

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

FRI DAY THE SEVENTH DAY OF AUGUST  
ONE THOUSAND NINE HUNDRED AND EIGHTY SEVEN

: PRESENT :

THE HON'BLE MR. B.N. JAYA SIMHA: VICE-CHAIRMAN  
AND

THE HON'BLE MR. D. SURYA RAO: MEMBER.

ORIGINAL APPLICATION NO. 428 of 87.

Between:-

CH. Somaraju

.....Applicants.

And

1. The manager & correspondent & Senior Divisional Personnel Officer South Central Railway, Vijayawada, Krishna Dist.
2. The Divisional Railway Manager South Central Railway, Vijayawada, Krishna Dist.
3. The Head Master (Gazetted) Railway Mixed High School (Bithragunta, Nellore Dist. .... Respondents. Telugu medium)
4. The Chief Personnel Officer, S.C. Railway, Rail Nilayam, Sec'bad

Application under Section 19 of the Administrative

Tribunals Act, 1985 praying that in the circumstances stated therein the Tribunal will be pleased to 1) quash the Penalty Advice of the manager & correspondent of Railway Schools & Senior Divisional personnel officer, South Central Railway, Vijayawada, vide letter No. B/P. 227/10/86/1 dt. 3-12-86 imposing the penalty of removal from service with effect from 8-12-86,

2. To quash the Divisional Railway Manager, Vijayawada, (Appellate Authority)'s letter No. B/P. 89/10/86/1, dt. 30-12-86 wherein the applicant's appeal dt. 14-12-86 was rejected.
3. To quash the Chief Personnel Officer, South Central Railway, Sec'bad's letter No. P. 90/D & A/ BZA/CHSR/701

Manager, S.C.R. Sec'bad

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Original Application No. 428 of 1987

(Judgment of the Bench delivered by Hon'ble Sri.B.N.Jayasimha )  
Vice Chairman

The applicant is a Graduate Assistant in the Railway High School, Bitragunta, Nellore District, Vijayawada Division of the South Central Railway. In this application, he questioned the order of the Senior Divisional Personnel Officer, South Central Railway in letter No.B/P.227/IV/86/1 dated 3.12.1986 removing him from service with effect from 8.12.1986. Disciplinary action was initiated against the applicant on the ground that he misbehaved with a girl student. The Article of charge reads as follows :-

" That the said Sri. Ch. Somaraju (applicant) while functioning as Graduate Assistant, RMHS/TM/BTTR during July 1985 has committed gross misconduct in that he misbehaved with a girl student by name Kum. G. V.Susheela of IX Class 'B' Section made overtures suggesting her illicit relationship with him and sexual advances comparing her 'as beautiful asVijayasanthi', assuring her against pregnancy due to his undergone (sic) vasectomy to which she broke down and started weeping as witnessed by other classmates, T. Tirupathi, Ramaniah, Prameela, Kesavulu, on their just entering the class room after recess noticing that Sri.Somaraju hurriedly left the class room. As a member of teachers community there is no greater sin than his departure from moral rectitude. This is a case of offence forging on the crop."

Thus he violated rule 3(i) of the Railway Servants (Conduct) Rules, 1968."

Enquiry was duly held following the prescribed procedure under the Railway Servants (Discipline and Appeal) Rules.

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After completion of the enquiry, the disciplinary authority came to <sup>a</sup> conclusion, ~~was~~ as follows :-

" Shri. Somaraju is not a fit person to continue in service and, therefore, I decide that he should be removed from service. The following factors primarily have influenced me to come to the above decision.

1. Shri Somaraju, though gave a list of 8 names as defence witnesses, could present only two. This does mean that his defence witnesses must have backed out as they do not want to give false statements.

2. He did not nominate any defence counsel and decided to defend himself. In his cross-examination of the witnesses, I did not find any substance. This gave me to believe that he has no strong case.

3. In the answer to question No.2 he said while he was sitting in VIII 'C' Section Kum. Suseela was passing through his class with a coloured picture paper which was indecent and he suggested good manners and at that time he was sitting with his defence witnesses. This was proved as beyond truth by the statement given by Kum. Suseela ~~was~~ according to which only Sri.Somaraju and Kum.Suseela were in the I X Class 'B' Section, and none else. Kum.Prameela and others entered when the bell rang.

4. Even to show an iota of mercy, when I called for his SR/CRS, they are beyond satisfaction. According to these reports there were complaints that Sri. Somaraju's relations with girl pupils is bad.

5. Even the informal enquiries revealed that Sri.Somaraju's character is bad.

Though items 4 and 5 did not influence my mind to come to the conclusion, I have gone into items 4 and 5 to show some mercy but I was helpless. "

2. The applicant thereafter submitted an appeal

dated 14.12.1986 to the Divisional Railway Manager. The

appellate authority after considering the relevant factors

and the grounds urged in the appeal petition passed the

following order :-

"DRM/BAZ, the appellate authority, has carefully considered your (applicant's) appeal with relevant records and in accordance with the provisions under Rule 22 of the RS (D A) Rules, 1968 has decided as under :-

" I have gone through the appeal dated 14.12.1986 and carefully scrutinised the articles of charges, the explanation of the employee, the enquiry proceedings and report and all connected records. I have even gone through his entire service record and confidential reports.

The employee did not adduce any new point in his appeal than what he has said earlier except asking for mercy now.

After going through his record of service, I am not in a position to show mercy. The offence committed by him as a teacher is unpardonable. There is no evidence of his side also to disprove the charges.

I have even given a personal hearing to the employee on 22.12.1986 and heard him but unable either to reduce or set aside the penalty.

Under the above circumstances, I do not consider the punishment imposed by the disciplinary authority needs any revision."

3. In this application the applicant urges the following grounds:-

- (i) that the appellate authority has not applied his mind and the order is not a speaking order;
- (ii) that the Senior Divisional Personnel Officer is not a competent authority to impose a penalty of removal.

Apart from this, the applicant has traversed over the entire evidence that was recorded by the Inquiry Officer and has tried to make out that the conclusion arrived at by the

Inquiry Officer is not based on the evidence recorded.

4. We have heard the learned Counsel for the applicant Sri G.V.Subba Rao and Sri Devaraj, learned Counsel for the Department.

5. The first contention that the Senior Divisional Personnel Officer is not a competent authority to impose a penalty of removal is not valid. The applicant belongs to Group 'C' <sup>category</sup> and the Senior Divisional Personnel Officer is the authority competent to impose penalty of removal from service. The learned Counsel for the Railways stated that the applicant was appointed by Senior Divisional Personnel Officer, Vijayawada Division/S.C.Railway under O.M.No.8/P-594/XI/Selection dated 19-10-1976. ~~and~~ He is in a non-gazetted post in Grade Rs.440-750, and he was still in a non-gazetted grade when he was removed from service. The Senior Divisional Personnel Officer who is an officer in the Junior Administrative Grade has been vested with powers to appoint under Schedule of powers, Part H, Establishment Matters at Serial No.6. Extract of Serial No.6 <sup>which</sup> is as follows:-

Sl. No.	Nature of power	Extent of powers delegated to HQ Officers			
		Level-I	Level-II	Jr. Admn.	Sr. Scale
					Jr. Scale
					Asst. Officer
1	2	3	4	5	6
6.	To make appointment to Non-Gazetted post a) Substantive b) Officiating	Full	Full	Full	Sr. Scale Full in respect of post upto 455-700(RS) <u>Junior Scale</u> Full in respect of Class IV post and Class-III and Artisan staff in grades raising upto Rs.560/-.

DIVISIONAL OFFICERS

<u>DRM</u>	<u>ADRM</u>	<u>Junior Admn.</u>	<u>Senior Scale</u>
7	8	9	10
Full	Same as in Col.7	Full	Same as in Col.6

The contention is, therefore, not valid. From the order of the appellate authority, it is seen that he has dealt with all the contentions raised by the applicant in his appeal petition and the contention that it is not a speaking order is not correct. It is to be noted that the applicant has not complained of violation of principles of natural justice or of any procedure prescribed under the Railway Servants (Discipline & Appeal) Rules 1968. The appeal reads as follows:-

" In all humbleness I reiterate that I am not at all guilty of the charge. The charge has been levelled against me on a mere false complaint from the father of the girl who was influenced by certain elements including my colleagues having ill feelings and jealousy against me with the sole aim of spoiling my official career and prospects. I may submit, if I am not misconstrued, that a close perusal of the discussion of evidence recorded, by the Enquiry Officer with an observation, "it can be said" that I am guilty and the speaking orders of the Disciplinary authority with a concluding expression that he was helpless, will reveal the implied defacto aspect that the genuineness of the charge could not be substantially and categorically established and proved. Even the witnesses cited by the Administration itself to sustain the charge have contradicted the charge in clear terms, during their deposition in the enquiry. Further never I was communicated in the past any adverse entries in my C.R. as to my character and integrity as required under rules, thus confirming that my C.R. is not bad as observed by the D.A./Sr.OPO in his speaking orders (vide para 5). So I submit that imposition of such a penalty of removal from service on the basis of a false complaint which could not be proved and on the basis of ~~which~~ informal enquiries by the D.A. (vide para-6) of the speaking orders) is a gross injustice.

Sir, notwithstanding the above orders, I now only pray for your mercy with an earnest request to set aside the penalty and to reinstate me to my post as I have 16 years to serve with bright prospects. I also assure that I shall be all the more careful in future not to give room even for such false complaints."

6. It is well settled that the High Court is not a Court of Appeal under Article 226 of the Constitution over the decision of the authorities holding departmental

inquiry against a public servant. The court is concerned to determine whether the inquiry <sup>is</sup> held by the authority competent in that behalf and whether the rules of natural justice were not violated. Where there is some evidence which the authority entrusted with the duty to hold inquiry has accepted which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. An error of law as apparent on the face of the record can be corrected by a writ but not an error of fact, however, grave it may appear to be. (AIR 1975 SC 2151) State of Andhra Pradesh vs. Venkat Rao). Similar views <sup>have</sup> ~~have already~~ <sup>expressed earlier</sup> ~~been reiterated~~ in State of Andhra Pradesh and others vs. S. Sreerama Rao (AIR 1963 SC 1723). ~~It is as follows:-~~

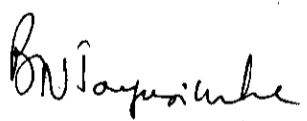
" In considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the court, does not apply and even if that rule is not applied, the High Court in a petition under Art. 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Art. 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant, it is concerned to determine whether the enquiry is held by an authority competent in that behalf,

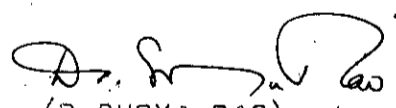
and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Art.226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Art.226 of the Constitution." (Para-7).

7. In this case <sup>we find</sup> ~~having found~~ that there is no violation of the principles of natural justice and that the applicant has been given full opportunity to defend himself, ~~and that~~ the appellate authority has also considered the grounds urged by the applicant, ~~we see no reason to admit~~ The application which <sup>is</sup> ~~was~~ filed <sup>only</sup> ~~mainly~~ on the ground of

certain inconsistencies in the evidence. The applicant had not raised or pointed out these inconsistencies in the appeal filed by him and these are not which can be urged before this Tribunal. Even on summary perusal of the evidence, we do not consider the discrepancies pointed out by the applicant would warrant admission of this application. It should be noted that the disciplinary authority, while awarding the punishment, has taken into account the past conduct of the applicant which shows that the applicant's attitude towards girl students has been bad. In these circumstances, we see no merit in this application.

The application is accordingly rejected at the admission stage itself.

  
(B.N. JAYASIMHA)  
Vice Chairman

  
(D. SURYA RAO)  
Member (J)

Dated this the 7<sup>th</sup> day of August, 1987.

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