extensively, attempt is made to establish that he is not disciplined. The punishment could not have been, therefore, termed ^{severe} by normal standards.

8. Our attention had not been, however, drawn to materials collected at the domestic inquiry. From the stand of the parties, it is seen that as the applicant had not disputed about his writing the letter, it had been presumed that, he had written the letter by himself and, therefore, proceedings were considered as warranted. However, the question is whether such conduct could be considered as a regular misconduct, which would have brought the employee, as subject matter of the disciplinary action and punishment. As referred to earlier, the charge sheet issued to the employee extracted earlier would show that communication to the press, is actionable, which has the effect of adverse criticism of any current or recent policy or action of the Central Govt. or State Govt. The employee had been asked to state his stand vis-à-vis definite allegation. We find that in the explanation, the applicant had, in sufficiently terms, expressed his anguish and the harassment that he had to suffer. This had placed himself and members of his family on tenterhooks.

9. The explanation, as above, according to us, by itself takes him out of the vice of the charge sheet, as the charge sheet itself indicated that the communication of such a nature alone as described was barred, viz. when it has the nature of an adverse criticism of any current or recent policy or action of the Central Govt. or State Government. The letter to the Editor would not have come within this category. Therefore, the finding that the applicant was guilty of the charges, on the basis of the charge sheet issued to him, was clearly perverse.

10. Of course, the appellate authority by its order dated 17.03.1999 have found him answerable for some different lapse as coming under

the Conduct Rules i.e. writing of the letter to the newspaper should have been only after obtaining prior permission/sanction of the Government or the competent authority. But we find that this was not the charge sheet, which ~~he~~ was expected to be answered or explained. The perusal of the Conduct Rules would indicate that under Rule 9, criticism of Government was considered as objectionable. Rule 11 dealt with unauthorized communication/information. Perhaps, the appellate authority had, in mind, Rule 8 as well but, as referred to earlier, this was not the charge that had been alleged against him. It may be a different thing to suggest that the facts were not in dispute but at least in same matters, the rigor of technicality has to come to the rescue of a party. We have to note that no public interest suffered, and it was in public interest that undesirable practices were exposed.

11. An interpretation and approach in the above lines is required to be employed in the present case since evidently the applicant has been subjected to harassment and he has been put to pressure for almost a decade as of now. Resultantly, his potential has been wilted and efficiency curtailed. There are grievance procedures, and when a complaint about the harassment had been there, the Administration ought not to have taken sides or come with a hammer when the issue could have been sorted out in a more democratic manner. The punishment imposed itself indicates that there was bias and perhaps the superiors have obliged, treating the applicant as insignificant and could be tossed without any serious repercussions.

12. In the circumstances, we have no doubt in our mind that interference is required. The impugned orders are set aside. The

applicant will have to be treated as if no punishment had been imposed on him by Annexure-1. We order that his pay is to be appropriately re-fixed and amounts withheld repaid within two months from today. If it is not so paid, the arrears will bear interest at 10% per annum, with effect from the dates due.

13. The O.A. is allowed. We make no order as to costs.

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(Mrs. Neena Ranjan)
Member (A)

M. Ramachandran

(M. Ramachandran)
Vice Chairman (J)

'SRD'