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

O.A. No. 414/89.

DATE OF DECISION: 7-8-90

~~T.A. No.~~

Between:-

V. Madhava Rao

Petitioner(s)

Shri G.V. Subba Rao,
Advocate

Advocate for the
petitioner(s)

Versus

The Divisional Commercial Superintendent,
South Central Railway, Vijaywada & 2 others.. Respondent.

Shri N.R. Devaraj,
SC for Railways

Advocate for the
Respondent(s)

CGRAM:

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 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
M(J)

HRBS
M(A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.414/89.

Date of Judgment. 7.8.90.

V.Madhava Rao

.. Applicant

Versus

The Divisional Commercial
Superintendent,
South Central Railway,
Vijaywada
& 2 others

.. Respondents

Counsel for the Applicant : Shri G.V.Subba Rao,
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).

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

This is an application filed by Shri V.Madhava Rao under section 19 of the Administrative Tribunals Act against the Divisional Commercial Superintendent, South Central Railway, Vijaywada and 2 others.

2. At the relevant point of time the applicant was functioning as Enquiry-cum-Reservation Clerk at Rajahmundry Station. A charge-sheet dated 22.8.86 was served on him and after conducting an enquiry the disciplinary authority by his order dated 26.10.88 inflicted the penalty of reduction of pay to the minimum of the grade for a period of two years (Recurring).

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The applicant preferred an appeal on 28.11.88 to the Senior Divisional Commercial Superintendent, South Central Railway, Vijaywada and the same has not been disposed of so far.

3. The applicant is aggrieved that the principles of natural justice have not been followed in that the complainants on whose complaint led to the issue of charge-sheet were not examined at the enquiry. the Enquiry Officer had cleared him of both the charges and still the disciplinary authority had inflicted the punishment on him. He has prayed that the penalty order dated 26.10.88 be quashed and he be given all the consequential benefits arising from the quashing.

4. The respondents have opposed the prayer. It is contended that all opportunities in accordance with the Railway Servants (Discipline & Appeal) Rules had been provided to him and that the disciplinary authority had applied his mind over the enquiry report and it was only after this that he had inflicted the punishment and that this is quite in order. The respondents have also pointed out that the complainants who could not be made available at the time of enquiry did not turn up for the enquiry despite several intimation letters from the Enquiry Officer. They held that despite this the charge should be taken as proved.

5. We have examined the case and heard the learned counsel for both the applicant and the respondents.

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Two charges have been levelled against the applicant and the Enquiry Officer had held that both the charges are not conclusively proved. However, he has picked up a new point that was not there in the charge-sheet. This is evident from his remark "Though there is no specific charge as such it has to be seen as to why a refund was made - if so, to whom." (Page 9 of the enquiry report). He has further proceeded to discuss the subject and held the applicant responsible for granting refund irregularly which, according to him, had led to the complaint. In summing up, the Enquiry Officer had held that the charges contained in the charge-sheet have not been established but had held the applicant responsible for granting the refund in an irregular manner.

6. The disciplinary authority has not attached much importance to Charge-I. He had held that even if the charge is held to be proved there is nothing wrong in permitting a colleague to make an entry in a register that is in the custody of the applicant. We may therefore take it that this charge is dropped. Coming to Charge-II against the applicant the disciplinary authority has differed from the Enquiry Officer. However, he has also not arrived at a conclusion based on unassailable evidence. He has remarked that his conclusion could be drawn only on the basis of inferences drawn from the statements of witnesses and other circumstantial evidence in the absence of direct evidence. Somehow he has also

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To

1. The Divisional Commercial Superintendent, South Central Railway, Vijayawada.
2. The Senior Divisional Commercial Superintendent, S.C. Railway, Vijayawada.
3. The Divisional Railway Manager, South Central Railway, Vijayawada.
4. One copy to Mr. G.V. Subba Rao, Advocate, 1-1-230/33, Chikkadpalli, Hyderabad-500020.
5. One copy to Mr. N.R. Devraj, SC for Railways, CAT, Hyderabad.
6. One copy to Mr. Hon'ble Mr. J. Narasimha Murthy, Member (J), CAT, HYD.
7. One copy to Hon'ble Mr. R. Balasubramanian, Member (A), CAT, HYD.
8. One spare copy.

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picked up ^{the} a new point (that was not there in the charge-sheet) referred to in the enquiry report regarding the irregular refund granted by the applicant and has agreed that the refund granted was irregular.

7. We hold that the action of the respondents in inflicting the ~~punishment~~ penalty on the applicant is illegal mainly for the following two reasons:-

126 (a) The Enquiry Officer as well as the disciplinary authority have acted upon ^{the premises} ~~a charge~~ that he had granted refund irregularly which was not a charge included in the charge memo. Such an extraneous factor ought not to have been taken into account by the disciplinary authority.

(b) In two judgments pronounced recently by this very bench (O.A.No.712/89 and O.A.No.255/88) we had, falling in line with several decisions including one of the Hon'ble Supreme Court, held that the action of the disciplinary authority imposing the punishment after differing with the enquiring authority without giving further opportunity to the delinquent official as illegal.

8. In view of the foregoing, we quash the order of punishment dated 26.10.88. The applicant is entitled to all the consequential benefits arising from this quashing.

9. In the result, the application succeeds with no order as to costs.

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(J.Narasimha Murthy)
Member(Judl).

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(R.Balasubramanian)
Member(Admn).

Dated 7th August 90

10-8-1990
Sd/- DEPUTY REGISTRAR (J)