

(44)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
AT HYDERABAD

* * *

OA No. 466/89

Date of order: 28.10.93.

Between

A. Vijayakumar

. . . Applicant

and

1. Divisional Railway Manager,
Personal Branch, S.C.Railway,
Vijayawada.
2. Senior Divisional Mechanical
Engineer/Loco Shed/Vijayawada.
3. Divisional Diesel Inspector,
Dhonakonda, (Prakasham Dist.,
S.G. Railway,

. . . Respondents

Counsel for the applicant : Mr. B.S.A. Swamy

Counsel for the respondents : Mr. N.R. Devaraj, Sr. CGSC

CORAM:

HON'BLE SHRI A.B. GORTHY, MEMBER (ADMN.)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

..2..

1899
g.

Re 46

OA. No. 466/89

Date of order: 28.10.93.

ORDER

As per HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN.)

The applicant's grievance is against the order dated 2.8.1988 passed by Senior Divisional Mechanical Engineer, South Central Railway imposing on him the penalty of removal from service. Aggrieved by the said order dated 2.8.88, the applicant preferred an appeal dated 20.8.88 which was rejected by the Divisional Railway Manager on 24.1.1989. Hence this application, in which the relief sought is, that the penalty be set aside and that the applicant may be reinstated in service with all consequential benefits.

2. The applicant was working as Loco Khalsi at Dhonakonda. On 12.5.1987 he was served with a charge memo alleging that on 26.12.86, the applicant was found unlawfully possessing Railway property consisting of 20 numbers of welding rods and two numbers of 12 inch Iron pipes hidden in a cloth bundle and took it out side for his personnel use. On the way near Railway Goods shed, he was arrested by RPF staff. A regular departmental enquiry was conducted at the end of which, the applicant was found guilty of the charge and was awarded the penalty of removal from service.

3. We have heard learned counsel for both the parties. Mr. B.S.A. Swamy learned counsel for the applicant stated that the applicant was unduly prejudiced in his defence on account of the enquiry officer's refusal to postpone the enquiry, so as to enable the defence assistant to be present and to help the applicant in the conduct

22/10/93
f

2

166

of defence. In this context Mr. Swamy drew our attention to the record which indicates that the enquiry was initially to be held at Vijayawada on 22.12.87, but at the last minute the applicant was informed that the venue of enquiry had been changed from Vijayawada to Rajahmundry. The defence assistant, was waiting at Vijayawada on 22.12.87. On the next day, that is, on 23.12.87, the applicant rushed to Vijayawada to fetch the defence assistant, who, however expressed his inability to come to Rajahmundry, because of certain personnel difficulties. Due to this peculiar situation, the applicant states, that he had asked the enquiry officer to postpone the enquiry but his request was not acceded to and the enquiry was held on the same day, that is, on 23.12.87. Under these circumstances we would have ordinarily accepted the applicant's plea that he was prejudiced in his defence on account of the nonavailability of the defence assistant on the day when the enquiry was held.

4. Mr. N.R. Devaraj learned counsel for the respondents drew our attention to the enquiry proceedings. In the said proceedings, we find that in reply to a specific question put by the enquiry officer to the applicant, the applicant categorically stated that he would like to defend himself even in the absence of his defence assistant. It was on account of this statement of the applicant, that the enquiry proceedings were carried on and completed on the same day.

5. Admittedly the applicant did seek the assistance of a defence assistant, and nominated Shri. R.Varadarajulu, a retired Railway employee as his defence assistant. There is also no doubt that the said defence assistant could not be present during the enquiry held on 23.12.87. At

300 189 27

2

Copy to:-

1. Divisional Railway Manager, Personal Branch, S.C. Railway, Vijayawada.
2. Senior Divisional Mechanical Engineer/Loco Shed/Vijayawada.
3. Divisional Diesel Inspector, Dhonakonda, Prakasham District, S.C. Railway.
4. One copy to Sri. S.S.A. Swamy, advocate, Advocates Association, High Court Building, Hyderabad.
5. One copy to Sri. N.R. Devaraj, Sr. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

5th 2nd
P. S. Q. 2/23
Rsm/-

XXXXXX

47

the same time, the enquiry proceedings clearly indicate that the applicant acquiesced to the holding of the enquiry in the absence of his defence assistant, and as the applicant had defended himself in the enquiry proceedings, he cannot subsequently, be allowed to take the stand that injustice was caused to him on account of the enquiry that was held without the presence of his defence assistant.

6. From the enquiry proceedings and the evidence of the witnesses who were examined there-at, it would be quite evident that the applicant was caught with the material stated in the article of charge. It was also brought out during the enquiry, that the applicant himself had signed the panchanama that was prepared after the seizure of the property by the RPF constables.

7. In the result, we find, that the penalty imposed suffered from no such irregularity or illegality as would call for our interference. The application is therefore dismissed, but without any order as to costs.

T. Chandrasekharareddy
(T. CHANDRASEKHARAREDDY)
MEMBER (JUDL.)

A.B. Gorthi
(A.B. GORTHY)
MEMBER (ADMN.)

Dated: The 28th October 1993
(Dictated in the Open Court)

spr

DT. Registrar (Judl.)

4th 10/10/93

com 10 - - - 57 -