

Central Administrative Tribunal
HYDERABAD BENCH : AT HYDERABAD

O.A. No. 661 of 1989

Date of Decision :

~~Ex No.~~

Mr. M. Pentaiah

Petitioner.

Mr. P. Krishna Reddy

Advocate for the
petitioner (s)

Versus

The Divisional Operating Superintendent, Respondent.
S.C. Railway, Secunderabad and another

Mr. Jalli Siddaiah, 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 ?
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 ?
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)

(29)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO. 661 of 1989

DATE OF JUDGMENT: 7-3-1991

BETWEEN:

Mr. M. Pentaiah

.. Applicant

AND

1. The Divisional Operating Superintendent
Meter Gauge, Hyderabad Division,
South Central Railway,
Secunderabad.
2. The Enquiry Officer
(Traffic Inspector, L.R),
(Meter Gauge), Hyderabad Division,
South Central Railway,
Secunderabad.

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

COUNSEL FOR THE RESPONDENT: Mr. Jalli Siddaiah, SC for Railways

CORAM:

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

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

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI J. NARASIMHA MURTHY, MEMBER (JUDL.)

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This is a petition filed by the petitioner for a relief to direct the respondents not to hold any departmental enquiry pursuant to the Memo of charge issued in Standard Form No.V under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 in No.Y/T/194/I/2/89 dated 18.5.1989 during the pendency of the criminal case pending before the XIII Metropolitan Magistrate for Railways, Secunderabad. The brief facts of the case are briefly as follows:-

The applicant was Assistant Secretary, South Central Railway Mazdoor Union, Kacheguda Branch during the year 1986-87 and he was working as Pointsman 'A' in Kacheguda Railway Station during that period. The post of Station Superintendent of Kacheguda Station was in the grade of Rs.840-1040. With a view to post one Mr. R.L.Peters who was the Station Superintendent in the grade of Rs.700-900, the post of Station Superintendent, Kacheguda was down-graded to the grade of Rs.700-900. On account of unauthorised downgrading of the post, chances of Station Superintendents who were in the grade of Rs.840-1040 or who are likely to get promoted from the grade of Rs.700-900 to Rs.840-1040 grade will be affected. As an office bearer of the Union, the applicant brought to the notice of the Divisional Railway Manager, the injustice done to the Station Superintendents in the grade of Rs.840-1040. The applicant states that he has no personal grievance against Mr. R.L.Peters. When Mr.Peters learnt that the applicant has an object for downgrading the post of Station Superintendent to the grade of Rs.700-900, he thought that the applicant has tried to harm him. In fact, it was never the intention of the applicant.

2. While the matter stood thus, the applicant approached the Station Superintendent, Kacheguda on 25.2.1989 at about

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15.30 hours to request him to grant casual leave. ~~subsequently~~
He thereupon insisted the applicant to file an application for the leave. The applicant explained him that there is no necessity for the applicant to file any application for casual leave and casual leave can be granted by noting on the casual leave card which the applicant produced before the Station Superintendent. The Station Superintendent was annoyed and refused to grant leave and asked him to get out even though the applicant was eligible for casual leave. The Station Superintendent reported against the applicant that the applicant has used foul language against him and prevented him from discharging duty, to the Railway Police No. 58 of 1989 and a criminal case was filed against the applicant in the Court of XIII Metropolitan Magistrate for Railway, Secunderabad, and the same is pending before the Court of the Hon'ble Magistrate. Not being satisfied of the same, the Station Superintendent reported against the applicant to the Divisional Operating Superintendent (Meter Gauge), Hyderabad. Meanwhile, the applicant was transferred from Kacheguda to Moula Ali. In the first instance, he was kept under suspension and after transfer to Moula Ali, the suspension order was revoked. The 1st respondent issued a Memorandum of charges in Standard Form No. V on 18.5.1989, alleging that the applicant while he was working as Pointsman at Kacheguda Railway Station on 25.2.1989 misbehaved with his immediate superior viz., the Station Superintendent. It is alleged in the annexure to the charge sheet that when the Station Superintendent asked the applicant to give leave application, the applicant abused him with unparliamentary language and ~~subsequently~~ he subsequently once again abused the Station Superintendent with filthy language on phone after a lapse of 15 minutes. The



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applicant intimated the 1st respondent that as a criminal case was pending against him on the same allegations, he cannot offer any explanation to the Memorandum of charges thereupon till the criminal case is disposed of. The 1st respondent/ informed the applicant vide letter dated 14.7.1989 that even when criminal proceedings are pending against him, departmental proceedings can be taken under Discipline & Appeal Rules and directed the applicant to file an application within 10 days of receipt of the said letter dated 14.7.89. Once again the applicant represented on 25.7.1989 to the 1st respondent that since the criminal case is pending, he cannot offer any explanation. Not being satisfied of the reply, the 1st respondent appointed the 2nd respondent as Enquiry Officer by an order dated 2.8.1989 and the 2nd respondent directed the applicant to attend for enquiry on 22.8.1989 in the office of the 1st respondent. Aggrieved by the action of the respondents, the applicant filed this application for the above said relief on the ground that ~~when a criminal case is pending against him, he cannot be compelled to offer explanation, attend enquiry and adduce evidence in his defence in the departmental enquiry and that no departmental enquiry can be held pending a criminal case.~~

3. The respondents filed a counter stating that the applicant had approached Shri R.L.Peters who was Station Superintendent of Kacheguda Station for grant of leave without submitting either leave card or leave application. Had the applicant approached him with a leave card, there would not have been a matter at all. When the applicant approached the Station Superintendent for leave, he was asked to produce the leave card or a leave application if he had not brought the leave card. Hence, the allegation of the applicant is a false one and developed with an intention to plead his innocence. The question of annoyance and further

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refusal has no ground since as a Station Superintendent, Shri R.L.Peters had to ask the applicant, ~~as~~ any other employee working under him, for either a leave card or a leave application. Since the applicant had deliberately made a false statement to plead his innocence, the above contention cannot be accepted. The criminal proceedings were initiated against the applicant by the Police after thorough investigation and as per the procedure. In these circumstances, the application is liable to dismissed.

4. Shri P.Krishna Reddy, the learned counsel for the applicant and Shri Jaiili Siddaiah, learned Standing counsel for the Railways/Respondents, argued the matter.

5. It is an admitted fact that the applicant while working as Pointsman 'A' approached the Station Superintendent, Kacheguda Station for grant of casual leave. The Station Superintendent gave one version and the applicant has given another version for granting leave. ~~and~~ ^{fact} The incident took place when the applicant approached the Station Superintendent for granting leave. It is also an admitted ~~that~~ ^{fact} that the ~~respondent~~ Station Superintendent gave a complaint to the Railway Police regarding the incident took place on 25.2.1989 and a Criminal Case No.58 of 1989 was filed against the applicant and it is pending before the XIII Metropolitan Magistrate for Railways, Secunderabad. Meanwhile, the Station Superintendent also gave a report regarding the incident took place to the higher authorities and the higher authorities transferred the applicant to Moula Ali and he was placed under suspension for some time and subsequently a charge memo was issued calling for his explanation and he made a representation that when a criminal case is pending, it is not proper on

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the part of the respondents to aske for explanation. Without giving any weightage to his representation, the respondents appointed an Enquiry Officer to enquire into the matter and the Enquiry Officer asked the applicant to appear before him for the enquiry. These are all the admitted facts.

6. A criminal case was pending against the applicant before the XIII Metropolitan Magistrate for Railways, Secunderabad with regard to the same facts covered in the charges. If the applicant offers his explanation, his ^{in the criminal case} defence has to be disclosed in the enquiry and it will effect him in the criminal case adversely because his defence ^{fact} will be known to the prosecution. So, in these circumstances he made a request to stop the disciplinary proceedings pending disposal of the criminal case and there is no hurry for the Departmental enquiry when a criminal case is pending. It is not also safe to ask the applicant to disclose his defence factors as it amounts to disclosing his defence while answering the charges that were frame against him. If he discloses his defence, it will adversely effect him in the criminal case. So, the applicant claims that he never asked to stop the proceedings totally but he asked the Department to postpone the disciplinary proceedings pending disposal of the criminal case. The claim of the applicant is not illegal or improper ^{claim} and so we feel that the contention raised by the applicant is a genuine one and nothing will effect adversely if the disciplinary proceedings are stopped pending disposal of the criminal case.

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7. For the reasons stated above, the impugned order No.Y/T/194/I/2/89 dated 18.5.1989 is liable to be kept in abeyance, pending disposal of the criminal case before the XIII Metropolitan Magistrate for Railways Secunderabad. We accordingly direct the respondents not to proceed with the enquiry till the disposal of the criminal case before the XIII Metropolitan Magistrate for Railways Secunderabad and the applicant shall not be asked to give reply to the charges framed against him pending disposal of the criminal case.

8. The application is accordingly ~~allowed~~ ^{disallowed}. There is no order as to costs.

NS
(J. NARASIMHA MURTHY)
Member (Judl.)

R. Balasubramanian
(R. BALASUBRAMANIAN)
Member (Admn.)

Dated: 7th March, 1991. *Encls. No. One* *by*
Deputy Registrar (J)

To

1. The Divisional Operating Superintendent, Meter Gauge, Hyderabad Division, S.C.Rly, Secunderabad.
2. The Enquiry Officer (Traffic Inspector, L.R.) (Meter Gauge), Hyderabad Division, S.C.Rly, Secunderabad.
3. One copy to Mr.P.Krishna Reddy, Advocate, CAT.Hyd.Bench.
4. One copy to Mr.J.Siddaiah. SC for Rlys, CAT.Hyd.
5. One ~~copy~~ ^{copy} to Hon'ble Mr.J.Narasimha Murty, Member (A)CAT.Hyd.
6. One ~~copy~~ ^{copy} to Hon'ble Mr.J.Narasimha Murty, Member (A)CAT.Hyd.
7. One spare copy.

pvm

vsn

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