

(49)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.891/89.

Date of Judgement 3-8-97

A.V.Abraham

.. Applicant

Vs.

1. The General Manager,
S.C.Rly., Secunderabad.
2. The Addl. Divl. ^{Railway} Manager(T),
S.C.Rly., Secunderabad.
3. The Sr. Mechanical Engineer, (T)
Kazipet Junction, S.C.Rly.
4. The Asst. Electrical Engineer,
S.C.Rly., Kazipet Junction.. Respondents

Counsel for the Applicant : Shri- ^{for}
Shri B.Nalini Kumar

Counsel for the Respondents : Shri Rajeswara Rao for
Shri D.Gopala Rao, SC for Rlys.

CORAM:

Hon'ble Shri R.Balasubramanian : Member(A)

Hon'ble Shri C.J.Roy : Member(J)

{ Judgement as per Hon'ble Shri R.Balasubramanian, Member(A) }

This application has been filed by Shri A.V.Abraham under section 19 of the Administrative Tribunals Act, 1985 against the General Manager, S.C.Rly., Secunderabad & 3 others. The prayer herein is to set aside the impugned order No.SOP:Conf:DAP:AVA:DSL:Shed dt. 21.4.82 by which he was dismissed from service.

2. The applicant is a colleague of Shri A.K.Sharma, applicant in O.A.No.889/89. The applicant herein was also dismissed from service by an order dt. 21.4.82 without conducting an enquiry. The disciplinary authority has invoked Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules, 1968. The applicant applied for leave from 16.4.82 to 19.4.82. Initially only two days' leave was granted but subsequently however the remaining portion of the leave was

also sanctioned. On 19.4.82 one Shri Bogeshwar Rao, trained Electrical Fitter and a member of the union was suspended. There was an agitation by the members of the union. The applicant and another Shri A.K.Sharma, applicant in O.A. No.889/89 somehow pacified the respondents and the situation was controlled. It is stated that Respondent No.3 served the applicant with a punishment order dt. 21.4.82 straightway without holding an enquiry. The enquiry was dispensed with under Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules, 1968. The applicant filed a Writ Petition No.4328/82 in the A.P.High Court. This was disposed of on 17.9.85 directing the respondents to dispose of the appeals pending before them. It is stated that pursuant to the direction of the High Court another appeal was preferred on 4.2.86 by way of reminder. Not getting a favourable reply the applicant has filed this application with a prayer to quash the punishment order.

3. The respondents have filed a counter affidavit and oppose the application. It is their case that the application is badly hit by limitation in that the cause of action arose in 1982 itself when the appellate authority is stated to have disposed of the appeal on 24.9.82. This apart, it is stated that it was not possible to hold an enquiry because the unruly situation created by the applicant which dislocated the work at the Diesel Shed was such that a tense atmosphere prevailed for nearly 7 hours.

4. We have examined the case and heard the rival sides.

5. The first point that the applicant raised is one of limitation on the ground that they had disposed of the appeal on 24.9.82 itself. To this end we have seen the records. We find an appellate order dt. 24.9.82 confirming the punishment order. In the endorsement to the Sr.DME(Dsl.) KZJ through whom the order was supposed to be served it was specifically asked to serve the letter on the applicant and obtain a clear acknowledgement in token of having served the letter on the applicant. We find no such acknowledgement on the file.

6. For reasons that will be obvious from the subsequent paras we do not consider it necessary to go into the aspect whether the appellate order was served on the applicant or not (the applicant denies having received the appellate order).

7. As for the question of limitation, this has been considered earlier by this Bench which had passed an order on 25.9.90 in M.A.No.655/89 to this O.A. The Bench had condoned the delay in the applicant filing this application *taking into account the role of the respondents too,*

in the case. The Bench had, however, ordered in the M.A. that in the event of the applicant's success in the main application and grant of consequential relief by way of payment of arrears of salary the period from 3.8.87 to 10.2.89 should not count for payment of such arrears.

8. Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules, 1968 states that "where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an enquiry in the manner provided in these rules *enquiry cannot be dispensed with* ~~in~~ the well known case ^{of} *Tulsi Ram Patel & others Vs. Union of India*, the Hon'ble Supreme Court had dealt with the Second Proviso to Article 311(2) of the Constitution and in the light of the judgement of the Hon'ble Supreme Court, ~~the~~ *Dept.* of Personnel & Training had issued an Office Memorandum No.11012/11/85/Estt.(A) dt. 11.11.85. By its endorsement No.E(D&A)85RG6-72 dt. 6.2.86 the Railway Board had endorsed a copy of this to all the General Managers of the Indian Railways. In that order it had been stated that "there must exist a situation which makes the holding of an enquiry not reasonably practicable. What is required is that holding of an enquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation". It had further been stated in the memo that while it is not possible to enumerate all the cases in which it would not be

reasonably practicable to hold the enquiry certain cases can be illustrative. The following are the cases of illustration contained in the memorandum.

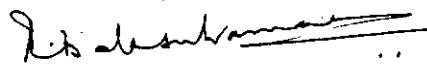
- (a) Where a civil servant, through or together with his associates, terrorises, threatens or intimidates witnesses who are likely to give evidence against him with fear of reprisal in order to prevent them from doing so; OR
- (b) Where the civil servant by himself or with or through others threatens, intimidates and terrorises the officer who is the disciplinary authority or members of his family so that the officer is afraid to hold the inquiry or direct it to be held; OR
- (c) Where an atmosphere of violence or of general indiscipline and insubordination prevails at the time the attempt to hold the inquiry is made.

The disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry because the Department's case against the civil servant is weak and is, therefore, bound to fail.


Another important condition precedent to the application of Rule 14(ii) is that the disciplinary authority should record in writing the reason or reasons for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated in the rules. This is a constitutional obligation and, if the reasons are not recorded in writing, the order dispensing with the inquiry and the order of penalty following it would both be void and unconstitutional. Keeping these instructions in view, we have examined the records. No convincing reason for dispensing with the inquiry has been recorded at any stage. On the other hand, by their own admission as seen from the counter, a certain amount of tension was there only for 7 hours. In this case it was certainly possible for the respondents to have conducted the inquiry and we are not at all convinced about the reasons for dispensing with the inquiry. That being the position, an important provision of the basic law has been flouted in that the delinquent official had not been given an opportunity to defend himself thereby ^{violating} following the principles of

natural justice. Such being the case, we have no hesitation in quashing the punishment order dt. 21.4.82 passed by the Addl. Divl. Rly. Manager, Secunderabad. The subsequent appellate order, if any, also goes off alongwith the punishment order.

9. The application is thus allowed and since the punishment order is quashed as an illegal one the applicant is entitled to all the consequential benefits including arrears of pay. However, while computing the arrears of pay, the orders passed by this Bench in the M.A. may be taken into account by the respondents.



(R. Balasubramanian)
Member(A).


(C. J. Roy)
Member(J).

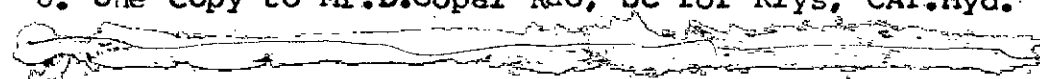
Dated:

3rd August 92


Deputy Registrar(J)

To

1. The General Manager, S.C.Rly, Secunderabad.
2. The Addl. Divisional Railway Manager(T)
S.C.Rly, Secunderabad.
3. The Sr. Mechanical Engineer (T), S.C.Rly, Kazipet Junction.
4. The Asst. Electrical Engineer, S.C.Rly,
Kazipet Junction, Kazipet.
5. One copy to Mr. B. Nalini Kumar, Advocate,
CAT Bar Association, CAT. Hyd.
6. One copy to Mr. D. Gopal Rao, SC for Rlys, CAT. Hyd.


7. one spare copy

P.M.

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TYPED BY

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COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH.

THE HON'BLE MR.

AND

THE HON'BLE MR.R.BALASUBRAMANIAN:M(A) /

AND

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

AND

THE HON'BLE MR.C.J. ROY : MEMBER(J)

Dated: 3-8-1992

ORDER / JUDGMENT

~~P.A./C.A./M.A. No.~~

in

O.A.No. 891/89

~~T.A.No.~~

~~(W.P.No.)~~

Admitted and interim directions
issued

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.

pvm.

