

74

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT HYDERABAD.

D.A. No. 372/89

DATE OF DECISION: - - - - - June, 1990

~~Transcriber~~

Between:-

Phool Singh, Sr. Chief Cook, SCR, Kazipet Petitioner(s)

Sri P. Krishna Reddy - - - - - Advocate for the  
petitioner(s)

Versus

Divisional Railway Manager, Sec'bad  
- - - - - and others - - - Respondent.

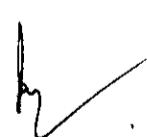
Sri N. R. Dev Raj, SC for Railways Advocate for the  
Respondent(s)

CORAM:

THE HON'BLE MR. J. NARASIMHA MURTHY, Member (J)

THE HON'BLE MR. R. Balasubramanian, Member (A)

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 Benches of the Tribunals ?
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)

  
(HJNM)

  
(HRBS)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD  
BENCH AT : HYDERABAD

D.A. No. 372/89

Date of Order: 28th June, 1990

BETWEEN

Phool Singh,  
Senior Chief Cook,  
Railway Catering Department,  
Kazipet

.. Applicant

Versus

1. The Divisional Railway Manager,  
South Central Railway,  
Secunderabad.

2. The Senior Divisional Commercial  
Supdt., South Central Railway, (BG)  
Secunderabad.

3. The Divisional Commercial  
Superintendent (B.G) South  
Central Railway, Secunderabad

.. Respondents

----

APPEARANCE:

For the Applicant : Sri P. Krishna Reddy, Advocate

For the Respondents : Sri N. R. Dev Raj, Standing Counsel  
for Railways

---

CORAM:

HON'BLE SHRI J. NARASIMHA MURTHY, MEMBER (J)

HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER (A)

----

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE SHRI J.  
NARASIMHA MURTHY, MEMBER (JUDICIAL))

-----

This petition is filed by the petitioner for  
a relief to set aside the order of the first respondent  
in No.C/C/65/M/KZJ/PS/88 of July, 88; order of the second  
respondent dt. 6.7.88 and also the order of the third  
respondent dt. 15.4.88. The brief facts of the case are  
as follows:

  
(Contd....)

2. The applicant put in 28 years of service in the Railways in the catering department. On the ground that few grams of sugar, B.G.flour, some green chillies and 6 Laddus were found in the bag of the applicant, a charge memo was given in form V of the Railway Servants (Discipline and Appeal) Rules. The applicant learnt that the Chief Catering Inspector seems to have reported against the applicant on 20.2.'88 when the applicant was found carrying in his bag, the above stated material on 19.2.1988. On the said basis the applicant was kept under suspension from 22.2.1988. Two charges were framed against the petitioner.

3. Even though the charge memo refers to the report submitted by the Chief Catering Inspector on 20.2.88, the report was not supplied to the applicant. Hence, the applicant made a request for the supply of the copy of the same. Without giving a proper opportunity to the applicant, he was asked to attend with an enquiry. Two witnesses were examined on behalf of the department namely Mr. R.V.Subba Rao, Chief Catering Inspector and Mr. Roberts Catering Manager. In his evidence Mr. Subba Rao stated that the socalled material was seized on 19.2.1988 and that the matter was reported by him on 20.2.1988. But surprisingly after the adjournment of the case, when he came to depose for the second time on 31.3.1988 on a leading question put by the Enquiry Officer he has stated that from the records he found that the incident was said to have taken place on 16.2.88 and by mistake he reported as if the incident has taken place on 19.2.1988. The applicant states that it is not a mistake and it is purposeful action on the part of the Chief Catering Inspector because the report was given on 20.2.1988 after keeping quite for 4 days. As it is the duty of the Officer to report the matter immediately, he made a consi-

(77)

derable delay in reporting the same. The first charge is that the applicant was found carrying the raw materials and that it was clear that the applicant has not used the raw material as per the prescribed schedule given to him on that day. The Enquiry Officer found that the charge was not proved. Hence the question of applicant pilfering the material does not arise. The Enquiry Officer as well as the disciplinary authority erred in coming to the conclusion that inspite of the fact that the first article of charge was not proved and the second charge was proved. The applicant states that the second article of the charge has no legs to stand when once the first charge was held not proved. Without following the procedure laid down under Rule 10 of the Railway Servants (Discipline and Appeal) Rules, the applicant was dismissed from service, by the 3rd respondent herein.

4. Aggrieved by the same, the applicant filed an appeal on 19.5.88 giving all details. The appellate authority has dismissed the appeal by an order dt. 6.7.1988. Aggrieved by the same, the applicant filed a review on 8.7.'88 under Rule 25 of the Rules. The same was partly allowed by the first respondent by converting the punishment of removal to one of compulsory retirement. Surprisingly the first respondent in his order finds that the applicant was responsible for theft of raw materials from catering units. The applicant submits that it is not the case of the department that the applicant has committed any theft. No panchanam was drafted at the time of the seizure of the bag. But the charge is that the applicant was carrying the bag. But the finding is that the bag was recovered from the kitchen. So aggrieved by the order the applicant filed this O.A for the above said relief.

5. The respondents filed the counter with the following contentions. It is not correct to say that the delinquent

employee was not given proper opportunity when he requested for the supply of copy of the report submitted by the Chief Catering Inspector. As the delinquent employee had stressed that he was prepared to face any DAR enquiry and immediately brought a letter on 20.3.'88 nominating defence counsel and requesting for early finalisation of the case, DAR enquiry was ordered and conducted. By mistake, the date of incident was mentioned as 19.2.'88 instead of 16.2.'88. They mentioned in the counter that the contents seized from the bag and weight of the material was given in the counter. (1) Sugar 0.350 grams (2) B.G Flour 0.450 grams (3) Green Chillies 1 Kg., (4) Boondhi Laddu 6 numbers. The respondents further contended that on humanitarian grounds the punishment of dismissal was reduced to removal from service and later to compulsory retirement by the Appellate Authority. The appellate authority observed that delinquent employee was responsible for theft of raw materials from catering unit in the sense that the raw materials were taken and kept under his custody in a bag without right.

In this case a report was made by the Chief Catering Inspector addressed to senior DCS on 20.2.'88. According to the report on 19.2.88 in the evening when A.C.S Catering B.G/S.C inspected the base kitchen, when he checked the personal bag of Sri Phool Singh, Sr. Cook on duty in presence of Mr. R.V. Subba Rao, Chief Catering Inspector and Mr. Roberts C.M, the below mentioned items found in it.

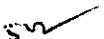
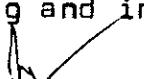
(1) Sugar 0.359 grams (2) B.G. Flour 0.450 grams (3) Green Dall 1 Kg., (4) Boondhi Laddu in 6 Nos, and ~~he submitted~~ a report to take necessary action to book up morality of the other staff. This report was given on 20.2.'88 and according to this report this has happened on 19.2.'88. But the report written on 19.2.'88 was not produced into court.

  
(Contd.....)



This is the report prepared on 20.2.'88. Mr. R.V. Subba Rao, categorically stated that the incident took place on 19.2.'88 for the answers to various questions. But in the further cross examination when the matter was adjourned, he stated that the incident has taken place on 16.2.'88. If the incident took place on 16.2.'88 they would have drafted a report then and there itself stating the various material that was found in the bag. but that report was not forthcoming. While answering to the question No.12 i.e., "Was the employee available on the spot from where the bag has been picked up for examining the contents ?" Shri Subba Rao stated as follows. "When A.C.S wanted for inspection, myself and A.C.S went first nobody was there in the kitchen. On the back of us Shri Phoolsingh and others followed us. A.C.S asked me whose bag is this. It was said that it belongs to Sri Phoolsingh. When the bag was picked up for examination Shri Phoolsingh was available with us since accompanied on our back into the kitchen. On enquiry Shri Phoolsingh told that it is his bag. The articles inside was examined in my room room in front of him immediately and informed that articles noticed therein were brought by him from outside for official use. It shows when Mr. Subba Rao and others entered into the kitchen the petitioner was not in the kitchen and immediate question that A.C.S., asked Mr. Subba Rao, whose bag is this? It shows that when they got into the room they fell their eyes on the bag and questioned the ownership of the bag.

In this connection, we have to recall the statement of the petitioner in which he stated that at the instant time he went out of the kitchen to answer calls of nature and after he returned his bag was taken to the room of the Inspector and the officials have got grouse against me they might have picked up my bag and inventing all these



80

things to sack me in the case. In the light of the petitioner's contention, when the A.C.S., asked Mr. Subba Rao, about the ownership of the bag, throws a doubt that the petitioner was not present when the bag was taken from the kitchen. Unless they know in advance that there is something in the bag, how could they straightaway picked out the bag and checked the bag by taking it to their room? The statement of the petitioner and the question No.12 of R.V. Subba Rao put together clearly throws a doubt about the way in which they manipulated the case against the petitioner. The respondents stated that when they checked the bag they found certain articles and at that time not only the respondents but also some others were also present. There is no mediatornama written at that time when the bag was taken out of the kitchen and was searched and the articles found in that bag. The important aspect of this case is that the respondents failed to prepare a mediatornama when they inspected the bag and found out some articles in the bag. Though there are so many people when the bag was checked they ought to have taken their help and prepared a mediatornama to show that the alleged articles were seized from the bag on 16--2--1988 itself. But there is no such mediatornama written by the respondents at the time of seizure. They/also given the weights of the material that was found in the bag. When they weighed the articles that were seized and in whose presence they have weighed the seized articles and where and when they were weighed is not mentioned clearly.

When he gave the report on 20-2-1988 he mentioned the weights of the articles alleged to have been found in that bag.

On 18--3--1988 the petitioner Shri Poolsingh drafted a letter to DCS(BG), Secunderabad as follows:

"Reference above memorandum received by me on 13--3--1988. I may kindly be permitted to submit that the above charges levelled against me are not based on facts and I deny the same."

(81)

However, to enable me to offer detailed explanation I may kindly be supplied a copy of report No. C/5/CCI/KZJ/88 dated 20--2--1988 shown as Annexure III in the Charge Memorandum."

According to the petitioner he was not supplied with the report on which they relied for framing charges against him.

In the charge memo they did not mention what are the articles ~~seized~~ seized and their weight and how they are seized and at what time and date. Though they mentioned the date as 19--2--1988 it is also not correct according to them. The Charge must be specific and precise but it should <sup>not</sup> be vague.

The alleged incident has taken place on 16-2-1988 and the report was given on 20--2--1988. There is a delay of four days to submit a report to the higher authorities for action. Why such a delay has taken place to give report to the higher authorities? The delay of four days is a serious lacuna for the alleged recovery incident. They have not properly explained the reasons for the delay to submit the application to the higher authorities. That is enough to throw a doubt on the alleged recovery that is said to have taken place on 16--2--1988. In this case, the time is not specifically mentioned and the material that they seized from the bag was not mentioned in the charge list and moreover there was no mediator nama at the time of seizure of the bag and inspection of the bag, ~~and~~ ~~inspection of the bag~~ and when the material was detected and weighed. Though there are other persons present according to the respondents at the time of alleged seizure no independent person was examined in the enquiry and there is no mediator nama. When the bag was seized in the kitchen by the respondents, the petitioner was not present.

82

There is no Mediator Report written at the time of seizure or at the time of weighing the articles that were found in the bag. No independent witness was examined in the inquiry. Moreover the respondents were not definite regarding the date of seizure and they gave different dates and different times. There is inordinate delay of four days to send a report to the higher authorities. There is every likelihood to manipulate the things in order to implicate the petitioner. Taking into consideration all the aspects, we are of the view that the allegations made against the applicant is not proved.

In the circumstances, we hold that there is no case made out against the applicant and the impugned order is liable to be quashed and accordingly it was quashed. The petitioner is entitled to be reinstated with all consequential benefits. The respondents are directed to reinstate the applicant with all consequential benefits within two months from the date of receipt of this order.

In the result the application is allowed. There will be no order as to costs.



(J.NARASIMHA MURTHY)  
Member (Jud1).



( R.BALASUBRAMANIAN)  
Member (Admn).

Date: 28.6.1990

*Encls to lower copy*  
S.M DEPUTY REGISTRAR (J)

mvs/SSS.

To:

1. The Divisional Railway Manager, south central railway, Sec'bad.
2. The Senior Divisional commercial superintendent, south central Railway, (BG) Sec'bad.
3. The Divisional commercial superintendent (BG) south central railway, Sec'bad.
4. One copy to Mr.P.Krishna Reddy, Advocate, 3-5-699, Himayat-nagar, Hyderabad.
5. One copy to Mr.N.R.Devaraj, SC for Railways, CAT, Hyderabad.
6. One ~~copy~~ spare copy.

• • •

kj.