

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.730/87.

Date of Judgment 22-2-81

Y.L.Kantha Rao

.. Applicant

Vs.

1. The General Manager,
South Central Railway,
Secunderabad.
2. The Chief Operating
Superintendent,
South Central Railway,
Secunderabad.
3. The Divisional
Railway Manager,
South Central Railway (BG),
Secunderabad. .. Respondents

Counsel for the Applicant : Shri G.Bikshapathi

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 has been filed by Shri Y.L.Kantha Rao under section 19 of the Administrative Tribunals Act, 1985 against the General Manager, South Central Railway, Secunderabad and 2 others.

2. The applicant who was a Senior Assistant Station Master at the relevant point of time fell sick and was absent from duty for a long time. It was only at the end of the long treatment for his ailment that he reported

for duty in December, 1983. The respondents initiated disciplinary proceedings against him and after serving him a charge-sheet and conducting an enquiry issued an order of punishment removing him from service vide their order dated 23.1.84. He preferred an appeal against this and the appellate authority rejected his appeal by a non-speaking order. The appellate authority had not gone into the compulsions that the applicant had to face. He filed this O.A. and in its judgment dated 25.8.89 this Tribunal allowed the petition applying the Full Bench decision of this Tribunal in the case of Gafoor Mia & others Vs. Director, DMRL & others [AISLJ 1988(2) CAT 277]. The respondents filed an S.L.P. in the Supreme Court against this decision and the case was remanded back by the Hon'ble Supreme Court for deciding the case on its merits.

3. The respondents have opposed the prayer stating that they had followed all the procedures required under the Railway Servants (Discipline & Appeal) Rules and justify their action in his removal from service.

4. We have examined the case and heard the learned counsels for the applicant and the respondents. The charge against the applicant was that he remained absent in an unauthorised manner from 18.5.81. The applicant had fallen a victim to a paralytic stroke and was under treatment for over 2½ years. It is not that during the entire 2½ years he was in such a bad condition as not to be able to have ^{intimated} the respondents about his illness either

by correspondence or through some friends and relatives who called on him. In this respect he is not above blame. At the same time it is surprising that the respondents had not taken any steps to ascertain the reasons for his absence for such a long period particularly when he had been holding a senior position like the Senior Assistant Station Master of a major railway station like Secunderabad. Not much effort was required in the enquiry to establish the charge as such, but the respondents did not go into the circumstances which compelled the applicant to conduct himself in the manner he did. The enquiry report is a brief one and simply establishes the fact that he remained absent without proper authority. The disciplinary authority agreed with it and imposed the extreme penalty of removal from service. The appellate authority also does not seem to have gone into the root cause. It is stated that the decision of the appellate authority could not be sent to the applicant because his whereabouts were not known. This is surprising because every administration has to keep on its records the addresses of all the employees and important communications are to be sent to the last known addresses. We also find from the Railway records that on 28.10.85 the applicant had preferred a mercy appeal to the General Manager, South Central Railway. In that mercy appeal he had represented that during his

sickness he was serious for a number of days and the family members were also so upset and his wife being illiterate they could not observe the requirements of the Railway rules. In the end he had made an appeal that in view of his 23 years of faithful service without any complaint he be permitted atleast to retire voluntarily from service to enable him to receive the pensionary benefits. While disposing of the mercy appeal, the General Manager had held that his disease could not have incapacitated him to such an extent as to avoid reporting to the Railway administration/Railway medical authorities for 2½ years and that even the D&A enquiry was delayed as he was not traceable. Thus, his appeal to consider his case for voluntary retirements also evoked no response.

5. All the above aspects apart, we find that a copy of the enquiry report has not been given to him before passing the final punishment order. We find from the punishment order dated 23.1.84 that a copy of the enquiry report was furnished only alongwith the punishment order. The Hon'ble Supreme Court had held in the case of Union of India & others Vs. Mohd. Ramzam Khan [Judgment Today 1990(4) SC 456] that non-furnishing copy of enquiry report before the passing of punishment order is violative of rules of natural justice and makes the final order liable to be quashed. On the basis of this decision of the

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1. The General Manager,
South Central Railway,
Secunderabad.
2. The Chief Operating Superintendent,
South Central Railway,
Secunderabad.
3. The Divisional Railway Manager,
South Central Railway (BG),
Secunderabad.
4. One Copy to Mr.G.Bikshapathy, Advocate, 16-9-749/A1,
Race Course Road, Old Malakpet, Hyderabad-540036.
5. One Copy to Mr.N.R.Devaraj, SC. for Rlys, CAT., Hyd.
6. One Copy to Mr.SJ.Narasimha Murthy : member (Judl), CAT., Hyd.
7. One Copy to Mr.R.Balasubramanian, Member (Admn), CAT., Hyd.
8. (One Spare Copy.

VGB.

Hon'ble Supreme Court ~~and~~ the order of punishment of removal and the subsequent rejection of the appeals, review etc., are set aside. 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 a direction to necessarily continue the disciplinary proceeding. That is entirely left to the discretion of the Disciplinary Authority.

6. The application is allowed as above with no order as to costs.

HS

(J.Narasimha Murthy)
Member(Judl).

R. Balasubramanian

(R.Balasubramanian)
Member(Admn).

Dated

22nd February 91

for Deputy Registrar(J).