

Central Administrative Tribunal
HYDERABAD BENCH : AT HYDERABAD

O.A. No. 352/89.

Date of Decision : 26

~~T.A.No.~~

P.B.Dasan

Petitioner.

Shri G.Ramachandra Rao

Advocate for the
petitioner (s)

Versus

Union of India per General Manager,
S.C.Rly., Secunderabad & 3 others

Respondent.

Shri N.R.Devaraj,
SC for Railways

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. J.Narasimha Murthy : Member(Judl)

THE HON'BLE MR. R.Balasubramanian : Member(Admn)

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M(J)

HRBS
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.352/89.

Date of Judgment 26.8.1991.

P.B.Dasan

.. Applicant

Vs.

1. Union of India per
General Manager,
S.C.Rly., Rail Nilayam,
Secunderabad.
 2. The Divl. Rly. Manager,
S.C.Rly., Opp. Rail Nilayam,
Secunderabad.
 3. The Sr. Divl. Operating
Superintendent,
Broad Gauge,
S.C.Rly.,
Secunderabad.
 4. The Divl. Operating
Superintendent,
Broad Gauge,
S.C.Rly.,
Secunderabad.
- .. Respondents

Counsel for the Applicant : Shri G.Ramachandra Rao

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

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 P.B.Dasan
under section 19 of the Administrative Tribunals Act, 1985
against the Union of India per General Manager, S.C.Rly.,
Rail Nilayam, Secunderabad and 3 others.

(71)

.. 1A ..

1. The applicant herein was working as Assistant Station Master, Rechni Road Station which lies between Kazipet and Ballarsha stations. He was on duty on 13-3-86 between 15-00 hours to 00-00 hours. During this time Train No. 128 passed through Rechni Road Station from Ballarsha towards Kazipet. It is the case of the applicant that the line between Ballarsha and Rechni Road Station was a single line whereas the line between Rechni Road to Kazipet was a double line. It is the applicant's case that on 13-3-1986 at 19-45 hours Train No. 128 Down passed Rechni road station without tail lamp and proceeded to Bellampalli i.e. on the Kazipet side. When a train pass^{es} without a tail lamp the Station Master on duty has to observe General Rule 4.17 and other allied rules. This rule states that till such time the defect is remedied, the train has to be treated as an incomplete vehicle and that the Station Master should not allow any train to

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enter the section between Rechni Road Station and Repalliwada on the Ballarsha line (Single Line).

The applicant states that he intimated the next station viz., Bellampalli that Train No.128 is not having tail lamp. Train No.128 passed through Bellampalli, Mandamarri, Mancherial, Peddampet and finally ^{reached} Ramagundam which takes about 33 minutes to run. After this lapse of 33 minutes this train was detained at Ramagundam and the lapse relating tail lamp not being lit was rectified at about 20-18 hours. In the meanwhile, train No. 907 express approached Rechni Road Station i.e., the station of which the applicant was Station Master on the double line from Kazipet and Ballarsha. Since Train No.128 had passed through without a tail lamp the applicant did not clear the block between Rechni Road Station and the next station Repalliwada (Single Line) to enable train No. 907 Express to pass through till he got confirmation about the defect in train No. 128 having been rectified.

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This resulted in a delay of 25 minutes in giving clearance to train no. 907. After the incidence, the applicant received a charge memo issued by the third respondent who is not having any jurisdiction to issue such charge sheet^s on 17-3-1986. Three charges were contained in the said charge sheet. The first being that the applicant deliberately detained Train No. 907 for 5 minutes at the home signal of *and for 20 minutes at Rechni Road Station* by not clearing the section between Rechni Road Station and Repalliwada. The second charge is that the applicant had not informed/ advised ASM, Bellampalli regarding 128 express having passed through without tail lamp and thus he had violated Block Manual Rule No. 5.9 and General Rule 4.17. The third charge is that the applicant had violated rule No. 3(1)(i)(ii) and (iii) of Railway Servants (Discipline and Appeal) Rules 1968. The applicant contends that he sought inspection on 21-3-86 of certain documents relied upon for proving the

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charges framed against him and also sought two more additional documents for giving explanation to the charge sheet. He also gave the names of witnesses to be examined on his behalf. He was not given inspection by the third respondent. The applicant again submitted a letter dated 3-4-1986 calling upon the third respondent to make available the documents. The third respondent without giving an opportunity for submission of explanation appointed Asst. Operating Superintendant of works as Enquiry Officer on 16-4-1986. The applicant states that non-furnishing of the documents precluded him from filing his explanation to the memorandum of charges and that commencing an enquiry without obtaining his explanation violates the Railway Servants (Discipline and Appeal) Rules 1968. The Enquiry Officer after enquiry held that the first charge namely relating to detention of train no. 907 at Rechni Road Station was proved. Consequently he also held that charge No.3 is violative of Conduct Rules is proved. The second

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charge that the applicant failed to advise ASM, Bellam-
pally relating ^{to} train No.128 passing through without
a tail lamp is not held proved. Basing upon the
Enquiry Officer's report, the third respondent passed
the impugned orders of removal i.e. proceedings No.
T.P.6/RECH/3/86 dt. 1/6-1-1987. The applicant pre-
ferred an appeal to the second respondent on 3-2-1987.
The second respondent confirmed the orders of removal
passed by the third respondent by an order dated
10-4-1987. Various Grounds are raised in the appli-
cation. The first being that the Chief Personnel Officer,
South Central Railway, Secunderabad, was the appointing
authority and that he ^{also} should have initiated action
and passed the impugned order. The second ground raised
is that no reasonable opportunity for perusing the
documents relied upon by the authorities for proving
all the charges was given, and, therefore, the orders
of removal are bad. The third ground raised is that
the applicant was not furnished inspection of the
that
records in support of the charges and he did not receive

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any reply either from third respondent or from the Enquiry Officer for perusing all the documents required and, therefore, the enquiry is bad. It is further stated that punishment is disproportionate to the charges framed. It is stated that the appellate order is not a speaking order and that the same was passed without giving an opportunity for personal hearing, and, therefore, the appellate order is liable to be set-aside. The applicant further states that since train No.128 had passed through without a tail lamp it was incumbent upon him under General Rule 4.17 and other instructions issued from time to time to detain train no. 907 till he received confirmation that the defect in train no. 128 has been rectified. The applicant states that because he has strictly followed the rules he is being victimised and was sought to be removed from service. He further stated that the third respondent tampered ^{with} ~~and~~ the records to show that the defect in Train No. 128 was cleared at 20-02 hours ^{state} and that the clearance could have only been at 20-22. For these reasons the impugned orders are sought to be set-aside.

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2. A counter has been filed on behalf of the respondents stating that the applicant was appointed by the Assistant Personnel Officer (MG) by proceedings dated 25-6-1981 and as such the appointing authority of the applicant is not the Chief Personnel Officer but the Assistant Personnel Officer. It is stated that on 13-3-1986 the applicant while on duty found that Train No. 128 Super Express proceeding to Bangalore without a tail lamp. He thereby had not cleared the section between Rechni Road-Repallewada which is a single line and detained train No. 907 at Rechni Road Station. He has orally informed the next station viz., ASM, Bellampalli 'A' Cabin about Train No. 128 passing without tail lamp. It is stated in the counter that the applicant only acted partly according to provision of GR 4.17. It is stated that even after getting advise from the station in advance that the ^{Train No. 128} ~~Train (128)~~ is complete from the Assistant Station Master, Bellampalli 'A' Cabin at 20-02 hours, ^{he} failed to clear the section between

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Rechni Road Station-Repallewada. He proceeded to detain train No. 907 till 128 Express was stopped at Ramagundam.

It is stated that once the Station Master i.e. ASM, Bellam-
has
pally/closed the block section, it means he is accepting the total responsibility of ensuring about the intactness of the train. Under Rule 56 of W.T.T., if the next station or some other station gives confirmation about the completeness of the train it was the duty of the applicant to clear the block section. In the instant case, since the next station viz., 'A' Cabin, Bellampally had given confirmation to the applicant at 20-02 hours, there was no necessity for the applicant to get such confirmation and he ought to have cleared Train No. 907 at 20-02 hours itself. It is further stated that the Controller on duty Sri V.K.Murthy, advised the applicant that the subsequent stations of Rechni Road viz., Mancherial/
Bellampally had cleared the sections after passage of Train No. 128 after ensuring that it was intact, but the applicant insisted upon the train No. 128 being stopped and verified. Therefore, it is stated that the applicant

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did not close the section between Rechni Road-
Repallewada, but deliberately detained Train No. 907
and that he thereby violated General Rule 4.17 2(C).
The Second charge is dropped since the applicant had
given oral advise about Brain No. 128 passing without
a tail lamp. The third charge is the consequence to
the first charge. It is stated that the applicant
was given an opportunity to scrutinise the records
on 5-5-1986 and again on 27-5-1986 and that the
enquiry ~~or~~ was ordered on 11-6-1986. It is stated
that on the dates mentioned above, the applicant did
not attend office to scrutinise the records. It is
stated that he had examined all records/witnesses and
further requested to make available some more witnesses
by his applications dt. 19-9-86 and 22-10-1986 and that
the enquiry was commenced only on 14-10-1986. After
completion of the enquiry, the third respondent imposed
the penalty of removal from service while informing the
applicant that he could prefer an appeal to the competent
authority. The Second respondent, appellate authority,
considered the appeal and the entire case including the

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enquiry report and the detailed remarks of the disciplinary authority and thereafter confirmed the penalty of removal from service imposed by the third respondent. The allegations ~~for~~^{of} bias etc., are denied. The counter reiterates once again that, the applicant ought not to have detained Train No. 907 super express when he had been informed by the ASM, Bellampally, preceding station, that Train No. 907 had been cleared from Kazipet - Balharshah, that by all the intermediary stations viz., Mancheri and Mandhamari, that he was also informed of the same by the Controller who controls and supervise the movements of the trains and that the applicant ought not to have insisted on stopping of Train No. 128 at Ramagundam. The applicant, thus, flouted the rules and unnecessary ^{il} stopped the two super fast trains causing dislocation to the running of the trains. As this whimsical ~~the~~^{att} attitude of the applicant is/serious irregularity, the authorities felt it necessary to impose the severe punishment of removal from service. It is denied that there was any tampering of the records as alleged in the applicant. It is contended finally by the respondents that the

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applicant had only complied with SR 4.17 2(a) & (b) and that he had failed to comply with SR 4.17 2(c) of the General Rules.

3. We have heard the arguments of the learned counsel for applicant ~~XXXXXXXXXXXXXXXXXXXX~~ and Sri N.R.Devaraj, Standing counsel for the Department. Before proceeding to discuss the contentions, it would be necessary to show the chart comprising the relevant stations and the approximate timings of arrival and departure. The said chart is extracted as follows:

128 EXPRESS →						
	Hrs. 19.45	Hrs. 19.52	Hrs. 20.00	Hrs. 20.05	Hrs. 20.10	20.15 H
	Rechniroad	Beelam- pally	Mandamary	Mancherial	Peddam- pet	20.18 Ramagund
X	X	X	X	X	X	X
Regally- Wagga						
20.05(Arr)						
2030(Dept.)						
← 907 EXPRESS						

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The above chart shows that line between Rechni Road and Repalliwada is a single line whereas the line between Rechni road to Ramagundam is a double line. Train No. Express 128/had passed through Rechni Road at 19-45hours on 13-3-1986 without a tail lamp. According to the applicant he has to intimate the next station viz., Bellampally to stop the train and to have the defect rectified. The applicant did so. The ASM Bellampally did not have time to stop the train and it was his duty to inform the subsequent station or stations and have the defect rectified. Till this was done, it was not open to the applicant to allow Train No. 907 Express which had come through from Bellampally to proceed beyond Rechni Road towards Repalliwada on the single line.

The reason for this being done is ^{that there is} a possibility of ^{some of} the ^{bogies} ~~wagons~~ of Train No. 128 ^{having got detached} ~~have got itself~~ detached some where between Repalliwada and Rechni Road and in that event there would be a collision of Train No. 907 with the detached ^{bogies} ~~wagon~~. It is only if Train No. 128 is stopped and it is conclusively established that the ^{bogies} ~~wagons~~ had not

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got itself detached and that the defect regarding the tail lamp is rectified and the applicant informed that it would be open to him to have allowed 907 to proceed beyond Rechni Road towards Repalliwada. The applicant states that by detaining Train No. 907 he had strictly complied with General Rule 4.17. It is the case of the respondent however that once Train No. 907 had been cleared by the ASM, Bellampally 'B' Cabin, which he actually did so at 20-02 hours, it was the duty of the applicant to have allowed Train No. 907 to go through to Repalliwada. It is the case of the respondents that the Controller had also confirmed that Train No. 907 had been cleared by the various stations between Ramagundam and Bellampally. In view thereof, the applicant also should have cleared Train No. 907. Before considering these rival contentions, it would be necessary to consider General Rule 4.17 which reads as follows:--

"4.17 Responsibility of Station Master regarding tail board or tail lamp of passing trains--

(1) The Station Master shall see that the last vehicle of every train passing through his station is provided with a tail board or tail lamp or such other device in accordance with the provisions of R Rule 4.16.

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(2) If a train passes the station without such indication to show that it is complete, the Station Master shall --

(a) immediately advise the station in advance to stop the train to see that the defect is remedied and to advise whether or not the train is complete.

(b) meanwhile withhold the closing of the block section to ensure that no train is allowed to enter the block section from the station in rear, and

(c) unless the station in advance has advised that the train is complete, neither consider the block section in rear as clear nor close it."

The applicant did not release the train towards the Ballarsha direction until he got the clearance that the defect had been rectified at Ramagundam and hence the detention of Express Train No.907 UP proceeding to Ballarsha.

4. The main contentions of the applicant are:

(a) That he was removed from service by an authority lower than the appointing authority viz: the Chief Personnel Officer. In the course of hearing, the learned counsel for the ^{Railways} ~~applicant respondents~~ stated that the applicant was appointed by the Asst. Personnel Officer and not by the Chief Personnel Officer. The applicant could not produce any proof that he was appointed by the

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Chief
Asst. Personnel Officer. While arguing the case in
O.A.No.524/87 the applicant ^{chose not to} ~~did not~~ press the question of
competency of the disciplinary authority. This issue may,
therefore, have to be dropped.

(b) That he was not given access to certain documents
referred to in Annexure III to the chargesheet. We find
from the appellate order dated 5.1.89 that the ^{delinquent} ~~employee~~
was given adequate opportunity to scrutinise the papers
on two occasions - once on 5.5.86 and again on 27.5.86.
However, he chose not to avail of these opportunities.
Moreover, at the end of the enquiry the employee had un-
equivocally stated that he was satisfied with the manner
in which the enquiry had been conducted. Hence we do not
accept this contention of the applicant.

(c) It is the case of the applicant that the disposal
dated 2.2.89 of his case by the Divl. Rly. Manager
appointing him as Commercial Clerk is only a further
extension of the disciplinary case in terms of the
Railway Servants (Discipline & Appeal) Rules. His
argument is that he, having been initially appointed to the
post of Asst. Station Master, cannot by way of punishment
be reverted to a lower post viz: Commercial Clerk. In the
course of ^{the} hearing, the learned counsel for the applicant
pointed out that though the letter dated 23.1.89 of the
applicant had been described by him as a mercy appeal,
there is no provision in the rules for such a mercy appeal.
Mercy appeal, if at all, can rest only ^{be to} ~~with~~ the President

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He, therefore, argued that what had been done by the Divl. Rly. Manager was in exercise of his powers as a reviewing authority only, although in the last para of his memo dated 2.2.89 the Divl. Rly. Manager says that on re-consideration on mercy grounds he had considered the re-appointment of Shri P.B.Dasan as Commercial Clerk. There is no provision for mercy appeal in the Railway Servants (Discipline & Appeal) Rules. The Divl. Rly. Manager having entered the picture and taken a decision can only ~~be~~ exercise ~~of~~ his powers of review and we, therefore, do not accept the contention of the respondents that it is not in exercise of his reviewing powers. If that is the case, the reversion of the applicant to a ~~lower~~ post lower than the one to which he was initially appointed is not legal. There are many decisions of the Hon'ble Supreme Court on this subject and one such decision is reported in AIR 1988 (SC) 1979. This action of the respondents is, therefore, illegal.

5. Three charges were levelled against ^{the applicant,} ~~him~~. After enquiry, Charge No.2 was dropped. Charge No.3 is not a charge by itself and cannot stand alone. That is why the Inquiry Officer in his findings stated that since the 1st charge stands proved the defendant stands guilty of violation of the Conduct Rules. Moreover, in the light of the Hon'ble Supreme Court judgment reported in AIR 1979 (SC) 1022 the action of the applicant cannot be

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viewed as a misconduct. Thus, what survives is only the 1st charge. We shall now split it into two parts:

(a) the merits, and (b) the legal aspects.

Regarding (a), the applicant has been charged with misconduct for having detained the Train No.907 UP at Rechni Road for 25 minutes. The applicant who had been recruited directly and who had only six years of service at that time was perhaps over conscious of the safety aspect. Off and on, stress is rightly laid by the Railways on safety aspects. Such being the case, having noticed the tail lamp missing and conscious of strict instructions on this subject the applicant was not prepared to relent until and unless the defect was rectified to his satisfaction. If at all there is any lapse on the part of the applicant it is only his over zealousness bordering almost on obsession for safety. If it was not possible to stop the Express Train No.128 DOWN at Bellampally it could have very well been stopped at Mandamarri or at the next station i.e., Mancheri and the defect removed. It was only on the insistence of the applicant that the train was finally stopped at an unscheduled station i.e., Ramagundam the defect rectified and then only the train No.907 UP was released in the opposite direction by the applicant. If the respondents had rectified the defect earlier at Mandamarri or at other stations, the need for detention of Train No.907 UP at Rechni Road by the applicant could have been obviated. As an alternative, the Section Controller

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who had also been pleading with the applicant to release the Train No.907 UP could, as a senior functionary, have assumed command and ordered the applicant sternly to release the train. There is no indication that this had been done. Thus, what emerges is over zealousness of the applicant whose experience in the Railway functioning was not much at the relevant time and his obstinacy was on the safety aspect eventhough he might have been aware that his action could dislocate the running of trains in this high density route. It is not our intention that such lapses on the part of the applicant, however well intentioned they may be, should go unpunished. The main purpose of a punishment is:

- (1) to correct the mistake/attitude of the delinquent, to avoid recurrence, and
- (2) to deter others from committing similar mistakes.

Regarding (1) above, as in this case, a stern warning accompanied perhaps by sidelining the applicant to a less important job for sometime at least would have sufficed. It is not the case of the respondents that the applicant had been in this habit. This would also serve as a deterrent to others, more so if such an action is accompanied by circulating the case-study to others. We find no evidence of such consideration of this case. This type of overall view is regrettably missing at all levels concerned in this case. This much is about the merits portion. Taking up the legal aspect, we had earlier pointed out that the action of the Divl. Rly. Manager is only in exercise of his powers as the reviewing authority

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and this is an infringement of the decision of the Hon'ble Supreme Court reported in AIR 1988 (SC) 1979.

6. Summing up, we find that the action of the respondents is illegal and we, therefore, set aside the initial punishment order dated 6.1.87, the appellate order dated 5.1.89 and the order of the 2nd respondent dated 2.2.89 reducing the applicant to the post of Commercial Clerk.

7. In the result, the application succeeds with no order as to costs and the respondents are directed to carry out the directions within a period of two months of receipt of this order. The applicant is also entitled to all the consequential benefits including arrears of pay.

MS

(J.Narasimha Murthy)
Member(Judl).

R. Balasubramanian

(R.Balasubramanian)
Member(Admn).

26
Dated

26th August 91

5/9/91
Registrar.

To

1. The General Manager, Union of India, S.C.Rly, Railnilayam, Secunderabad.
2. The Divisional Railway Manager, S.C.Rly, Opp: Railnilayam, Secunderabad
3. The Sr.Divisional Operating Superintendent, Broad Guage, S.C.Rly, Secunderabad.
4. The Divisional Operating Superintendent, Broad Guage, S.C.Rly, Secunderabad.
5. One copy to Mr.G.Ramachandra Rao, Advocate, 3-4-498/ Barkatpurachaman, Hyderabad.
6. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.
7. One copy to Mr.J.Narasimha Murthy, Member(Judl) CAT.Hyd.
8. Copy to all benches and reporters
9. One spare copy.

pvm.

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Typing

TYPED BY
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

COMPARED BY
APPROVED BY

THE HON'BLE MR. V.G.
AND
THE HON'BLE MR. M(J)
AND
THE HON'BLE MR. J. NARASIMHA MURTY: M(J)
AND
THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

DATED: 26-8-1991

~~ORDER~~ JUDGMENT

~~M.A./R.A./G.A.~~ No.
in

D.A. No. 352/89 ✓

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

Admitted and Interim directions
issued.

Allowed. ✓

Disposed of with direction.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

M.A. Ordered/Rejected

No order as to costs.

Central Administrative Tribunal
DESPATCH
17 SEP 1991
HYDERABAD BENCH

[Signature]
5/9/91