

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.811/87.

Date of Judgment: 28.6.90

G.Dhanraju

.. Applicant

Versus

Sr. Divisional
Accounts Officer,
S.E.Railway, Waltair
& 3 others

.. Respondents

Counsel for the Applicant : Shri P.B.Vijaya Kumar,
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).

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

This is an application filed by Shri G.Dhanraju
under section 19 of the Administrative Tribunals Act
against the Sr. Divisional Accounts Officer, S.E.Railway,
Waltair and 3 others.

2. At the relevant point of time the applicant was
working as Clerk Grade I in the office of the Sr. Divisional
Accounts Officer, S.E.Railway, Waltair. A
charge-sheet dated 5.7.85 was served on the applicant.

The charge against him was that he submitted a declaration
on 23.5.83 to the effect that he ^{was} ~~is~~ having two unmarried
sisters and one widowed sister as his dependents

and that he had drawn privilege passes on three occasions.

The applicant submitted his explanation and an enquiry was conducted. The first respondent thereupon passed an order dated 4.4.86 reducing the petitioner to the post of Clerk Grade II for a period of 5 years. The applicant preferred an appeal to the second respondent and the appellate authority modified the punishment order as one of reduction ~~to~~ operative only for 3 years instead of the 5 year period inflicted by the disciplinary authority. The applicant preferred a review petition and the reviewing authority did not modify the appellate authority's decision.

3. In the meantime he had passed the promotion examination and the third respondent had even issued an order dated 7.2.86 promoting the applicant as Section Officer from Clerk Grade I and posted him at Bhilai but within a short time by an order dated 21.2.86 the promotion order was cancelled without assigning any reason whatsoever.

4. The applicant has prayed that the entire disciplinary proceedings against him upto the stage of the review order dated 5.5.87 be quashed and all attendant benefits including the promotion to the grade of Section Officer be given to him. The respondents have not filed any counter affidavit. In the course of the hearing they have however submitted the records. It is their point that both the parents of Shri G.Dhanraju having expired

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long before the birth of the two persons shown as unmarried sisters, they cannot be real sisters of the applicant. It is also their case that he did not have any widowed sister who was also shown as dependent on him. It is contended that these facts were established from the records and also in the course of enquiry. They therefore maintain that the whole process of disciplinary action, the disposal of the appeal and later the disposal of the review petition are all in order.

5. We have examined the case and heard the learned counsels for the applicant and the respondent. The main contentions of the applicant are:

- (a) that the punishment order as well as the appellate orders are not speaking ones,
- (b) that the inclusion of the names of unmarried sisters was a genuine mistake on his part and was not with the intention to defraud the Government,
- (c) that the widowed sister was entirely dependent on him and therefore he was right in claiming the passes for her,
- (d) that the charge-sheet is defective because it charges him with violation of the provisions of Rule 3(l)(i) of the Railway Service Conduct Rules, 1966 which points out that he was guilty of misconduct.

6. As to the exact relationship between the applicant and the three sisters, two unmarried and one widowed, it has become clear that they were not his real sisters but were only cousins. This has been admitted by the applicant himself in his appeal to the appellate

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authority. Vide para 5 of the appeal (page 25 of the material papers to the application) the applicant has stated that the two unmarried sisters and one widowed sister were his cousins and were wholly dependent on him and that their inclusion in the pass declaration of 1983 was unmotivated. Having admitted this, the applicant contends throughout that the sisters being dependent on him it was his moral duty and responsibility to take care of their needs and goes on to justify his including them in the list of dependents. He has also quoted that he has shown them as his dependents in his ration card. We do not accept this contention. While inclusion in the ration card for getting essential commodities for their sustenance very livelihood may be permissible under the relevant rules inclusion of ineligible persons for facilities like free rail travel not permitted by rules cannot be justified. The applicant has contended that though he had included the unmarried sisters as dependents he had never drawn a pass in their favour and that he had drawn passes on three occasions in respect ^{only} of the widowed sister. This does not absolve him from the mistake because what counts more is his intention. Had there been any opportunity he might have drawn passes for his unmarried sisters also. If he had no intention to draw passes for them why then did he include them at all in the list of dependents?

7. As for the non speaking orders of the disciplinary authority, the disciplinary authority has agreed with the

findings of the enquiry report and there is therefore no need for him to discuss at length the various aspects of the enquiry [Supreme Court Judgment in the case of State of Madras Versus A.R.Srinivasan reported in A.I.R. 1966 (SC) 1827]. As regards the non speaking order of the appellate authority, it is noted and that in his lengthy appeal he has not anywhere assailed the proceedings as such or pointed out lacunae in the proceedings. All that he had tried to maintain was that the inclusion of the three names as dependents was inadvertant and not with any malafide intention and should not therefore be considered as an act unbecoming of a Govt. servant. He has also quoted a few cases of law. We have seen the citations and find that none of them is applicable in the present case. Finding that the whole disciplinary procedure was in accordance with the rules and that these have not been assailed by the applicant it was not required of the appellate authority to discuss the various aspects and express his views. Since he was in entire agreement with the disciplinary proceedings all that he exercised was his power of moderation and he has just reduced the punishment to being operative only for 3 years instead the 5 year period inflicted by the disciplinary authority. We do not find that the appellate order suffers from an infirmity. It has necessarily to be a speaking order only when various defects are pointed out and when

the need for discussing those points arises. In the instant case there was no such need and we find nothing wrong in the appellate order.

8. The applicant in his appeal had also pleaded that the Railway Board in its letter dated 23.3.65 communicating a schedule of penalties against irregularities in connection with free passes had not included the kind of penalty that had been inflicted on him (para 6 page 27 of the material papers to the application). The said letter indicates a long schedule of various penalties for various irregularities. Out of the long list we do not find a mention of wrong declaration. Moreover, vide para 4 of the letter dated 23.3.65 the General Manager has clearly stated that a copy of this letter together with its enclosure is being published in the S.E.Railway gazette so that all the staff may realise the fact that they are liable to removal or dismissal from service for misuse of passes, PTOs and concession orders and for any fraudulent acts or false representation and certification in connection therewith. It is clear that false certification could have led to the removal or dismissal of the applicant. In the instant case the punishment is just one of reduction. As for the promotion which was ordered and cancelled within a short time, the disciplinary proceedings against him at the time of issue of the promotion order were in a very advanced stage.

To:

1. The Senior Divisional Accounts officer, S.E.Railway, Waltair.
2. The Additional Financial Adviser & Chief Accounts officer, S.E.Railway, Garden Reach, Calcutta.
3. The Financial Adviser and Chief Accounts officer, S.E.Railway Garden Reach, Calcutta.
4. The General Manager, S.E.Railway, Garden Reach, Calcutta.
5. One copy to Mr.P.B.Vijay Kumar, Advocate, A-1-8/7/11, Chikkadpally, Hyderabad-500 020.
6. One copy to Mr.N.R.Devaraj, SC for Railways, CAT, Hyderabad.
7. One copy to Mex Hon'ble Mr.R.Balasubramanian:Member:(Admn.) CAT., Hyderabad.
8. One spare copy.

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The authorities having realised the mistake had immediately cancelled the promotion order and this action of the respondents is quite in order since the person against whom the disciplinary proceedings are in progress cannot in any case be promoted until he is cleared in the case.

9. The applicant's contention that he was not guilty of misconduct and the mere inclusion of ineligible persons in the list of dependents was inadvertant and harmless is not acceptable. He holds a responsible post in the Railway administration and cannot expect to get away with it after committing this misconduct. The various case laws he had cited at page 32 of the material papers to the application also do not come to his rescue. We find that the disciplinary proceedings have been conducted in accordance with the rules and we do not find any infirmity either in the punishment order or in the appellate order or in the review order. Under the circumstances the application is liable to fail and is accordingly dismissed with no order as to costs.

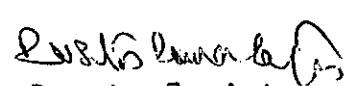


(J. Narasimha Murthy)
Member(Judl).

R. Balasubramanian

(R. Balasubramanian)
Member(Admn).

Dated 28th June 90


L. S. Devaraj
Deputy Registrar(J)