

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT
HYDERABAD

(3X)

TRANSFERRED/ORIGINAL APPLICATION NO. 154 of 1989

DATE OF ORDER: 9 April, 1990

BETWEEN:

Shri M.Shanker Rao

APPLICANT(S)

and

The General Manager, S.C.Railway,
Secunderabad and 2 others

RESPONDENT(S)

FOR APPLICANT(S): Shri G.Bikshapathy, Advocate

FOR RESPONDENT(S):Shri N.R.Devaraj, SC for Railways

CORAM: Hon'ble Shri J.Narasimha Murthy, Member (Judl.)
Hon'ble Shri R.Balasubramanian, Member (Admn.)

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Bench of the Tribunal?
5. Remarks of Vice-Chairman on columns 1,2,4 (to be submitted to Hon'ble Vice-Chairman where he is not on the Bench)

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M(A)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI J.NARASIMHA MURTHY, MEMBER (JUDL.)

This is a petition filed for a relief to declare the proceedings No.DRM/S&T/BG/DAR/CSI/SKZR dated 18.4.1988 passed by the 3rd respondent as illegal and arbitrary and direct the respondents to treat the applicant as if he continued in service in ESM Grade 'A' with all benefits.

The contents of the petition is as follows:-

2. The applicant was appointed as Electrical Signal Maintainer (ESM) Grade 'B' with effect from 3.4.1968. He was confirmed in the said post. Subsequently, he was promoted to the post of ESM Grade 'A'. While the matter stood thus, the petitioner was issued with a charge sheet dated 10.9.1987 under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 alleging that the applicant failed to carry out the maintenance of battery banks for two months, i.e., from February to April; that he neglected the maintenance of insulated joints for February, March and April, 1987; that he failed to effect periodical replacement of electric signal lamps; that he build-up fake records on 27.1.1987 and that he refused to receive certain letters. The said allegations were styled as misconduct, violating Rule 3(1)(ii) of the Railway Servants (Conduct) Rules, 1968. The applicant denied charges and submitted detailed explanation. The applicant was not furnished with the allegations basing on which the charges were framed. Without considering the explanation submitted by the applicant, an enquiry was ordered by the 3rd respondent. Shri N.Swamynathan, Chief Signal Inspector

was appointed as Enquiry Officer to conduct the enquiry into the charges framed against the applicant vide charge sheet dated 10.9.1987. In the enquiry, none of the witnesses were examined in support of the charges. No records were placed in the enquiry. The 3rd respondent passed an order on 18.4.88 imposing the following punishment:

"Shri M. Shanker Rao, ESM 'A' /MAG 'H' in the scale Rs.1320-2040 (RSRP) is reduced to the post of ESM 'B' in the scale of Rs.1200-1800 (RSRP) of pay of Rs.1410 for a period of 3 years with cumulative effect and loss of seniority with immediate effect".

3. The applicant has filed an additional affidavit contending that he was not furnished with a copy of the Enquiry Officer's report prior to the imposition of penalty. It is only supplied along with the penalty order. Therefore, non furnishing of the Enquiry Officer's report amounts to denial of reasonable opportunity as set out by the Full Bench of the Tribunal in 1988(6) ATC page 904 (Premnath K. Sharma Vs. Union of India and others) and on the said ground the O.A. is to be allowed. It is contended that the proceedings are illegal and non-furnishing of the Enquiry Officer's Report amounts to denial of reasonable opportunity.

4. The respondents filed a counter stating that a major penalty charge sheet was issued to the applicant on 10.9.1987.
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He denied that the charges are vague and do not constitute act of misconduct or negligence. The disciplinary authority has not satisfied with the explanation and an enquiry was ordered.

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The applicant was given reasonable opportunity to defend himself by allowing inspection of documents, permitting engagement of defence assistant and also permitting examination of two additional witnesses. The enquiry was held in accordance with the provisions contained in the Railway Servants (Discipline & Appeal) Rules. The findings were given based upon evidence. There is no violation of principles of natural justice. According to the respondents there are no merits in the application and it is liable to be dismissed.

5. Shri G.Bikshapathy, learned counsel for the applicant and Shri N.R.Devaraj, SC for Railways argued the matter. Shri Bikshapathy stated that the disciplinary authority did not furnish the applicant with a copy of the enquiry officer's report before passing the order of penalty. He relies upon the ratio of decision in "Premnath K.Sharma Vs. Union of India and others" (1988(6) ATC 904) by the New Bombay Bench of this Tribunal wherein it was held that "furnishing a copy of the enquiry report to the charged officer is obligatory" and based on this decision the application is liable to be allowed.

6. Following the decision of the Full Bench cited above, we quash the Proceedings No.DRM/S&T/BG/DAR/CSI/SKZR dated 18.4.1988 passed by the 3rd respondent. This order, 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

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in the circumstances of the case, there will be 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 proceedings should be treated would depend upon the ultimate result.

MS

R. Bala Subramanian

(J. NARASIMHA MURTHY)
Member (Judl.)

(R. BALA SUBRAMANIAN)
Member (Admn.)

TVN 16/4/90

Dated: 9 April, 1990. DEPUTY REGISTRAR (A).

To

1. The General Manager, S.C.Railway, Secunderabad.
2. Senior Divisional Signal and Telecommunications Engineer (M), Broad Gauge, S.C.Railway, Secunderabad.
3. Divisional Signal and Telecommunications Engineer (M-I), Broad Gauge, S.C.Railway, Secunderabad.
4. One Copy to Mr.G.Biskshapathy, Advocate, Race Course Road, Old Malakpet, Hyderabad-500036.
5. One Copy to Mr.N.R.Devraj, SC for Rlys, CAT, Hyderabad.
6. One spare copy.

VSN

14/4/90

Draft by: Checked by: Approved by
D.R.(J)

Typed by:- PC Compared by:-

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.

HON'BLE MR. B.N. JAYASIMHA: (V.C.)
AND

HON'BLE MR. D. SURYA RAO: MEMBER (JUDL)
AND

HON'BLE MR.D.K.CHAKRAVORTY:MEMBER:(A)
AND

HON'BLE MR. J. NARASIMHA MURTHY: MEMBER (J)

W. B. LEWIS. ⁴¹¹ B. G. & G. S. & S. & H. & M. & M. & H. & H.

DATED: Sept. 90 : MONAER (M)

ORDER/JUDGMENT

M.A./R.A./C.A./No. —

T.A.No. (W.P.No.)

O.A.No. 154 89-89

Admitted and Interim directions issued.

Allowed.

Dismissed.

~~Disposed of with direction.~~

M.A. Ordered.

No order as to costs.

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