

92

# Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 464 of 1989

~~XXXXX~~

Date of Decision : 10-6-1991

Mr. A. Prasada Rao

Petitioner.

Mr. P. Krishna Reddy

Advocate for the  
petitioner (s)

Versus

The General Manager, S.C.Railway,  
Secunderabad 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 ? Yes
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 Tribunal ? Yes
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)

48

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :  
AT HYDERABAD

ORIGINAL APPLICATION NO. 464 OF 1989

DATE OF JUDGMENT: 10.6.1991

BETWEEN:

Mr. A. Prasada Rao

..

Applicant

AND

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

2. The Divisional Railway Manager,  
South Central Railway,  
Vijayawada.

3. The Senior Divisional Mechanical  
Engineer (Loco),  
South Central Railway,  
Vijayawada.

..

Respondents

COUNSEL FOR THE APPLICANT: Mr. P. Krishna Reddy,

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

CORAM:

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

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

... 2 ...

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 declare the order of the 3rd respondent in No.B/P.5/III/86/25 dated 26.12.1986 as confirmed by the order of the 2nd respondent in No.B/P.90/III/87/7/UA, dated 23.3.1987 and as confirmed by the order of the 1st respondent in No.P.94/BZA/APR/989, dated 27.9.1988 as illegal and without jurisdiction and set-aside the same with a direction to the respondents to reinstate the petitioner with continuity of service, back wages and all other consequential benefits. The contents of the petition are briefly as follows:-

The petitioner was a Railway servant working in the Railways as Loco Khalasi. On the ground that he was unauthorisedly absent, a charge sheet in Standard Form No.V, dated 19.5.1986 was issued to the petitioner. An Enquiry Officer was appointed to hold the enquiry. The Senior Divisional Mechanical Engineer is the appointing authority as far as the petitioner is concerned. Under the Railway Servants (Discipline and Appeal) Rules, the disciplinary authority can enquire into the charges or he can appoint any one on his behalf to enquire into the allegations and submit a report as per Rule 9(2) of the rules. Instead of the 3rd respondent appointing the Enquiry Officer, the Assistant Mechanical Engineer (Loco), South Central Railway, Rejahmundry  appointed as the Enquiry Officer and Standard Form No.5 was also not issued by the appointing authority. Hence, the entire proceedings are vitiated as the enquiry was conducted by a person, not appointed by the disciplinary authority.

2. The petitioner states that on account of his ill-health, he could not attend to the office regularly during the years 1985 and 1986 for a period of about 269 days. As the petitioner is more confident on a Doctor at Allure, Nellore District, he ~~had~~ took treatment from him and there is no prohibition for getting treatment under a private medical officer. The duty of an employee is, as soon as he was declared fit, he has to report to the Railway Medical Officer and he should get a fitness certificate from him. On the ground that the petitioner was unauthorisedly absent, the disciplinary authority (3rd respondent herein) by his order dated 26.12.1986 removed the petitioner from service. The period of absence was shown in Standard Form No.5 as leave without pay. When the period of absence was treated as leave without pay, the conclusion of the disciplinary authority that the petitioner was unauthorisedly absent is illegal.

3. Aggrieved by the order of the disciplinary authority, the petitioner filed an appeal dated 21.1.1987 explaining the circumstances under which he could not attend the office and the same was dismissed only on the ground that after the charge-sheet in Standard Form No.V was issued, the petitioner was absent for 35 days. Since it is not the subject matter of the enquiry, the order of the appellate authority is not in conformity with the Rule 22 of the Railway Servants (Discipline and Appeal) Rules. Aggrieved by the same, the petitioner filed a revision petition under Rule 25 of the Rules and the same was dismissed by the 1st respondent. None of the authorities have taken into consideration the submissions of the petitioner. Only on the ground that the petitioner was absent, he was

removed from service. The orders of the respondents are illegal and without jurisdiction. The enquiry was conducted by a person who was not appointed by the disciplinary authority. Hence, the entire proceedings are vitiated. The disciplinary authority who awarded the punishment of removal from service against the petitioner, has not supplied the enquiry officer's report before imposing the punishment. The said action of the disciplinary authority is contrary to law and opposed to the principles of natural justice. The appellate authority also did not give a personal hearing to the petitioner. Hence, the petitioner filed this petition for the above said relief.

4. The respondents filed a counter with the following contentions:-

The Assistant Mechanical Engineer (Loco) was competent enough as per the Schedule of powers to issue the Standard Form No.V and also to appoint the enquiry Officer. As such, the appointment of the enquiry officer was in order. However, Senior since the Divisional Mechanical Engineer was the appointing authority, the punishment of removal from service was issued by him. Hence, the enquiry proceedings are not vitiated as alleged by the petitioner. As per rules, the petitioner should have gone to the Railway Hospital at BTTR which is very close to his native place viz., Alluru (only about 6 Kms.). Even if the petitioner had gone directly to an outside Doctor, atleast he should have kept the Railway Administration duly informed which he did not do so. For his unauthorised absence for a long period of 269 days, the petitioner was removed from service by the Senior Divisional Mechanical Engineer which is in order. Though the order of the disciplinary authority mentions that the period of absence shall be treated as leave, it is actually <sup>the</sup> period of unauthorised absence without pay.

which is normally done on such cases. The appellate authority has gone through the appeal dated 21.1.1987 against the penalty of removal from service, and after examining the charge sheet issued, the enquiry proceedings and other connected records, he came to the conclusion that the reasons adduced in the appeal were not convincing and ~~imposed~~ he felt that the penalty imposed by the disciplinary authority was justified.

~~However~~ The penalty was justified not only on account of the 35 days absent after issue of the Standard Form No.V but also based on all the details mentioned in his appeal. The order of the appellate authority is, therefore, in conformity with the rules in force. The 1st respondent also has gone into his review petition even though it was time barred and then only dismissed the appeal of the petitioner. The Assistant Mechanical Engineer was the competent authority for appointing the Enquiry Officer and hence the enquiry proceedings are in order. The disciplinary authority sent the enquiry report along with the punishment order dated 26.12.1986 and hence the punishment of removal from service is in order. In view of the above, the petitioner failed to make out any case and there is no merit in the O.A., and the petition is liable to be dismissed.

5. The learned counsel for the petitioner, Shri P.Krishna Reddy and the learned Standing Counsel for the respondents/ Railways, Shri N.R.Devaraj argued the matter. It is an admitted fact that the petitioner is a permanent employee in the Railway service and it is also an admitted fact that he fell sick and he was admitted in a private hospital and he took treatment. Because of his ill-health, he could not

48

attend office regularly and he took treatment with a private Doctor at Allur, Nellore District. As per rules also, there is no prohibition to take treatment from a private Doctor. While he was in the hospital, he could not attend office. On account of his absence, the Railway Department gave him a charge sheet. An Enquiry Officer was appointed who conducted the enquiry and submitted his report. Thereafter, the petitioner was removed from service. The petitioner was not served with the enquiry officer's report also before giving the order of punishment. Along with the punishment order, the enquiry officer's report was served on him. The disciplinary authority in his order treated the period of absence as leave without pay and the petitioner was removed from service for his absence during the period he was in the hospital.

6. It is an admitted fact that there is no prohibition to take treatment in a private hospital in which the petitioner is having confidence and joined in a private hospital at Allur and took treatment during that period due to which he could not attend office during that period. The petitioner was charged and given the punishment of removal from service. He made an appeal to the appellate authority stating the difficulties under which he could not attend the office and according to him, the appellate authority has not considered his request and confirmed the punishment.

7. Here in this case, the disciplinary authority treated the period of absence as leave without pay and it is not the case of the respondents that the petitioner did not take treatment

✓

....?

in the private hospital and it is also not the case of the respondents that the petitioner did not suffer from the illness. Only thing is that, he could not attend office because he was not in a position to move out from the bed. In such circumstances, the position of the petitioner has to be viewed basing on those facts.

8. Removing the petitioner from service is a major penalty in administrative laws. In criminal cases, death or transportation for life are major penalties. In awarding such punishments, Courts will take all precautions and weigh evidence carefully and award punishment proportionate to the seriousness of the offence. In awarding punishment of death or transportation of life not only the person who receives punishment but his family set-up will also affect very badly especially in poor classes and their children will become orphans. So, while awarding such punishments, Courts will take all precautions carefully. Moreover, in Criminal law there is penalty prescribed for each offence according to its seriousness. There is no such provision in the Administrative laws.

9. In Administrative laws, removal of an employee from service is also a capital punishment. If an employee is out of job, his family members will also be affected very badly. If an employee is removed after putting up some service, he cannot get employment anywhere. He has to resort to so many bad ways to get livelihood to maintain his family members. So, removal from service is a serious punishment in so far as the Administrative laws are concerned.

10. In the instant case, the petitioner was absented from attending office because of his ill-health as he was admitted in the hospital.

He produced fit certificate also after recovering from illness but an enquiry was conducted and the period of his absence was treated as leave without pay and not satisfying with it, he was removed from service.

To award such a capital punishment, there must be a moral turpitude involved. Without moral turpitude, for a simple absence from duty, an employee cannot deserve for such a serious punishment of removal from service. The Department must ~~must~~ take into consideration the seriousness of the offence while giving punishment to the petitioner. Of course, this Court cannot reduce the punishment and also cannot direct the respondents to reconsider the matter in view of the decision rendered in the case of Union of India Vs. Parma Nanda (AIR 1989 SC 1185). However, Their lordships in the above judgment observed that "adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter. If the findings of the Inquiry Officer is arbitrary or perverse, the Tribunal may remit the matter to the competent authority for reconsideration or by itself substitute one of the penalties provided under Clause (2) of the second proviso to Article 311(2) of the Constitution of India."

11. As has been stated in the previous paragraphs, we find that the penalty imposed is disproportionate to the unauthorised absence on the part of the applicant. The one redeeming feature is that there is no fraud or corruption or other serious offence. Even so, we are not in a position to interfere with the quantum of punishment in the light of the judgment of the Hon'ble Supreme Court in the case of Union of India Vs. Parma Nanda (AIR 1989 SC 1185).

.. 9 ..

We also find from a judgment of the Chandigarh Bench of this Tribunal [ II 1988 ATLT (CAT) 421 ] that the Bench felt that the appellate authority should have given a personal hearing to the applicant before disposal of the appeal. In that case, the Chandigarh Bench observed that but for this aspect the appellate order could not otherwise be faulted. They had also referred to the Supreme Court judgment in the case of Ram Chander Vs. Union of India & others [ ATR 1986(2) SC 262 ]. We reproduce below the portion cited by the Chandigarh Bench:

"Such being the legal position, it is of utmost importance after the Forty-second amendment as interpreted by the majority in Tulsi Ram Patel case that the Appellate Authority must not only give a hearing to the government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasise that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authority regarding the final orders that may be passed on his appeal "Considerations of fair play and justice also require that such a personal hearing should be given."

The Chandigarh Bench therefore felt that the appellate authority should have given the applicant a personal hearing even though the applicant did not ask for such a hearing. In a similar case while disposing of O.A. No.273/88 the Cuttack Bench of this Tribunal had also fallen in line with the observations of the Chandigarh Bench and remitted the case back to the appellate authority with a direction to give a personal hearing to the applicant. In the case before us also we find that the appellate order cannot otherwise be faulted. Falling in line with the observations of the Chandigarh Bench as well as the decision of the Cuttack Bench we feel that a chance be given to the applicant to explain his case to the appellate authority. In such a case it is possible that the appellate authority may take a different view of the case. We, therefore, remit the case back

.. 10 ..

to the appellate authority with a direction that the applicant be given a personal hearing to explain his case. The appellate authority may then take a decision in the light of the hearing. The application is thus disposed of with no order as to costs. The disposal of the appeal after personal hearing may be effected within 3 months of receipt of this order.

*M.S*

( J. Narasimha Murthy )  
Member (Judl).

*R.BalaSubramanian*

( R. BalaSubramanian )  
Member (Admn).

Dated: 10.6.91

*827691*  
Deputy Registrar (A)

To

- 1- The General Manager, S.C.Rly, Secunderabad.
2. The Divisional Railway Manager, S.C.Rly, vijayawada
3. The Senior Divisional Mechanical Engineer (Loco)  
S.C.Rly, Vijayawada.
4. One copy to Mr.P.Krishna Reddy, Advocate, CAT.Hyd.
5. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.
6. One copy to Mr.J.Narasimha Murty, Member (J)CAT.Hyd.

contd...

*W.H.G.*