

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 831/89

198

DATE OF DECISION 16.9.1991

M. Gopalakrishna Petitioner

Shr. S. Lakshma Reddy Advocate for the Petitioner(s)

Versus

Union of India rep. by the General Manager,
SC Rlys, Rail Nilayam, Secunderabad. Respondent

Shri Jalli Siddaiah Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J. NARASIMHA MURTHY : MEMBER (JUDICIAL)

The Hon'ble Mr. R. BALASUBRAMANIAN : MEMBER (ADMINISTRATIVE)

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 Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000

(JNM)
M(J)

(RBS)
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A.No.831/89.

Date of Order: 16.9.1991.

M.Gopalakrishna

.....Applicant

Vs.

1. Union of India represented
by the General Manager, SC Railway,
Rail Nilayam, Secunderabad.
 2. Senior Divisional Mechanical Engineer,
Broad Gauge, Secunderabad.
 3. The Chief Personnel Officer, SC Railway,
Rail Nilayam, Secunderabad.
 4. Senior Divisional Personnel Officer,
Broad Gauge, Secunderabad.
 5. The Divisional Railway Manager, [B.G.], S.C.R. Secunderabad.
.....Respondents
- [Respondent No 5 impleaded as per the order of the Tribunal dt 13.6.91 in MA 659/91]

Counsel for the Applicant : Shri S.Lakshma Reddy

Counsel for the Respondents : Shri Jalli Siddaiah, SC for Rlys

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CORAM:

THE HON'BLE SHRI J.NARASIMHA MURTHY : MEMBER (J)

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

(Judgment of the Division Bench delivered by
Hon'ble Shri J.N.Murthy, Member (J)).

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It is a petition filed to quash the termina-
tion order dt. 2-4-85 and confirmed by the Appellate Authority
i.e. the 4th Respondent herein, through his proceedings
No.P/94/SC/MG/1024 dt.22-5-89 as illegal, arbitrary and without
jurisdiction and to direct the respondents to reinstate the
applicant with all consequential benefits.

Brief facts of the case are as follows :-

The applicant entered the Railway Service on

22-7-55 as Apprentice Fireman 'A' Grade and continued in service
.....2.

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without break till 9-1-1984. On 9-1-84 the applicant fell sick and was under medical treatment till 28-8-86. Consequently on 29-8-86 the applicant went to the Lalaguda Railway Hospital to have him checked up. The applicant was kept under observation by the said Hospital from 29-8-86 till 11-9-86 and was declared to be fit to join duty, to which effect a certificate was issued by the said hospital vide No.185654 dt.11-9-86. On 12-9-86 the applicant went before the Sr.Divisional Mechanical Engineer, Broad Gauge, Secunderabad. To his dismay he was informed that he has been removed from service. The applicant on 12-9-86 hearing that he was removed from service, has a set back in his health due to the shock from 13-9-86 and was on Medical Treatment till 29-3-88. The applicant has till date has not been served any order to this effect despite numerous approaches by the applicant to the Railway Officers. Hence this petition.

A counter has been filed on behalf of the Respondents with the following contentions.

The applicant who was working as Jr.Fuel Inspector at Secunderabad, was served with a major penalty chargesheet dt.3-9-83 for unauthorised absence from 18-6-83 onwards. His version that he fell sick on 9-1-84, that he was under private medical treatment from 28-8-86, that on 12-9-86 he called on the Sr.Divisional Mechanical Engineer and that he fell sick again from 13-9-86 to 22-3-88 on hearing the news of his removal from service are all misleading, incorrect and baseless.

It is stated that the applicant did not submit his explanation to the charge-sheet and he did not communicate with the disciplinary or any other concerned authority after issuance of the charge-sheet. His address and whereabouts were not known. Every effort was made to trace him and to intimate him of the enquiry but of no avail. A notice regarding the impending enquiry issued by the Enquiry Officer was also displayed on the notice board of the Mechanical Branch on 14-12-84, but, the applicant did not reply to the charge-sheet not attended the enquiry. The Enquiry Officer proceeded ex-parte and submitted his report on 4-1-85. The The applicant was found guilty of the charge of unauthorised absence. The order of removal was put up on the Notice Board of the Sr.Divisional Mechanical Engineer's Office on 3-4-85. There is no record to the effect that the applicant met the Sr.Divisional Mechanical Engineer on 12-9-86 whereupon he was informed that he was removed from service. The fit certificate issued by the ADMD, Railway Hospital, Lallaguda, on 11-9-86 was produced by the applicant for the first time on 30-3-88 along with his representation. On the same day, he produced a medical certificate dt.28-8-86 purportedly issued by an alleged Doctor 'interested in psychiatry' to the effect that he was suffering from "manic depressive psychosis" from 9-1-84 to 28-8-86. The authenticity, genuineness and correctness of the certificate is not admitted. The allegation that by reason of the shocking information which he got from the Sr.Divisional Mechanical Engineer (Power) whom he alleges to have met on 12-9-86, he fell again sick

from 13-9-86 to 22-3-88 is a baseless and incredible allegation. The applicant submitted a representation to the General Manager and the same was treated as an appeal and the appellate authority, i.e. the Chief Operating Superintendent passed orders rejecting the appeal which was communicated to him through a letter dt.22-5-89. The appellate authority confirmed the penalty imposed on him by the Disciplinary Authority after going through the records and after considering all the aspects. So there are no merits in the application and the application is liable to be dismissed.

We have heard Shri S.Laxma Reddy, learned counsel for the applicant and Shri Jalli Siddaiah, learned standing counsel for the Respondents. The contention of the applicant is that he ~~was~~ fell sick on account of his mental disability and he was admitted in the Hospital and after recovery from the sickness he went to the Railway Hospital, Lallaguda, to have him checked up. The applicant was kept in observation by the said Hospital authorities from 29-8-86 to 11-9-86 and was declared to be fit to join to duty and to that effect the hospital authorities gave a certificate dt.11-9-86. The applicant approached the Sr. Divisional Mechanical Engineer, BG, Secunderabad with the fitness certificate and he was informed by the same officer that he was removed from service. So on the mental shock he again became sick.

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The version of the Respondents is that the charge sheet was served on him and he had not chosen to reply to the same. An enquiry was conducted and the applicant was removed from service basing on the enquiry officer's report. The applicant contends that he had not received any charge sheet and also states that he had not received any Enquiry Officer's report or punishment order. Respondents say that the applicants whereabouts are not known and they kept the enquiry officer's report and removal order in the Notice Board. At the first instance they say that they sent charge sheet to the applicant and the same was acknowledged. What prevented the Respondents to send the proceedings to the same address and if they sent it to the same address what endorsement made by the post-man. No such evidence is forthcoming about what is the enquiry conducted, whom the enquiry officer examined.

On a persual of the records, in a letter No.D.O.

No.P.94/SC/BG/1024 dt.29-10-88, it was stated as follows :-

"From page-26 of the case file, it is clear that the DAR file was in the Personnel Branch only. It is, therefore, not understood as to how the acknowledgement from the party is not available in the file, since without this the file cannot be closed at that stage.

It is seen that Sr.DME, vide page-28, has stated that there are no papers to confirm that the final orders were received in his office. But on receipt of final

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reply from Sr.DME vide page-30, it appears that the case has been laid to rest and thereafter, the DAR file was sent to this office on a reference from this office.

The representationist states that he reported on 12-9-86 to Sr.DME and produced fit certificate. Neither it is confirmed nor disputed.

Normally, the party, after long absence, cannot present himself before the Railway Doctor without an authority from the department. Whether this was the case or otherwise and the details thereof were not furnished.

You will appreciate that with the above infirmities, no action can be taken for processing the case to GM. It is basically uncertain whether the penalty order was served on the party, in the absence of which, the penalty may be deemed to have been not given effect to till date.

I, therefore, request you kindly examine the above position and send the remarks covering all points raised in the representation."

There is another letter No.CM.226.L.DAR from Sr.DME (P)/ SC to Sr.DPO/BG/SC dt.7-7-88, which reads as follows :-

"Sub:-Application dt.30-3-88 of Sri M.Gopal Krishna, Ex.JFI/SC.

Ref;-Your letter No.DAR/EL/MGK/83 dt.24-6-88.

A Check of the record in this branch reveal that there are no papers to confirm that the final orders have been received in this branch for serving to the employee.

Hence it is difficult to say whether the orders have been served on to the party or not at this stage.

The employee himself has stated in his application that he is not in receipt of the termination orders."

The applicant also sent representation to the authorities that the removal order was not served upon him and also wrote letters on 30-3-88 stating that how he suffered with and how the Doctor examined and given the fitness certificate. A memorandum dt. 2-4-85 in the file reads as follows :-

"Shri M.Gopalakrishna, JFI/BG/SC is informed that the Enquiry Officer appointed to enquire into the charges framed against him has submitted his report. A copy of the report of the enquiry officer is enclosed.

Shri M.Gopalakrishna, JFI/SC has failed to attend the DAR enquiry fixed on 14-12-84 by Enquiry Official. In the circumstances I have no other alternative than to decide the case EX-PARTE. In the light of evidence available on record, I hold him guilty of the charge levelled against him. I have therefore decided

to impose on him the penalty of "Removal from service" with immediate effect.

Shri M.Gopal Krishna, JFI is hereby advised that under Rule 18 to 19 of the Railway Service (D&A) Rules 1968 he may prefer an appeal against these orders to CME/SC provided that ;

(i) the appeal is preferred within 45 days from the date of receipt of this order. etc.,."

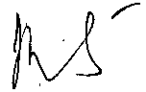
There is no evidence what is the enquiry has been made and how the enquiry proved against the applicant. It is not the pervue of the Enquiry Officer to suggest the penalty and contrary to the rules, the enquiry officer has suggested the penalty in the enquiry report itself and what is the evidence recorded, there is no report delivered and the enquiry officer's report is not complete and it is not served on the applicant.


From the contents of the various letters cited above it is clear that the enquiry officers report not reached the applicant and there is no evidence also that the Respondents have taken steps to serve the enquiry officer's report to the applicant. The contents of the record discloses that the Railways has not served the charge memo nor the enquiry officer's report or the penalty advice except oral information given by the authorities when the applicant approached with the fitness certificate. Without serving chargememo, without giving an opportunity to the applicant and without serving

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the Enquiry officer's report, the respondents removed the applicant from service. So without giving any notice and without calling for his explanation the respondents cannot remove the applicant from service. Hence we quash the impugned order dt.22-5-1989 and the applicant is entitled to reinstatement into service with all consequential benefits. Accordingly the application is allowed with no order as to costs.


(J.NARASIMHA MURTHY)
Member (J)


(R.BALASUBRAMANIAN)
Member (A)

Dated: 16th September, 1991.


Registrar.

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To

- 1 The General Manager, Union of India
S.C.Railway, Railnilayam, Secunderabad.
2. The Senior Divisional Mechanical Engineer,
Broad Gauge, Secunderabad.
3. The Chief Personnel Officer, S.C.Railway,
Railnilayam, Secunderabad.
4. The Senior Divisional Personnel Officer,
Broad Gauge, Secunderabad.
5. The Divisional Railway Manager, (B.G.), S.C.R. Secunderabad.
6. One copy to Mr.S.Lakshma Reddy, Advocate, CAT.Hyd.
7. One copy to Mr.J.Siddaiah, SC for Rlys, CAT.Hyd
8. One copy to Hon'ble Mr.J.Narasimha Murty, Member(J)CAT.Hyd.
9. One spare copy.

pvm


18/9/91.