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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:AT HYDERABAD

O.A.NO.743 of 1989

Date of Order: 25-9-89

Between:

Balaiah Mysiah.Applicant.

and

1. The Divisional Railway Manager,
Hyderabad(MG) Division,
South Central Railway, Secunderabad.
and 2 others.

....Respondents.

FOR THE APPLICANT: MR.V.KRISHNA RAO: ADVOCATE

FOR THE RESPONDENT: MR.N.R.DEVARAJ: S.C. FOR RLYS.

CORAM:

HON'BLE MR.D.SURYA RAO: MEMBER(JUDL)

AND

HON'BLE MR.D.K.CHAKRAVORTY: MEMBER(BOMN)

(JUDGMENT OF THE BENCH DELIVERED BY HON'BLE
MR.D.SURYA RAO: MEMBER(JUDL))

...Contd...

ORIGINAL APPLICATION NO. 743 of 1989

ORDER OF THE BENCH DELIVERED BY HON'BLE SHRI D.SURYA RAO, MEMBER (J).

The applicant herein who was a Black Smith Gr.II in South Central Railway, Manmad, has filed this application questioning the Order No. YW/452/WIV/DAR dated 29.9.1988 passed by the 3rd respondent (Divisional Engineer South, South Central Railway, Secunderabad) removing him from service. The order of removal dated 29.9.1988 was confirmed by the 1st respondent in his letter No. YW/452/WIV/DAE/South/MG/Pt.III dated 11.5.1989.

2. We have heard the learned counsel for the applicant Shri V.Krishna Rao and the learned Standing counsel for the respondents Shri N.R.Devaraj, SC for Railways. The learned counsel for the applicant, apart from the other contentions raised in the application, seeks to rely on the Full Bench decision of this Tribunal reported in "1988(2) SLJ 277 (CAT) (Shri Gafoor Mia & Others Vs. Director, DMRL, Hyderabad)" and the Full Bench decision of the New Bombay Bench of this Tribunal reported in "1988(3) SLJ 449 (CAT) (Shri Prem Nath K.Sharma Vs. Union of India and others)". He contends that the applicant could have been removed from service only by an order of the General Manager as an appointing authority and not by the Divisional Engineer, South Central Railway, Secunderabad. The respondent has not shown any case for removing the Divisional Engineer.

South Central Railway, Secunderabad nor by the Divisional Railway Manager, South Central Railway, Secunderabad in the instant case. The Full Bench decision of this Tribunal in "Gafoor Mia and others Vs. Director, DMRL (1988(2) SLJ 277 (CAT)" reads as follows:-

"Evidently, to make the position certain, where there is more than one appointing authority, the Rule Making Authority thought it necessary to define the term "Appointing Authority" as the highest among them. It is by virtue of delegation that appointment to Class III and Class IV posts may be made by an officer subordinate to the General Manager but the General Manager also continues to be competent to make these appointments, and amongst the Officers competent to appoint, the General Manager happens to be the highest authority. Hence, so far as Class III and Class IV Railway Servants are concerned, the General Manager alone would be the "Appointing Authority" within the meaning of the definition of "Appointing Authority" contained in Rule 2(1)(a)."

The Rule Position was summarised as follows:-

"(i) As an appointing authority only the highest among the appointing authorities, is competent to impose any of the penalties including the penalties specified in Art.311.

(ii) Any appointing authority, if constituted specifically as a disciplinary authority, may impose any penalty as authorised under the rules governing disciplinary proceedings, but, such disciplinary authority cannot impose penalties specified in Art.311 unless that authority is also the authority which had appointed the particular Govt. Servant or is an authority equivalent or superior in rank to such authority.

(iii) A delegate of an appointing authority, by virtue of more delegation of the power to appoint, is not competent to initiate disciplinary proceedings or impose any penalty.

.. 3 ..

(iv) A delegate of an appointing authority can initiate disciplinary action and impose penalties against a Govt. servant only if he is constituted as a disciplinary authority under the rules.

xxxxx xxxx xxxx xxxx xxxx

In regard to initiation of disciplinary proceedings under the Railway Servants (Discipline & Appeal) Rules:-

- (i) The President or any other authority empowered by the President by a general or special order and any disciplinary authority directed under Rule 8(1) (b) of the Railway Servants (Discipline & Appeal) Rules to institute disciplinary proceedings against any Railway Servant on whom that disciplinary authority is competent to impose any of the penalties specified in Rule 6 may initiate disciplinary proceedings for imposing any penalty.
- (ii) Insofar as a non-gazetted Railway servant is concerned only an authority competent to impose a major penalty may initiate disciplinary proceedings for imposing a major penalty."

Relying on the above decision, the learned counsel for the applicant contends that the applicant, who is a Class III employee in the Railways, could have been removed by the General Manager, S.C.Railway. He also states that the disciplinary authority did not furnish to the applicant a copy of the Enquiry Report and give him an opportunity to make his representation against that report before it passed the impugned order. This is contrary to the decision rendered by the Full Bench of the Central Administrative Tribunal, New Bombay Bench reported in 1988(3) SLJ 449 (CAT) wherein it was held as under:-

"Even after the amendment of Article 311(2) by the 42nd Amendment, the Constitution guarantees a



reasonable opportunity to show cause against the charges levelled against the charged officer during the course of the enquiry. In order to fulfil the constitutional requirement he must be given an opportunity to challenge the enquiry report also. The Enquiry Officer enquires into the charges, the evidence is recorded and the charged officer is permitted to cross-examine the witness's and challenge the documentary evidence during the course of the enquiry. But the enquiry does not conclude at that stage. The enquiry concludes only after the material is considered by the Disciplinary Authority, which includes the Enquiry Officer's report and findings on charges. The enquiry continues until the matter is reserved for recording a finding on the charges and the penalty that may be imposed. Any finding of the Disciplinary Authority on the basis of the Enquiry Officer's report which is not furnished to the charged officer, would, therefore, be without affording a reasonable opportunity in this behalf to the charged officer. It therefore follows that furnishing a copy of the enquiry report to the charged officer is obligatory."

3. Following the above decision, we hold that the enquiry is vitiated and the orders imposing the penalty of removal from service upon the applicant dated 29.9.1988 as confirmed by the 1st respondent in his order dated 11.5.1989 are quashed. This, however, will not preclude the respondents from supplying a copy of the enquiry report to the applicant and give him an opportunity to make his representation and proceedings to complete the disciplinary proceedings from that stage. If the respondents choose to continue the disciplinary proceedings and complete the same, the manner as to how the period spent in the proceedings should be treated would depend upon the ultimate

1. The Divisional Railway Manager,
Hyderabad(MG) Division,
South Central Railway, Secunderabad.
2. The Senior Divisional Engineer,
(Co-ordination)(MG),
Hyderabad (MG) Division,
South Central Railway, Secunderabad.
3. The Divisional Engineer(South),
Hyderabad(MG) Division,
South Central Railway,
Secunderabad.
4. One copy to Mr.V.Krishna Rao, Advocate,
12-11-1444, Boudhanagar, Secunderabad+500 361.
5. One copy to Mr.N.R.Devaraj, S.C. for Rlys.,
CAT, Hyderabad.
6. One copy to Hon'ble Shri D.K.Chakravorty, Member (Admn.)
7. One spare copy.

ghm/

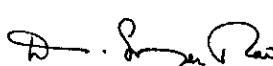
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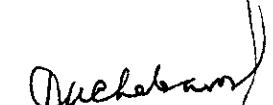
result of the case. Nothing said herein would affect the decision of the Disciplinary Authority. At the same time, this order is not a direction to necessarily continue the Disciplinary Proceedings. That is entirely left to the discretion of the Disciplinary Authority. The applicant be reinstated to duty with all consequential benefits and arrears of salary.

4. We are not going into the question whether the competent authority has not passed the order of removal as defined in Rule 2(1)(a) since we are setting aside the order of removal merely on the principle laid down in 1988(3) SLJ 449 (CAT). If the respondents choose to continue disciplinary proceedings against the applicant, it is open to the applicant to raise the contention viz., that the 3rd respondent is not the competent authority.

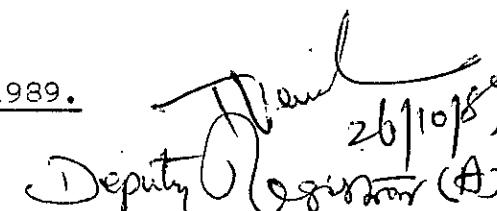
5. The application is accordingly allowed. There will be no order as to costs.

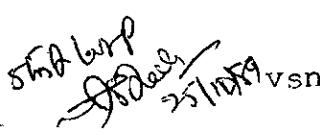
(Dictated in the open Court).


(D. SURYA RAO)
Member (Judl.)


(D.K.CHAKRAVORTY)
Member (Admn.)

Dated: 25th September, 1989.


Deputy Registrar (A)
26/10/89


Sh. L. R. Rao
35/10/89 vsn

DRAFT BY

CHECKING BY

D.R.

TYPED BY *SNR*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH

HON'BLE MR. B. N. JAYASIMHA: V.C.
AND

HON'BLE MR. D. SURYARAO: MEMBER (J) ✓
AND

HON'BLE MR. D. K. CHAKRAVORTY: M(AD.) ✓
AND

HON'BLE MR. J. NARASIMHAMURTHY: M(J) ✓

DATED : 25/9/89

ORDER / JUDGEMENT *25/9/89*

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

C.C.A. No. 743/89

Allowed

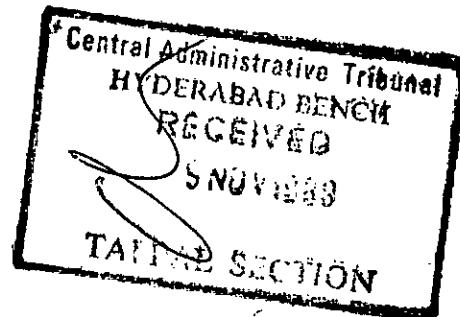
Dismissed

Disposed of

Ordered

No order as to costs.

PSR



*25/9/89
D.R.*