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: IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :

HYDERABAD BENCH : AT HYDERABAD

OA 617/89.

Dt. of Order:21-10-93.

Yadagiri Baliah

....Applicant

Vs.

1. The Divisional Railway Manager,  
Secunderabad (BG) Division,  
SC Railway, Sec'bad.
2. The Sr.Divisional Mechanical  
Engineer, Secunderabad (BG) Division,  
SC Railway, Sec'bad.

...Respondents

.. ..

Counsel for the Applicant : Shri V.Krishna Rao

Counsel for the Respondents : Shri N.R.Devraj, SC for Rlys

.. ..

CORAM:

THE HON'BLE JUSTICE SHRI V.NEELADRI RAO : VICE-CHAIRMAN

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (A)

(Order of the Dinv. Bench passed by Hon'ble  
Justice Shri V.N.Rao, V.C.).

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While the applicant was working as Diesel Asst.  
in Loco Foreman's Office, SC Railway, Lalaguda, Sec'bad,  
chargememo dt.9-9-88 was issued to him and the charge reads  
as under :-

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"That the said Sri B.Yadagiri while working as Diesel Assistant of L.E.No.17600 on 7-7-88 has committed serious misconduct and failed to maintain devotion to duty and behaved on a manner unbecoming of a Railway Servant in that he failed to observe the correct aspect of the advance starter and not informing the driver while starting from I loop which resulted driver entered VKB-GDQ section without authority to proceed. He violated rule No.GR.3.83(1). He also contravened Railway Service Conduct Rules 3(1)(i)(ii)(iii) of 1966."

After enquiry the Disciplinary Authority passed order dt.12-12-88 removing the applicant from service. It was confirmed in the appeal, and the same is assailed in this Original Application. When this O.A. had ~~come~~ <sup>come</sup> up for consideration earlier it was contended inter alia that the order of removal is vitiated as copy of the report of the Enquiry Officer was not furnished to the applicant before the order of removal <sup>was</sup> passed. The said contention was up-held and the O.A. was allowed on 9-10-90 and the Disciplinary Authority was given liberty to continue the enquiry in accordance with law after furnishing copy of the report of the Enquiry Officer to the applicant. Civil Appeal No.4071/91 was filed against the said order <sup>in</sup> ~~before~~ the Supreme Court.

(H)

2. As the order dt.9-10-90 was not suspended by the Supreme Court, the Disciplinary Authority proceeded with the enquiry <sup>and</sup> ~~and continued the enquiry after furnishing~~ <sup>furnished</sup> copy of the report of the Enquiry Officer, while <sup>the</sup> ~~placing the~~ <sup>was placed</sup> applicant under suspension. After receipt of explanation from the employee the Disciplinary Authority passed order dt.21-1-92 removing the applicant from service. On appeal thereon, the appellate authority passed order on 11-1-93 by modifying the order of removal as one of Compulsory Retirement with effect from 21-1-92. The Supreme Court set aside the order dt.9-10-90 of this Tribunal in this O.A. as per their judgment dt.30-8-93. When once the order dt.9-10-90 was set aside by the Supreme Court, the subsequent order dt.21-1-92 of the Disciplinary Authority ordering removal and the order dt.11-1-93 of the Appellate Authority where by the order of removal was ~~modified~~ modified as Compulsory Retirement had ~~became~~ void.

3. The learned counsel for the applicant had not drawn our attention to any infirmity in the enquiry. But when on the same material the second Appellate Authority had chosen to modify the order of removal as Compulsory Retirement we feel that it is just and proper to modify the order of 12-12-88 where by the applicant was removed from service as Compulsory Retirement.

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4. But the question arises as to whether the Compulsory Retirement had to be ordered from the date on which the applicant was removed from service in pursuance of the order dt.12-12-88 or from 21-1-92, the later <sup>(</sup>order ~~removing~~ of removal.

5. We have heard Shri N.R.Devraj, counsel for ~~the applicant~~ the Respondents and Shri V.Krishna Rao, counsel for the applicant. Shri Krishna Rao, counsel for the applicant submits that the applicant was paid the subsistence allowance for the period of deemed suspension and also for the period of suspension, when the applicant was kept under suspension after 9-10-90, the date of the earlier order in this O.A. As the order dt.21-1-92 of the Disciplinary Authority and the order dt.11-1-93 of the Appellate Authority have to be held as void in pursuance of the judgment dt.30-8-93 of the Supreme Court, and as we held that order dt.12-12-88 of removal had ~~to be~~ <sup>to be</sup> modified as Compulsory Retirement, the Compulsory Retirement as on the date of actual removal in pursuance of the order dt.12-12-88 had to be held as the date of Compulsory Retirement as per this order. The applicant is entitled to the pension from that date. If any excess

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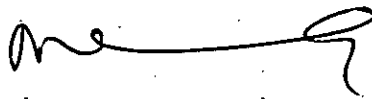
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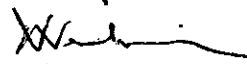
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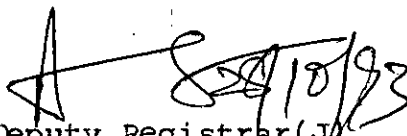
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amount is paid as Gratuity and pension, the said excess  
for the period subsistent to removal  
amount and the subsistence allowance, that was already  
paid have to be adjusted towards pension payable as per  
this order. The Original Application is ordered accord-  
ingly. No order as to costs.

  
(R. RANGARAJAN)  
Member (A)

  
(V. NEELADRI RAO)  
Vice-Chairman

Dated: 21st October, 1993.  
Dictated in Open Court.

  
Deputy Registrar(J)

avl/

To

1. The Divisional Railway Manager, Secunderabad (BG) Division, S.C. Railway, Secunderabad.
2. The Sr. Divisional Mechanical Engineer, Secunderabad (BG) Division, S.C. Rly, Secunderabad.
3. One copy to Mr. v. Krishna Rao, Advocate, CAT. Hyd.
4. One copy to Mr. N. R. Devraj, SC for Rlys, CAT. Hyd.
5. One copy to Library, CAT. Hyd.
6. One spare copy.

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STG  
PSC  
7.10.93

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO  
VICE CHAIRMAN

AND

R. Ranga Raju

THE HON'BLE MR. ~~A. B. CORTE~~ : MEMBER (A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY  
MEMBER (JUDL)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M(A)

Dated: 21-10-1993

ORDER/JUDGMENT:

M.A./R.A./C.A.No.

in

O.A.No. 617/89.

T.A.No. (W.P. )

Admitted and Interim directions  
issued

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.

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