

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

APPLICATION No. 647/87(F)

(WP. NO. —

COMMERCIAL COMPLEX, (BDA)
INDIRANAGAR,
BANGALORE-560 038.

DATED: 7-10-87

APPLICANT

M. R. Seetharama Rao

vs

TO

RESPONDENTS

Chief Personnel Officer, S. Rlygs
Madras and Ors.

1. Sri M. R. Seetharama Rao,
D. No. 2545, I Cross Road,
Gandhi Nagar,
Madras.

3. Chief Personnel Officer (Hq)
Personnel Branch,
Southern Railways,
Madras-3.

2. Sri M. R. Achar, Advocate,
No. 1074, 1075,
SBN Colony, BSK I Stage,
Bangalore-50.

4. Divisional Railway
Manager,
Southern Railways,
Mechanical Branch,
Mysore.

5. Sri K. V. Lakshmanachar,
Adv,
No. 4, 5th Block,
Briand Square Police Quarters
Bangalore-2

SUBJECT: SENDING COPIES OF ORDER PASSED BY THE BENCH IN APPLICATION NO. 647/87(F)

....

Please find enclosed herewith the copy of the Order
passed by this Tribunal in the above said Application on
25 Sep 87.

Recd. Copy
Submited
12/10/87
Rly. Distr. Office

B. V. Venkatesh, I.O.
DEPUTY REGISTRAR
(JUDICIAL)

ENCL: As above.

RECEIVED 5 copies 8/10/87. 8/10/87.

Diary No. 1263 (CR) 87

18th Oct 1987 8/10/87

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 25th DAY OF SEPTEMBER, 1987

Present : Hon'ble Sri P.Srinivasan

Member (A)

Hon'ble Sri Ch.Ramakrishna Rao

Member (J)

APPLICATION No. 647/87(F)

M.R.Seetharama Rao,
D.M.O.2545, I Cross Road,
Gandhi Nagar,
Mysore.

...

Applicant

(Sri M.R.Achar

... Advocate)

vs.

1. Chief Personnel Officer (Hq),
Personnel Branch,
Southern Railways,
Madras - 3.

2. Divisional Railway Manager,
Southern Railways,
Mechanical Branch,
Mysore.

Respondents

Ch (Sri M.Srinivasan) ... Advocate)

This application has come up before the Tribunal
today. Hon'ble Sri Ch.Ramakrishna Rao, Member (J) made the
following :

O R D E R

The applicant was appointed as Loco Khalasi
in the Mysore Division of the Southern Railway on 13.5.1958.
During 1984, he was working as Loco Khalasi at Aisikere.
He did not report for duty on 24.4.1984 and continued to
remain absent thereafter. It is common ground that he
did not apply for leave prior to the period of his absence.
The authorities waited till 3.6.1984 and when they found
that he had not reported for duty till that day, and had
not applied for leave, a memorandum was issued to the



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applicant on 11.6.1984, by the Divisional Mechanical Engineer, Mysore, wherein it was proposed to hold an enquiry against him under rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1958. The charge in respect of which the enquiry was to be held, read as follows :

"That Sri M.R.Seetharama Rao, while functioning as Loco Khalsi, has committed misconduct in that he was absenting from duty continuously from 24.4.1984 onwards without permission or sanction of leave from the competent authority."

Thus the said Sri M.R.Seetharama Rao has failed to maintain devotion to duty and thereby contravened rule 3(1)(ii) of Railway Services (Conduct) Rules, 1958."

The statement of imputations narrated that the applicant had failed to maintain punctuality in attendance and had, on his own accord, remained absent from duty without prior permission or sanction from the competent authority. This was stated to constitute failure to maintain devotion to duty and consequently contravention of rule 3 (1)(ii) of the Railway Services (Conduct) Rules, 1958.

2. The applicant sent his reply to this memo. by letter dated 3.7.1984. In this letter, he stated that he had received information on the night of 23.4.1984 that the condition of his wife, a patient of asthma, had worsened. His wife was in Mandy at that time. On his arrival at Mandy, he took her to a doctor and she was under continuous treatment thereafter. Since there was nobody to look after her, he had to



remain at Mandy till the treatment was completed. That was why he was obliged to be absent from duty from 24.4.1984 to 23.6.1984. He promised that no such irregularities would occur in future and begged "to be excused for this time." He also requested that the period of absence be treated as leave.

3. After receiving the aforesaid reply of the applicant, the Divisional Mechanical Engineer, Mysore, appointed an Inquiry Officer in the person of a certain M.G.Narayana Rao. Sri Narayana Rao fixed the date of hearing in connection with the enquiry on 28.8.1984. On that date, the Inquiry Officer questioned the applicant. Referring to the charge-sheet given to the applicant and acknowledged on 24.6.1984, the Inquiry Officer asked the applicant what he had to say. The applicant replied - "Yes. I accept the charges levelled against my unauthorised absence without prior permission or sanction of leave by the competent authority detailed in the charges unconditionally." The Inquiry Officer again asked him if he was aware of the consequences of unauthorised absence without prior permission or sanction of leave from the competent authority to which the answer of the applicant was - "Yes. I am fully aware of the consequences of unauthorised absence, without prior permission or sanction of leave by the competent authority." After recording the questions and answers in English, the Inquiry Officer recorded a further note stating that what he had recorded had been read over and translated into



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Kannada and accepted as true by the applicant and below this note, the applicant also appended his signature. Thereupon the Inquiry Officer recorded his finding to the effect that the charge had been proved because it had been accepted by the applicant. On the basis of this report, the disciplinary authority namely the Divisional Mechanical Engineer, Mysore, passed an order imposing the penalty of removal from service on the applicant. The said order which was passed on 2.10.1984 was duly communicated to the applicant.

4. The applicant filed an appeal against the aforesaid order imposing the penalty of removal from service on him. In his appeal dated 20.10.1984, he gave an entirely different explanation for his absence from duty from 24.4.1984 to 22.6.1984 from the one he had given in his reply dated 3.7.1984 to the memo of charge. He was suffering from acute amoebic dysentery and was under the treatment of a doctor, Dr.C.S.Pai, M.D., Physician and Cardiologist of Mysore. Since his transfer to Arsikere, he had not got any accommodation and had therefore to live on the platform exposed to inclement weather, eating hotel food which was not hygienic and so he developed a stomach upset for which he was taking treatment at Arsikere. His parents-in-law, who came from Mandya to see him, found him unable to move and took him to Mysore for treatment under Dr. Pai and he was under his treatment from 24.4.1984 to 22.6.1984. He was appending a copy of a certificate issued by Dr. Pai dated 21.5.1984 in support of his statement. His parents-in-law, not



being aware of the railway rules, did not inform the nearest railway doctor of his condition and he himself was in no condition to sit or move because of exhaustion. When he resumed duty on 23.6.1984, he gave the medical certificate to the loco head, but the latter would not accept it. The Inquiry Officer and the disciplinary authority had not cared to go into the reasons for his absence without leave from 24.4.1984. When he agreed before the Inquiry Officer that he had remained unauthorisedly absent without prior permission for sanction of leave from the competent authority, what he meant to say was that he had remained absent without prior permission. He did not understand the meaning of the word 'unauthorised'. He had resumed duty on 23.6.1984, the chargesheet was served on him on 24.6.1984, the enquiry completed on 28.8.1984 and the penalty order issued on 5.10.1984 indicating undue haste on the part of the authorities to "hound him out". He therefore pleaded that the punishment be set aside since his absence from duty was for proper reason namely illness, though he had not complied with the medical attendance rules of the railways. He also pleaded that the penalty imposed on him was excessive in the circumstances of the case.

6. The appellate authority, viz. The Divisional Railway Manager, Southern Railway, Mysore after considering the contents of the applicant's appeal, passed an order dated 17.1.1985 rejecting the appeal. While doing so, he referred to the past conduct of the applicant. The applicant had been absent from duty on 12 separate occasions



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between 13.10.1961 and 14.7.1983 for which disciplinary action had been initiated on different dates and punishment had been awarded to him on 10 occasions, which consisted of withholding of increments and reduction of pay. Considering this, the appellate authority concluded—"there appears to be no reason whatsoever to show any consideration when he has not mended his ways at any time in spite of periodic punishment imposed for his unauthorised absence." He found no lacuna in the proceedings of the enquiry and therefore declined to modify or cancel the punishment of removal from service.

7. The applicant, thereafter, filed a review application to the Chief Personnel Officer, Southern Railway, Madras, which was disposed of by the reviewing authority viz. the General Manager, Southern Railway, Madras, and the said rejection was communicated to the applicant by letter dated 24.9.1986. The General Manager observed that the service record of the employee was not satisfactory, and therefore the said service record did not "warrant any consideration of showing any mercy. Under the circumstances, I feel there is no need for any modification of the penalty already imposed." Thereafter, the applicant seems to have made a number of mercy petitions and representations, but all of them were rejected.

8. In this application, the applicant wants us to set aside order dated 2.10.1984 of the disciplinary authority (Annexure A), order dated 17.1.1985 by the appellate authority (Annexure B) and letter dated 24.9.1986 by which the order of the reviewing authority viz. the General Manager, confirming the punishment was conveyed to him.



9. Sri M.R.Achar, learned counsel for the applicant made the following submissions : In his reply dated 3.7.1984 to the memo of charges, the applicant had requested that the period of absence be treated as leave. Without deciding this, the authorities should not have proceeded with the disciplinary proceedings. They should first have decided whether the applicant had leave to his credit and whether his absence from duty could be adjusted against such leave. Without passing an order in that regard, they should not have proceeded to impose penalty. The charge against the applicant alleging unauthorised absence made no reference to "wilful" absence from duty which alone constituted misconduct and was punishable. For this, he relied on rule 2112 of Volume II of the Railway Establishment Code. Since the applicant was not guilty of wilful absence, he should not have been punished. The applicant being a Group D official, was not familiar with the disciplinary rules. The Inquiry Officer should have specifically asked him to nominate a defence assistant. Not doing so amounted to violation of natural justice. The appellate authority, in confirming the penalty imposed on the applicant, relied on his past conduct. If the past conduct was to be made the basis of punishment, it should have been put to the applicant and his explanation sought before the penalty was imposed. For this Sri M.R. Achar relied on the decision of the Supreme Court in State of Mysore vs Manche Gowda AIR 1964 SC 506. Though the Inquiry officer had mentioned that the applicant had unconditionally accepted the charge, he did not record a separate deposition of the applicant in this regard. A mere question put by the officer and answer given by the applicant thereto was not sufficient for this purpose.



After perusing the records of the respondents, Sri Achar pointed out that the order of the disciplinary authority was passed without application of mind because it was in a cyclstyled preforma. Referring to a draft order appearing in the records produced by respondents at page 23, he contended that the disciplinary authority also had been influenced by the applicant's past conduct in imposing the punishment and this was in violation of the decision of the Supreme Court in Manche Gowda's case. Finally, for a mere 43 days' absence from duty, according to Sri M.R.Achar, punishment of removal from service was excessive.

10. Sri K.V.Lakshmanachari, learned counsel for the respondents, sought to refute the contentions of Sri M.R.Achar. The applicant did not apply for leave either before the period of his absence or afterwards and the question of passing any order on leave did not arise. In response to the memo of charges, the applicant had prayed that his absence be treated as leave. The question before the disciplinary authority was whether the applicant had absented himself without authority and that was the subject matter of the disciplinary proceedings and therefore of treating the absence as leave dehors. The inquiry did not arise. The reference to wilful absence in rule 2112 of the Railway Establishment Code Volume II was in the context of a railway servant who remained absent after the expiry of leave granted to him. Wilful absence in such circumstances was to be treated



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as misbehaviour. But that did not mean that long absence without sanction, did not amount to conduct ~~unbecoming~~ of a railway servant. Absenting oneself from duty without authorisation was an act of indiscipline which amounted to misconduct and was punishable. The absence of the word "wilful" in the charges levelled against the applicant therefore cannot exonerate him from punishment. The memo of charges clearly indicated to the applicant that he could choose another Government servant as defence assistant and the Inquiry Officer had also specifically drawn the attention of the applicant to the fact that he had not nominated any defence assistant : he did so in a letter dated 8.3.1984 addressed to the applicant wherein he asked the applicant to nominate a defence assistant. Therefore, the applicant was clearly informed of his right to appoint a defence assistant, and if he chose not to appoint one, it was not the fault of the Inquiry Officer or of the disciplinary authority and the principles of natural justice were not violated.

The appellate authority referred to the past conduct of the applicant only to see if any mercy could be shown to him in the matter of penalty. He found that the applicant's past conduct did not give any room for mercy to tone down the penalty. The draft which Sri M.R.Acher pointed out in the file of the disciplinary authority referring to the applicant's past misconduct, was neither here nor there because the order of the disciplinary authority which was eventually issued did not contain any reference to such past conduct. The Inquiry Officer had specifically asked the applicant as to what he had to say about the charge



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levelled against him and the applicant in reply had accepted the charge unconditionally and recorded his signature in token of such acceptance. The Inquiry Officer had translated the answer into Kannada and that was also confirmed by the signature of the applicant. There was no need to take a separate deposition from the applicant in this regard. Once the applicant was found guilty of misconduct, it would not have been proper to retain him in service. By absenting himself for a long time, without any communication to his office, much less sanction of leave, the applicant had acted in a very indisciplined manner. After 26 years of service, if he behaved in such an indisciplined manner, there was no choice for the disciplinary authority but to remove him from service and that is what he did. This was not a fit case for this Tribunal to interfere with the quantum of punishment, as the punishment cannot be said to be grossly disproportionate to the charges levelled against the applicant.

11. We have considered the rival contentions very carefully. We do not see much ^{Red.} force in the contention of Sri G.R.Achar that the authorities should first have considered the applicant's request for treating period of absence as leave before proceeding with the departmental enquiry. Till the enquiry was initiated, the applicant did not apply for leave and therefore the question of granting or rejecting his application for leave did not arise. If in reply to the memo of charges, he sought adjustment of the period of absence against leave, the authorities were under no obligation to deal with such



C.A.

request first, particularly because it was the nature of the absence which was itself the subject of the disciplinary proceedings. We also do not see merit in Sri M.R. Achari's contention that only "wilful" absence is punishable. Absence for long periods without prior sanction is a clear act of indiscipline constituting misconduct for which disciplinary proceedings could certainly be initiated. Sri Lakshmanachar has also pointed out that the Inquiry Officer himself reminded the applicant that he should appoint a defence assistant. Therefore, the contention that the applicant as a Group D officer, was not made aware of his right to appoint a defence assistant has no merit. Scrutinising the order of the appellate authority, we find that reference to past conduct was indeed only to see if some mitigating factor could be found there to reduce the quantum of penalty. The appellate authority found that the past conduct did not give room for any such sympathetic consideration. On the other hand, the order finally passed by the disciplinary authority imposing the penalty made no reference to the applicant's past conduct. The fact that the reference to past conduct in the draft order on the file, the final order that was issued made on the file pointed out by Sri Achari was deleted in the final order shows that the disciplinary authority deliberately kept the applicant's past conduct out of consideration in imposing the penalty. We may, in this connection, deal ^{ext.} with the state of law as it existed in 1964. According to



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the law as interpreted by the Supreme Court at the time, a delinquent Government servant had to be given an opportunity of being heard not only in regard to his guilt but also in regard to the punishment proposed to be imposed. In that case, the second show cause notice proposing the punishment did not refer to past misconduct. The Constitution has since been amended to say that no second opportunity need be given in regard to the punishment to be imposed. However, we must also mention that the Constitutional provision now requires imposing of penalty on the basis of evidence collected ~~During~~ the inquiry and so evidence not included in the inquiry would not be relevant for determining the quantum of punishment. On a scrutiny of the records of the respondents, we are satisfied that the disciplinary authority relied only on the evidence before him and considered the applicant's absence for a long period without authorisation as serious enough to merit the punishment of removal from service. The records show that the applicant unconditionally accepted the charge levelled against him and the contention that a separate deposition should have been taken from him does not impress us. We, therefore, hold that ~~charge~~ ^{the Ad.} against the applicant stands established.

12. Having said so much, we feel that the quantum of punishment is somewhat excessive. There is no doubt that the applicant's long absence from duty constituted gross indiscipline and was a serious offence. We also agree that the Railway Administration could not afford to retain a person in service who, even after 26 years of service, absented himself from duty for such a long period without sanction of leave. At the same time, removal from



service denies to the applicant all benefits arising out of the service rendered by him in the past. This, we consider to be rather harsh, since no moral turpitude was involved in this case. We would, therefore, reduce the punishment to that of compulsory retirement from the date from which the applicant was removed from service. The applicant will be entitled to all retirement benefits in accordance with the rules. The penalty is reduced accordingly to that of compulsory retirement. *Car*

13. In the result, the application is partly allowed as indicated above.

14. Parties to bear their own costs.



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sd/-

25/7/07
MEMBER (A)

sd/-

25/7/07
MEMBER (J)

- True Copy -

B. V. Mukundan
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE