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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 370 of 1989

Date of Decision : 18.4.91

~~Plaintiff~~

Mr. G. Panduranga Rao

Petitioner..

Mr. G.V. Subba Rao

Advocate for the
petitioner (s)

Versus

The Divisional Opg. Supdt., S.C.Rly,
Vijayawara and 2 others

Respondent.

Mr. 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.)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?

Whether it needs to be circulated to other Benches of the Tribunal ?

Remarks of Vice Chairman on columns 1, 2, 4

(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)


HJNM
M(J)


HRBS
M(A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO. 370 of 1989

DATE OF JUDGMENT: 10-4-1991

BETWEEN:

Mr. G. Panduranga Rao

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Applicant

AND

1. The Divisional Operating Superintendent,
South Central Railway,
Vijayawada.
2. The Senior Divisional Operating Supdt.,
South Central Railway,
Vijayawada.
3. The Divisional Railway Manager,
South Central Railway,
Vijayawada.

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Respondents

COUNSEL FOR THE APPLICANT: Mr. G.V. Subba Rao, Advocate

COUNSEL FOR THE RESPONDENTS: Mr. N.R. Devaraj, SC for Railways

CORAM:

Hon'ble Shri J. Narasimha Murthy, Member (Judicial)

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



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

This is a petition filed by the petitioner for a Relief to quash the penalty order No.B/P227/IV/85/15, dated 24.8.1987 withholding the annual increment for a period of two years (recurring) as being illegal, arbitrary and unconstitutional. The fact are briefly as follows:-

The petitioner was working as Assistant Station Master at Karavadi Station. At Karavadi Station, there was one Station Master and two Assistant Station Masters who were rostered to work on 8 hours shift. The duty roster for Station Master is between 12.00 hours to 20.00 hours (continuous) and for Assistant Station Master (1) is between 6.00 hours to 12.00 hours and for Assistant Station Master (2) is between 20.00 hours and 6.00 hours. The Station Master is always on the day shift between 12.00 hrs. and 20.00 hours and the other two Assistant Station Masters rotate between 6.00 hours to 12.00 hours and 20.00 hours to 6.00 hours according to the roster. The post of Station Master fell vacant at Karavadi from 31.1.1985 consequent on the retirement of the incumbent under superannuation. This vacancy of the Station Master was not filled up by the authorities from 31.1.1985.

2. The applicant being a senior Assistant Station Master, he was asked to work in the place of the Station Master. One leave reserve Assistant Station Master was posted to work in the place of the applicant. There was one post of RGSM whose Headquarters were at Karavadi. He works out rest to

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Station Masters at Karavadi, Ammannabrolu, Uppugunduru, Surareddypalem, Ulavapadu, Tettu for six days and takes one day rest. There was one rest given Assistant Station Master whose Headquarters are at Ammannabrolu and he gives rest to ASMs. The rostered rest for Station Master at Karavadi is Thursday of every week. On 11.7.1985 according to the roster the applicant availed of his rest and he was due to take up duties of the Station Master at 12.00 hours on 12.7.1985 but on account of severe cervical pain he reported sick at 6.00 hours on 12.7.1985. The Leave Reserve ASM who was posted to work in the place of the applicant reported sick on 11.7.1985 and a message was given by the applicant to the Station Superintendent, Ammannabrolu with copies to Traffic Inspector, Ongole, Station Master, Ongole, Chief Controller and DOS/BZA informing that the L.R.ASM reported sick and to arrange immediate relief in his place. Though the applicant was not supposed to be on duty on his rest day, as a responsible Station Master, he issued a message which the RGSM Shri Ch.V.Subbaiah is well aware of as he was on duty on 11.7.1985.

3. On 12.7.1985 the applicant suddenly developed pain in the Head and Neck and reported sick in the morning and went to Railway Hospital, Ongole and the Railway Doctor placed him in sick list. Shri Sowraiah, the other Assistant Station Master, Karavadi performed the night duty on 11/12.7.1985 and he was the Station Master incharge to whom the applicant reported that he was sick. Shri Sowraiah gave an authorisation memo to go to the Railway Doctor, Ongole. When the applicant reported sick at 6.00 hours on 12.7.1985, he ceases to function as Station Master as he

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was under the control of the Railway Doctor till he is certified fit to resume duty. On 11.7.1985 Shri Ch.V. Subbaiah, RGSM worked in the place of the applicant and Shri Sowraiah relieved him at 20.00 hours and took charge of the station. On 12.7.1985 the RGSM was to avail his rest. This RGSM Shri Ch.V. Subbaiah left without permission to Nellore which is unauthorised and Shri Sowraiah, ASM who permitted this RGSM to go to Nellore is not the competent authority to permit the LRSM to leave headquarters, knowing very well that the other LRASM who comes from Ammannabrolu reported sick on 11.7.1985 and that the applicant also reported sick at 6.00 hours on 12.7.1985.

4. The Traffic Inspector, the Zonal Station Masters, Ongole and Ammannabrolu who are responsible for arranging relief to the staff working at way side stations are well aware of the fact that Shri G.Sriramulu reported sick on 11.7.1985 and the Traffic Inspector, Ongole had to arrange relief in his place. No action was taken by the Traffic Inspector Ongole, Station Master Ammannabrolu, ~~and~~ the Chief Controller of Vijayawada and the Divisional Operating Superintendent Vijayawada, in arranging relief for the ASM who reported sick on 11.7.1985.

5. The applicant who was suffering from ^acomplaint of Chronic Cervical Pain was subjected to frequent attacks resulting in complete incapacitation to do any work and for this reason he has been frequently reporting sick and undergoing treatment. This fact is known to the Traffic Inspector, Ongole and is substantiated ~~in~~ the Station Inspection Report of the Traffic Inspector, Ongole.

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6. Shri Sowraiah, the on duty Assistant Station Master refused to grant line clear to ERG Down Goods Train on the plea that he was on long hours duty which resulted in the detention of the Train for 85 minutes at Karavadi Home Signal and consequently No.5 express suffered a detention of 65 minutes. Shri Sowraiah deliberately resorted to refuse line clear to the train at 10.00 hours on 12.5.1985. ~~Maxxaaaaa~~ The petitioner was arbitrarily issued a major penalty charge sheet. An enquiry was conducted and a punishment order was served withholding annual increments for a period of two years (recurring). There is no nexus between the charge and the punishment. It only indicates the malafide action of the respondents in arbitrarily punishing the applicant for an alleged offence with which he is in no way concerned. Hence, the applicant filed this application for the above said relief.

7. The respondents filed a counter stating that the petitioner did not inform about his sickness. So, the respondents could not make alternative arrangements to provide substitute in his place. If he informed about his sickness earlier, the respondents would have made alternative arrangements. Because of his recklessness, the goods train was detained for 65 minutes. The incident was enquired into and it was found that Shri B. Sowraiah, the on duty Assistant Station Master at Karavadi was on duty from 20.30 hours on 11.7.1985 without getting relief at 06.00 hours on 12.7.1985. The nominated rest giver availed his rest on 12.7.1985 and left headquarters after informing Shri B. Sowraiah who relieved him on 11.7.1985 at 20.30 hours. At that time, neither Shri

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Sowraiah nor Shri Ch.V. Subbaiah, the nominated rest giver were aware that the applicant was unwell and likely to report sick on 12.7.1985. If they had any such information, Shri Sowraiah would have prevented Shri Subbaiah from leaving the headquarters since there will be no one to relieve him in the morning of 12.7.1985 in the event of the applicant reported sick. Therefore, the applicant was charged and after the charges were proved he was imposed the punishment. As stated by the applicant, his services are not blemishless. He has committed irregularities during his duty period and was taken up under D&A Rules 1968. He was censured twice as a result of two disciplinary proceedings. One set of his privilege pass was withheld on ~~other~~ occasion. His annual increment was withheld for six months on another occasion. The case is about the conduct of the applicant, being a senior employee having put in 26 years of service in the Railways. The applicant should have taken 6 to 18 hours duty on 12.7.1985 as the 3rd ASM was also sick. There is no proof that he was suffering from acute cervical pain on 12.7.1985. If he was really suffering from cervical pain, instead of taking medicines from a Pharmacist, he would have gone to Madras immediately and taken treatment from the same doctor with whom he took treatment on 22.3.1984 or with any other doctor for relief. The applicant behaved in an irresponsible manner which ultimately resulted in heavy detention to a goods train and Krishna Express.

8. The frequent severe attack of cervical pain was not a severe one on 12.7.1985 as the applicant ^{who} found that the Railway Doctor was not available at Ongole Dispensary

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..... took the medicine given by the Pharmacist and took fit certificate from the Doctor on 13.7.1985, the next day. It is, therefore, not possible for the administration to keep a stand bye ready merely to meet the sick casualty of the applicant. The applicant left Headquarters on 11.7.1985 without permission and finding the acting Station Master (the applicant) missing, Shri Ch.V.Subbaiah had no other go except to obtain permission from Shri Sowraiah who was only available at Karavadi. If the applicant was physically available on 11.7.1985 evening, Shri Ch.V. Subbaiah would have approached him for permission and stopped going if the applicant informed him that he is likely to report sick. Thus, the applicant is responsible for the detention, since he himself left headquarters without permission. The Officers got the information only at 6.00 hours as the applicant reported sick only at 6.00 hours on 12.7.1985. Non-availability of RGSM, Shri Ch.V.Subbaiah at headquarters was also not known to the officers at Vijayawada till enquires were made about him after the applicant reported sick. Thus, there was very little time left for the officers to check up staff position and move a spare ASM to Karavadi before the detention to the trains were caused. There was no unconstitutionality about the charge sheet and the subsequent enquiry. The applicant vide his answer to question No.41 at the end of the enquiry has replied that he was satisfied about the enquiry. It is strange that instead of raising the unconstitutionality of the charges then, the applicant is now raising such matters, probably because he has no substance in his case. The disciplinary authority passed a detailed speaking order and thus the allegation that

he did not apply his mind is erroneous. For the above reasons, the ~~xxx~~ respondents state that the application is devoid of merits and it is liable to be dismissed.

9. Shri G.V.Subba Rao, learned counsel for the applicant, and Shri N.R.Devaraj, SC for Railways on behalf of the respondents argued the matter. The charge against the applicant is that "he while functioning as acting SM/KRV on 11.7.1985 and 12.7.1985 committed neglect of duty and serious misconduct in that knowing well the accute staff position not only availed rest on 11.7.1985 but also permitted Shri Ch.V.Subbaiah, RGSM/KRC to avail rest on 12.7.1985 without ensuring relief either from TI/OGL or SS/OGL and also left headquarters on 12.7.1985 at 6.00 hours preparing sick memo for himself without specifying on duty ASM Shri B.Sowraiah to work upto 12 'O' clock on 12.7.1985 resulting in an avoidable detention of 85 minutes to EBR Goods at KRV signals and consequent detention of 65 minutes to 5 express at OGL. Thus he violated rule No.3(i)(ii) and (iii) of Railway Service (Conduct) Rule 1966."

10. It is a fact that the applicant who was the Station Master Incharge has got his duty hours from 12.00 hours to 20.00 hours and he availed rest on 11.7.1985. On 12.7.1985, he had to attend duty from 12.00 hours to 20.00 hours but he did not attend. He contended that he was suffering from cervical pain and reported sick at 6 a.m. on 12.7.1985. He very well knew that Shri G.V.Subbaiah was permitted by him to avail rest on 12.7.1985 without ensuring relief and the applicant also left the headquarters. The only person

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available on duty was Shri Sowraiah from 20.00 hours of 11.7.1985 to 6.00 hours of 12.7.1985 and the person who had to relieve him was permitted to go on leave on 12.7.85 by the petitioner. Though the petitioner permitted Shri Ch.V.Subbaiah to go on leave on 12.7.1985, he did not make any alternative arrangement to work in the place of Shri Ch.V.Subbaiah. He also did not inform the competent authorities to post some-body in the place of Shri Ch.V. Subbaiah on 12.7.1985. The petitioner did not attend duty on 12.7.1985 at 12.00 hours to 20.00 hours duty. Moreover, he was reported sick and went to Ongole for treatment. He knows that Shri Ch.V.Subbaiah was on leave and also ^{he} did not post any body in his place. When he was leaving to Ongole for treatment, he ought to have informed Shri Sowraiah to continue on the duty upto 12.00 hours, until he returns from Ongole. He did not also inform Shri Sowraiah that he was going to Ongole for treatment. Shri Sowraiah's duty hours are only from 20.00 hours to 06.00 hours i.e., upto the morning 6 A.M. on 12.7.1985. No reliever had come and he did not receive any information from any body about his relief. How long can he wait for a relief? During that period, after the duty hours of Shri Sowraiah was over, there was a delay of 85 minutes to a goods train for want of signal. Who will be held responsible for this delay? The petitioner very well knows that Shri Ch.V.Subbaiah was not on duty on 12.7.1985. That fact was not informed by the petitioner to the office and he did not make any alternative arrangement to post a substitute in the place of Shri Subbaiah. The petitioner did not inform any body that he was going for treatment to Ongole. He stated that he suffered with cervical pain. He travelled upto Ongole to get treatment. When he was

To

1. The Divisional Operating Superintendent,
South Central Railway, Vijayawada.
2. The Senior Divisional Operating Superintendent,
South Central Railway, Vijayawada.
3. The Divisional Railway Manager, S.C.Railway,
Vijayawada.
4. One copy to Mr.G.v.Subba Rao, Advocate, CAT.Hyd.Bench.
5. One copy to Mr.N.R.Defraj, SC for Railways, CAT.Hyd.
6. One copy to Mr.J.Narasimha Murty, Member(J)CAT.Hyd.Bench.
7. One spare copy.

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able to travel upto Ongole, can't he inform in the Department that a reliever should be posted to Sowraiah and also inform about his sickness to make alternative arrangement. He did not feel responsibility to inform in the Department about his absence and also the absence of Shri Subbaiah. If any accident takes place during that period which may cause danger to lives and property by the negligence of the he will be held responsible. petitioner On account of his negligence, the goods train was detained for 85 minutes for want of signal. The petitioner did not feel his responsibility and he did not inform the department about his absence and the absence of Shri Subbaiah for duty. It is a deliberate act of negligence on the part of the petitioner for delaying the goods train for 85 minutes. The sickness was not such serious that the petitioner could not even inform the department. He went to Ongole and the Medical Officer was not present. He took medicines from a pharmacist only. There is no such seriousness that he could not inform the department about his sickness. Morevoer, when he granted off to Shri Subbaiah on 12.7.1985, he ought to have put some body in his place or else he should inform the department to make alternative arragement in the place of Shri Subbaiah. Nothing prevented him to do that.

11. The petitioner behaved in an irresponsible way. The Department correctly charged sheeted him and correctly punished him. There are no grounds to interfere in the punishment given by the respondents. We find no merits in the petition. The petition is dismissed. No order as to costs.

(J. NARASIMHA MURTHY)
Member (Judl.)

(R. BALASUBRAMANIAN)
Member (Admn.)

Dated: 10/5 April, 1991.

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