

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.609/87.

Date of Judgment: 21.8.90.

K.S.N.Raju

... Applicant

Versus

The General Manager,
South Central Railway,
Secunderabad &

The Chief Operating Superintendent,
South Central Railway,
Secunderabad

.. Respondents

Counsel for the Applicant : Shri G.V.Subba Rao,
Advocate.

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

CORAM:

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

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

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

This application under section 19 of the Administrative
Tribunals Act has been filed by Shri K.S.N.Raju against the
General Manager, South Central Railway, Secunderabad and
another.

2. The applicant while functioning as a Senior Clerk fell
sick and was absent from duty from 25.10.77 to 14.10.82.
Throughout this period of nearly 5 years he was under the
treatment of a private medical practitioner. When he reported
for duty on 15.10.82 he was directed to get a fitness
certificate from the Chief Medical Officer of the Railways.

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He did so. Later, a charge-sheet was issued against him for the unauthorised absence, an enquiry was conducted and a punishment of withholding of annual increment for a period of 3 months (non-recurring) ^{was inflicted} vide letter No.T/305/3/Vol.V dated 11.3.83. 12 ~~and~~ By the same order the period of absence was also treated as E.O.L. The applicant did not prefer an appeal against this penalty. After a lapse of 9 months the applicant was intimated that in terms of Rule 25 of the Railway Servants D&A Rules, 1968 the General Manager has reviewed the DAR case and decided to cancel the DAR proceedings since he had noticed procedural irregularities. Thereafter a fresh charge-sheet was issued on 11.4.84. The applicant moved the Hon'ble High Court by a writ and the same was transferred to this Tribunal as T.A.No.803/86. The order in this case was passed on 26.8.87. Pursuant to that order the General Manager, South Central Railway issued a memorandum No.P/90/D&A/SC/KSNR/155 dated 18.9.87 indicating his proposal to revise the punishment to a major one commensurate with the gravity of the offence committed by the applicant. By this letter the General Manager gave Shri K.S.N.Raju an opportunity to show cause as to why the penalty should not be enhanced and wanted any representation from him to reach him within 10 days of the receipt of the memorandum. It is against this order that the applicant has now filed this application praying that the show cause memorandum proposing to enhance the minor 9.2 penalty already inflicted on him be set aside.

3. The respondents have opposed the prayer. They have pointed out that it is well within the powers of the reviewing authority to enhance the punishment ^{and} that he had ~~given~~ ^{issued} the impugned memorandum in pursuance of the judgment of this Tribunal dated 26.8.87 in T.A.No.803/86.

4. They have also pointed out that after ^{the} receipt of the show cause notice dated 18.9.87 the applicant had submitted a representation and he was also given a personal hearing. However, before the orders of the General Manager could be communicated the applicant moved this Tribunal ^{by} ~~via~~ the present application. The respondents are aggrieved that instead of waiting for the final orders the applicant had rushed to this Tribunal and therefore they were not in a position to communicate the decision taken by the General Manager on 29.9.87 due to the pendency of the O.A. before this Tribunal.

5. We have examined the case and heard the learned counsel both for the applicant and the respondents. The applicant had raised the point that the reviewing authority is not within his powers to take up the review of the punishment beyond the time limit of 6 months. We find that the judgment in T.A.No.803/86 covers not only this point but other points raised in this application by the applicant. This Tribunal in its judgment in T.A.No.803/86 had held that there is no time limit for the General Manager to act as a reviewing authority. Rule 25 of the Railway Servants D&A Rules, 1968 does not forbid this. They had covered all the developments in this case upto the stage when the respondents proposed a de-novo

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enquiry vide their memorandum of 16.3.84. The Tribunal held that since it was proposed to enhance the punishment, to meet the principles of natural justice the respondent should issue a show cause notice and then pass a review order after considering any representation made by the applicant. This is the procedure required to be followed when the punishment already inflicted is proposed to be enhanced by the reviewing authority. It is in pursuance of this directive that the respondents issued a memorandum dated 18.9.87 giving an opportunity to the applicant to explain why the penalty should not be enhanced. The applicant had submitted his explanation to the General Manager and was also given a hearing by the General Manager. Instead of waiting for the outcome he had approached this Tribunal praying that the proceedings for enhancement of penalty be set aside. When the case came up for hearing on an earlier occasion this Tribunal by its order dated 12.2.90 directed the respondents to communicate the decision already taken by the General Manager on 29.9.87 and which remained uncommunicated due to the pendency of this O.A. We also directed in the same order of 12.2.90 that if the decision of the department was in favour of the applicant there would be no necessity for the application to be pursued and it would be treated as infructuous. If, on the other hand, the decision was adverse, the applicant was at liberty to go ahead with the case. We find from the

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Railway records, that by his letter No. P/90/D&A/SC/KSNR/155 dated 15.3.90, the General Manager had communicated in pursuance of our order dt.12.2.90 the decision taken ^{by him} on 29.9.1987. After careful examination of the case, the representation of the applicant and after personal hearing, he had decided to take a lenient view. His decision was:

- (i) The period of unauthorised absence from 25.10.77 to 14.10.82 is treated as 'Leave without Pay' which will not count as qualifying service for retirement benefits.
- (ii) His promotion to higher grade should be withheld for a period of five (5) years with effect from 15.10.1982.

6. The treatment of the period of unauthorised absence as one of leave without pay not counting for retirement benefits is not a penalty. It is just ^a treatment of the absence, within the powers of the General Manager. As regards modification of the penalty, we find from Rule 6 of the Railway Servants D&A Rules, 1968 that the revised penalty (withholding of promotion) is less than the one originally inflicted on the applicant (withholding of increments) against which he did not appeal. There is thus a reduction in the punishment and not enhancement.

7.2 There is thus, no need for us to interfere in this case.

7. In his letter dt.15.3.90 conveying his decision the General Manager has indicated that in terms of Rules 18 to 20 of the Railway Servants D&A Rules, 1968 an appeal can be preferred by the applicant against the General Manager's orders to the Railway Board. Such an appeal, if opted for by the applicant, should be preferred within 45 days from the date of receipt of the order dated 15.3.90. If the applicant desires to prefer an appeal against the

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General Manager's order to the Railway Board, he still has the liberty to do so within a period of 45 days from the date of receipt of this order. When received, the Railway Board should give its consideration to the appeal in accordance with the D&A Rules.

8. In view of the above this application which seeks quashing of the memo dt.18.9.87 had become infructuous and therefore there is no need for us to interfere in this case. The application is thus dismissed as infructuous with no order as to costs.



(J. NARASIMHA MURTHY)
Member (Judl).



(R. BALASUBRAMANIAN)
Member (Admn.)

Dated: 21 August, 1990


Deputy Registrar (Judl)

MVS



To

1. The General Manager, S.C. Railway, Secunderabad.
2. The Chief Operating Superintendent, South Central Railway, Secunderabad.
3. One copy to Mr. G.V. Subba Rao, Advocate
1-1-230/33, Jyothi Bhavan, Chikkadapally, Hyderabad.
4. One copy to Mr. N.R. Devraj, SC for Rlys, CAT. Hyd. Bench.
5. One copy to Mr. J. Narasimha Murthy, Member (J) CAT. Hyd. Bench.
6. One copy to Mr. R. Balasubramanian, Member (A) CAT. Hyd. Bench.
7. One spare copy.

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