

(27)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A.NO. 341 of 1987

Date of Order:01/03/1990

...

G.A.Sukkalah

..Applicant

Versus

Union of India, rep. by the
General Manager, SC Railway,
Rail Nilayam, Secunderabad
and 2 others

..Respondents

..

For Applicant: Mr.B.Nalin Kumar, Advocate

For Respondents: Mr.N.R.Devaraj, ~~Asst.~~ SC for Railways

CORAM: THE HON'BLE MR.B.N.JAYASIMHA: VICE CHAIRMAN.
THE HON'BLE MR.D.SURYA RAO: MEMBER:(JUDL.)

...

(Judgment delivered by Hon'ble Shri D.Surya Rao, Member(J)

1. The applicant herein is working as a Driver at Kazipet, under the Secunderabad (BG) Division, South Central Railway. He has filed this application questioning the Order No.C/T/5/G/A-4/1, dated 11-3-1987 issued by the 2nd respondent confirming the order of removal passed by the 3rd respondent in Order No.C/T/S/G/A-4, dated 10-12-1986.

2. The applicant states that vide charge Memo dated 8-9-1986, bearing No.C/T/5/G/A-4/1, a charge was framed against him that while functioning as Driver 'B'/Kazipet of Train No.SNF. Jumbo Goods Engine on 29-7-86, he passed DN Main Home signal at Danger at Kazipet shed and one Mr.Sriramuloo, driver of coupled engines succumbed to injuries. An enquiry was held by the Enquiry Officer.

contd..2

1/1/90

The Enquiry Officer submitted his report on 25-11-86 holding the applicant guilty of the charges. Thereafter, the 3rd respondent passed the order of dismissal dated 10-12-1986 as disciplinary authority, and on appeal by the applicant the 2nd respondent by his order dated 11-3-87 confirmed the order of removal passed by the 3rd respondent.

3. We have heard Both the Counsel.

4. Shri Nalin Kumar, relying on the decision of the full bench of the Bombay in Premnath K.Sharma Vs.UOI (1988(6) ATC 904), states that the Enquiry Officer's Report was not furnished to the applicant by the disciplinary authority before he passed the order of Removal. We have considered this submission. In Premnath Sharma's case it was held that:

"Even after the amendment of Article 311(2)

by the 42nd Amendment, the Constitution guarantees a reasonable opportunity to show cause against the charges levelled against the charged officer during the course of the enquiry. In order to fulfil the constitutional requirement he must be given an opportunity to challenge the enquiry report also. The Enquiry Officer enquires into the charges, the evidence is recorded and the charged officer is permitted to cross-examine the witnesses and challenge the documentary evidence during the course of the enquiry. But the enquiry does not conclude at that stage. The enquiry concludes only after the material is considered by the Disciplinary Authority, which includes the Enquiry Officer's report and findings on charges. The enquiry continues until the matter is reserved for recording a finding on the charges and the penalty that may be imposed. Any finding of the Disciplinary Authority on the basis of the Enquiry Officer's report which is not furnished to the charged officer would, therefore, be without affording a reasonable opportunity in this behalf to the charged officer. It, therefore, follows that furnishing a copy of the enquiry report to the charged officer is obligatory"

To:

1. The General Manager, (Union of India) south central Railway, Rail Nilayam, Secunderabad.
2. The Divisional Railway Manager, (B.G.) south central Railway, Transportation Branch, Rail nilayam, Sec'bad.
- ~~3. The Divisional Railway Manager, (B.G.) south central Railway, Transportation Branch, Rail nilayam, Sec'bad.~~
3. The Senior Divisional Mechanical Engineer (P)/Secunderabad, south central railway, Secunderabad.
4. One copy to Mr. B. Nalin Kumar, Advocate, 10-3-29/2, East Marredpally, Secunderabad.
5. One copy to Mr. N.R. Devaraj, SC for Railways., CAT., Hyderabad.
6. One spare copy.

...

kj.

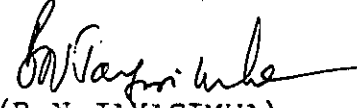
Done
Jr
2/3


4/2/90

(29)

Following the afore-said decision, we hold the enquiry initiated in that there has been denial of an opportunity to the applicant to represent against the Enquiry Officer's Report. The orders dated 10-12-1986 passed by the 3rd respondent as confirmed by the 2nd respondent in order dated 11-3-1987, imposing the penalty of removal from service are quashed. This, however, will not preclude the respondents from supplying a copy of the enquiry report to the applicant and give him an opportunity to make his representation and proceeding to complete the disciplinary proceedings from that stage. The application is allowed to the extent indicated above, but in the circumstances we make no order as to costs. If the respondents choose to continue the disciplinary proceedings and complete the same, the manner as to how the period spent in the proceedings should be treated would depend upon the ultimate result. Nothing said herein would affect the decision of the Disciplinary Authority. At the same time, we hasten to add, that this order of the Tribunal is not direction to necessarily continue the disciplinary proceeding. That is entirely left to the discretion of the Disciplinary Authority. It is open to the applicant to raise all objections available under law before the concerned authority in the event of further action being taken against him.

(Dictated in open court)


(B.N. JAYASIMHA)
Vice Chairman


(D. SURYA RAO)
Member (Judl.)

Dt. 3rd March, 1990

 14/3/90
DEPUTY REGISTRAR (J)

SQH*

.....