

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD

BENCH : AT HYDERABAD

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O.A.No. 958 of 1989

Dt. of Decision: 4.1.1991.

Between:-

C.R.Thangavelu

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Applicant

and

1. Divisional Railway Manager  
(Meter Gauge), South Central  
Railway, Secunderabad.
2. Senior Divisional Mechanical  
Engineer (Meter Gauge), South  
Central Railway, Hyderabad.
3. Assistant Mechanical Engineer/  
Personnel/PAU, Purna Junction,  
Parbhani District, Maharashtra State.
4. Running Shed Supervisor, ADB,  
Purna, Parbhani District,  
Maharashtra State.

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Respondents

Appearance

For the applicant : Shri S.Laxma Reddy, Advocate

For the respondents : Shri N.R. Devraj, Additional  
Standing Counsel for Railways.

CORAM:

THE HONOURABLE SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HONOURABLE SHRI D.SURYA RAO, MEMBER(JUDICIAL).

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(JUDGEMENT OF THE BENCH DELIVERED BY

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1. The applicant herein was formerly working as Box-Boy  
in the office of the Running Shed Supervisor, ADB, Purna,  
Parbhani District, Maharashtra State, under South Central  
Railway. He has filed this application questioning the



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order of the 3rd respondent dated 31.5.1989 removing him from service and as confirmed by subsequent order<sup>of</sup> the 1st respondent and 2nd respondent in Appeal and Revision.

2. The applicant's main case is that a charge was made ~~against~~ him alleging that on 14-11-1987 he has misbehaved with the 4th respondent using unparliamentary language, and at that time he was intoxicated. The charge memo was issued by letter dated 20-11-1987 by the 3rd respondent. The applicant denied the charge. An Enquiry Officer was appointed and enquiry was conducted on 30-3-1988. Two witnesses were examined on behalf of the prosecution. Thereafter the enquiry report was submitted to the ~~1st respondent~~<sup>2nd</sup> and 3rd respondents by proceedings dated 6-4-1988 has imposed the penalty of removal from service on the applicant. The applicant preferred an appeal to the 2nd respondent. The 2nd respondent, without considering the submissions made by the applicant, has mechanically passed an order dated 7-2-1989 confirming the order of removal. The applicant has preferred a revision before the 1st respondent and the 1st respondent had also mechanically dismissed the revision petition without assigning any valid reasons and upheld the order of punishment. Aggrieved by the same, the applicant has filed this O.A. questioning the action of the respondents as arbitrary, illegal and violation of the principles of natural justice and article 311(2) of the Constitution of India.

3. He further ~~stated~~ that he was not given a reasonable opportunity as contemplated under Rules 9 to 13 of the Railway Servants Disciplinary and Appeal Rules, 1968, and that the Enquiry Officer has not followed the principles of natural justice. It is further alleged that the case was cooked up against him. For these reasons it is prayed that the impugned order dated 4-6-1988 as confirmed in

appeal by the 2nd respondent by order dated 7-2-1989 and further confirmed in revision by the 1st respondent by his order dated 31-5-1989 be quashed.

4. On behalf of the respondents a counter has been filed rejecting the contentions raised in the application.

5. We have heard Shri S.Laxma Reddy, learned Counsel for the applicant, and Shri N.R. Devraj, learned additional Standing Counsel for Railways, on behalf of respondents.

6. Shri Devraj takes a preliminary objection that the application is barred by limitation, as He seeks to <sup>contend that</sup> ~~question~~ the order of the Disciplinary Authority <sup>which</sup> ~~which~~ was passed on 4.6.1988 and the limitation counts from that date and not from the date of rejection of his appeal and revision petition. The basis of the argument of Sri Devraj is that the applicant on 6.1.1989 had presented a mercy appeal to the appellate authority, that the Railway Servants (D&A) rules do not contemplate a mercy appeal and hence the disposal of the appeal dated 6-6-1989 and the revision thereafter by the revising authority are liable to be ignored. He contends that if these proceedings of the appellate authority and the revising authority are ignored, then the only order left is the order of the disciplinary authority dated 4.6.1988 imposing on the applicant the punishment of removal, that since the application has been filed only on 8.12.1989 i.e. more than one year after the order dated 4.6.1988, the application is barred by limitation. We have no hesitation in rejecting these contentions as wholly untenable. An appeal though styled as a mercy appeal but pleading for reduction of the punishment (as has been done in the

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instant case) is yet an appeal, for an employee who has been visited with a punishment, can always say that a punishment is too severe and can invoke the jurisdiction of the appellate authority under Rule 22(2)(c) of the Railway Servants' (Discipline and Appeal) Rules. Once such an appeal has been preferred, it is incumbent on the part of the appellate authority to consider whether the procedure laid down in the rules has been followed or not and if this has resulted in failure of justice. This is incumbent upon the appellate authority even if the appeal is strictly not <sup>couched</sup> ~~concluded~~ in terms of a regular appeal containing the grounds of appeal. This is clear from the Railway Board's instructions in E(D&A) 86 R9 6/11, dated 17.11.1986 which reads as follows:-

" The appellate authority has a right to reject the appeal vide Rule 21(2) if it does not contain all the material statements or is not concluded in a proper or respectful language. It is now clarified that it will not be proper to reject an appeal merely on this ground, if it otherwise has merits. The appellant in such cases may be directed to submit a properly worded appeal for consideration. "

In our view this is a <sup>salutory</sup> ~~statutory~~ rule, wherein, in cases where there are merits in <sup>the</sup> appeal as in the case of non-following of the procedure by the enquiry officer/disciplinary authority, the appellate authority ought to have referred the case back to the appellant to raise the relevant grounds. This rule ought to be invoked particularly in the case of low paid employees who are not well acquainted with disciplinary procedures and rules and not trained to draft appeals in a legal format. Alternatively where the procedure prescribed was not followed, the

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appellate authority itself could have interfered though no ground was raised, as it is incumbent upon the appellate authority under Rule 22(2)(a) to do so. In the instant case the appellate authority has not considered this aspect but informed the applicant that he may prefer a revision under Rule 25. The applicant did prefer a revision on 21.4.86 assailing the findings of the enquiry officer, which was disposed of on 31-5-1989 by the Divisional Railway Manager, Meter Gauge, Secunderabad. This authority also did not consider whether the procedure followed in the enquiry was in accordance with the Discipline & Appeal Rules. Since the revisioning authority is required to follow the procedure prescribed in disposing of appeals when considering a revision, the Railway Board Circular dated 17-4-191986 would equally apply to the disposal of the Revision and it was equally incumbent on the revising authority to examine whether the procedure was followed or not as is required by the appellate authority. Though the applicant preferred an appeal and revision and though he might not have raised specific grounds that the procedure was not followed, the said appeal/revision does not cease to be an appeal/revision within the meaning of the expression exhaustion of, "all" the remedies available to him under the relevant service rules as to redressal of grievances" as envisaged in section 20 of the Administrative Tribunals Act, 1985. Consequently such appeal/revision cannot be ignored and the application treated as time barred treating only 4.6.88 viz., date of order of the disciplinary authority as the relevant date for purposes of limitation under section 21 of the Administrative Tribunals Act. Taking the date of disposal of the revision viz., 31-5-1989 as the crucial date for purposes of limitation

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and since the application has been made within one year thereafter, it follows that the application is within time.

7. The next question is whether the Inquiry Officer has not followed the procedure prescribed in the Railway Servants (Discipline & Appeal) Rules in the conduct of the inquiry and consequently whether there is failure of justice. The proceedings of the Inquiry Officer disclose

*the following infirmities:- serious infirmities in regard to the procedure to be followed in the conduct of enquiries.*

The applicant was in the first instance examined even before examination of the witnesses whereas the procedure envisaged is as follows:-

First under Rule 9(17) the oral and documentary evidence in support of the charge should be produced by the disciplinary authority, witnesses shall be examined by the Inquiry Officer and then cross-examined by the charged employee. Thereafter i.e. after close of the case of the disciplinary authority under Rule 9(19) & (20), the charged employee shall be required to state his defence orally or in writing and to produce his defence witness. It is only thereafter that under Rule 9(21) that the Inquiry Officer can question the charged employee with regard to the circumstances against him.

As already stated above, the Inquiry Officer straightaway commenced questioning the applicant. When the applicant denied having struck the RSS Sri Vijayarathnam ~~with the complainant~~ <sup>complainant</sup> ~~unparliamentary~~ or used unparliamentary language, the Inquiry Officer questioned the said Vijayarathnam, who is not a witness to the inquiry and took <sup>down</sup> ~~his~~ version. Again in regard to the two witnesses cited, the record of evidence discloses that the Inquiry Officer put two questions to the first witness Rajaram. He thereafter

To

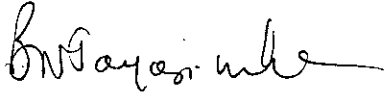
1. The Divisional Railway Manager (Meter Gauge)  
S.C.Railway, Secunderabad.
2. The Senior Divisional Mechanical Engineer (Meter Gauge),  
S.C.Railway, Hyderabad.
3. The Assistant Mechanical Engineer/Personnel/PAU  
Purna, Junction, Parbhani District, Maharashtra State.
4. The Running Shed Supervisor, ADB, Purna,  
Parbhani District, Maharashtra State.
5. One copy to Mr.S.Laxma Reddy, Advocate  
3-4-548/3, behind Y.M.C.A. near Andhra Bank, Narayanaguda, Hyd.
6. One copy to Mr.N.R.Devraj, SC for Railways, CAT.Hyd.Pench.
7. One spare copy.

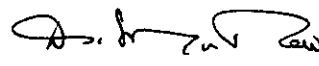
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asked the applicant what he had to say, to which the applicant replied that Rajaram was not present. In regard to the second witness Iftiker Ahmed, the Inquiry Officer put two questions. In regard to neither of the witnesses was any cross-examination allowed.

Thus it is clear that the Inquiry Officer has totally ignored the procedure prescribed in the Railway Servants (Discipline and Appeal) Rules and given no opportunity whatsoever to the applicant to defend himself. The procedure adopted was wholly unwarranted in law and arbitrary findings have been recorded that the applicant is guilty of the charges. These glaring irregularities have not been considered either by the disciplinary authority or the appellate authority or the revising authority. Consequently the order of the disciplinary authority dated 4-6-1988 as confirmed by the appellate authority and revising authority are quashed and set aside. The applicant will be reinstated to duty alongwith all consequential benefits of arrears of salary and other service benefits. The parties are directed to bear their own costs.

  
(B.N. JAYASIMHA)  
VICE-CHAIRMAN

  
(D. SURYA RAO)  
MEMBER (JUDICIAL)

Date: 24<sup>th</sup> January 1991

  
Deputy Registrar (Judl)



R/S  
8/1/91

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25/1/91

CHECKED BY  
TYPED BY

APPROVED BY  
COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD.

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

THE HON'BLE MR. D. SURYA RAO : M(J)  
AND

THE HON'BLE MR. J. NARASIMHA MURTY : M(J)  
AND

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

DATE: 24-9-

4/1/91

~~ORDER~~ / JUDGEMENT:

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

T.A. No.

W.P. No.

O.A. No.

958/89

Admitted and Interim directions  
issued.

Allowed. —

Dismissed for default.

Dismissed as withdrawn.

Dismissed.

Disposed of with direction.

M.A. Ordered / Rejected.

No order as to costs.

Central Administrative  
DESPATCH  
18 JAN 1991  
HYDERABAD BENCH.