

(60)

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No.107/89
T.A.No.

Date of Decision : Dec.1990

Mr. G.V. Perumal Petitioner.
Mr. G. Ramachandra Rao Advocate for the
petitioner (s)
Versus
GM, SCR, Secunderabad and 3 others Respondent.
Mr. N. R. Deva Raj, SC for Railways Advocate for the
Respondent (s)

CORAM :
THE HON'BLE MR. B.N. JAYASI MHA, VC

THE HON'BLE MR. D. SURYA RAO, MEMBER(J)

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)

b.n.j.

(HBNJ)

(HDSR)

(HDSR)

61

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD
BENCH AT : HYDERABAD

O.A. No.107/89

Date of order: 24 Dec. 1990

BETWEEN

G.V. Perumal .. Applicant
Vs.

1. General Manager,
South Central Railway,
Railnilayam,
Secunderabad.

2. The Senior Divisional
Operating Superintendent,
(BG) Secunderabad Division,
Railnilayam, Secunderabad.

3. The Divisional Operating
Superintendent (BG),
Secunderabad Division,
South Central Railway,
Secunderabad.

4. The Divisional Safety
Officer (BG) Secunderabad
Division, South Central
Railway, Secunderabad. .. Respondents

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APPEARANCE

For the applicant : Mr. G. Ramachandra Rao, Advocate

For the respondents : Mr. N. R. Devaraj, Standing Counsel
for respondents.

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CORAM

THE HON'BLE SHRI B.N. JAYASIMHA, VICE CHAIRMAN

THE HON'BLE SHRI D. SURYA RAO, MEMBER (JUDICIAL)

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(62)

(judgement of the bench delivered by Hon'ble Shri B.N.
Jayasimha, Vice Chairman)

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The applicant ~~herein~~ is an Asst. Station Master, South Central Railway, and he has filed this application questioning orders issued by the Divisional Operating Superintendent in order dt.7/9.12.87 imposing penalty of reduction to a lower post in the category of Assistant Station Master and also reduction in pay for a period of 5 years with cumulative effect with loss of seniority and confirmed by the Senior Divisional Operating Superintendent, South Central Railway, Secunderabad in his order dt.12.5.1988.

2. The applicant states that while he was working as Asst. Station Master at Rechni Road Station, the Divisional Safety Officer, Secunderabad Division, sent a letter to him stating that he was refusing to sign on the Station Working Rules and asked him to appear before him to explain as to why he was not signing on the Station Working Rules. The applicant submitted his reply on 10.2.1987 and personally handed over the same to the respondent No.4 in his office on 20.2.87. By an order dt.24.2.87 the applicant was kept under suspension on the ground that disciplinary action is contemplated and a memorandum of charges was issued on 11.3.1987. An enquiry officer was appointed and an enquiry was held in July and August, 1987. The Enquiry Officer found that the main charges levelled against the applicant were not proved but held the applicant guilty of insubordination. Based on the report of the Enquiry Officer, the respondent No.3, the disciplinary authority

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63

passed an order dt.7/9.12.1987 imposing the penalty of reducing the applicant to a lower grade and also fixing the pay of the applicant in the lower grade at Rs.1,200/-for a period of 5 years with loss of seniority on restoration and with cumulative effect. Aggrieved by this order the applicant filed an appeal to the second respondent and the said appeal was rejected by the second respondent in his proceedings dt.12.5.88. The applicant challenges these orders on several grounds in this application.

3. The respondents have filed a counter rebutting the various points made by the applicant in this application.

4. We have heard Shri Ramachandra Rao, learned counsel for the applicant and Shri N.R. Deva Raj, Standing Counsel for the respondents.

5) The main ground of attack is that the very complainant viz., Respondent No.4 on whose complaint the disciplinary action was initiated has not been examined, as a witness. The enquiry could not have taken the complaint on record without examining Respondent No.4 and giving an opportunity to the applicant to cross-examine him. Shri Ramachandra Rao submits that the applicant in his reply dt.4.4.87 to the charge memo had stated that the documents cited as Annexure-III is a report of Shri A. Bharat Bhushan, DSO/SC, and list of witnesses barring his name is not complete making even the veracity of the document doubtful. Hence in the absence of Shri Bharat Bhushan, the then DSO/SC as a witness the document cited in Annexure-III cannot be and should not be taken in support of prosecution. Inspite of his having specifically pointing out that

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the complainant is not included as a witness for the prosecution the enquiry was continued without calling the complainant as a witness. Shri Ramachandra Rao further points out that even in the complaint dated 20.2.1987 of Shri A. Bharat Bhushan, DSO/SC, he had not given details of the alleged misbehaviour of the applicant and these were elicited by other witnesses in the course of enquiry. Shri Ramachandra Rao, contends that the procedure adopted by the Enquiry Officer is in violation of principles of natural justice and the entire enquiry is therefore vitiated.

Shri Deva Raj, however states that the applicant had stated at the conclusion of the Enquiry that he was satisfied with the conduct of the enquiry, that the principles of natural justice have been observed and that all reasonable opportunities were given to him. The applicant cannot at this stage argue that the enquiry is vitiated. The applicant should have specifically requested calling the complainant as a witness if he so desired.

6. To appreciate the facts, we may notice the statement of articles of charge issued to the applicant in the Memorandum dt.11.3.1987. The Enquiry Officer devided these articles into the following 4 parts.

"Part-I: The delinquent refused to sign in the Register in token of having understood the SWR No.630 dt.12.6.1986 in force from 20.10.86.

Part-II: The delinquent misbehaved with the DSO on 20.2.87 when the former met the latter in his chamber.

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6. To appreciate the facts, we may notice the statement of articles of charge issued to the applicant in the Memorandum dt.11.3.1987. The Enquiry Officer devided these articles into the following 4 parts.

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Part-II: The delinquent misbehaved with the DSO on 20.2.87 when the former met the latter in his chamber.

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Part-III: The delinquent did not wear uniform when he met the DSO in his chamber on 20.2.87, inspite of being advised on the previous occasions.

Part-IV: The delinquent made a false statement on 10.2.87 that he had already signed the SWR of RECH (Referred to in Part I above) and submitted a photocopy of the letter dt.20.5.86 of SS/RECH. On verification of the same it was revealed that the delinquent signed that the said letter was in token of signing the SWR dt. 10.2.86 but not of 20.10.86".

The Enquiry Officer held that part-I and Part-IV as not proved and that Part-II and Part II as proved.

7. The DSO/SC in his note No.C.T.781.I Rech.87 dt.20.2.87 has stated as follows:

"Sub: Irresponsible and arrogant behaviour of Shri G.V. Perumal, ASM/RECH.
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The ASM referred to above had refused to sign on the SWR and booked to office to find out the reasons as to why he did not sign (FN 1). Initially he was booked during the first week of Jan.87. He came to office on 3.2.87 after a reminder. At that time he did not substantiate any valid reason for not signing the SWR and came without uniform. At that time he was orally warned for not coming in uniform and directed back to come with sufficient reasons/objections within a week's time vide FN.6. He did not come within the stipulated time, but came on date again after a reminder (FN 10). Even this time he failed to come in uniform with some vague reasons for not signing the SWR. The reasons brought by him were not convincing and reasonable enough that prevents his acknowledgement. His letter addressed to the undersigned may be perused which speaks his mind and arrogant nature towards officers. (FN).

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This particular ASM is a trouble shooter and tries to advocate ill about the officers among his colleagues. The scant respect to the instructions of officers and advocating indiscipline on the section among other staff had reached the saturation point. Any amount of making him understand in the normal course proved futile. In his letter referred to above challenges the undersigned that DSO has no powers to take him under DAR.

Further his behaviour, tone while he was in my room is rather provoking and unbecoming of a subordinate".

The contention of Shri Ramachandra Rao is as the entire disciplinary proceedings is initiated consequent to this complaint, the enquiry conducted without examining the complainant is invalid. Further the complainant has not given specific details of his misbehaviour. It is only two additional witnesses who were called have deposed about his misbehaviour. Shri Ch. Rameswar Rao, witness No.3 stated that the behaviour of the delinquent (i.e., applicant) was not polite and on the otherhand he (the applicant) questioned authority and jurisdiction of DSO in taking disciplinary action against him. Shri J.Pandu Ranga Rao, prosecution witness No.4 stated that the DSO and the applicant were talking to each other in high pitched tones when the DSO enquired as to why the accused was not in uniform and the accused first told that the uniform was not suiting and subsequently added that it was suiting but one button was missing. The gesticulations, postures and the way of sitting, frequent and loud belching of the delinquent showed his bad manners. In the circumstances we find that there is considerable merit in the contention of Shri Ramachandra Rao that the complainant ought to have been examined as a witness so that the applicant could have had an opportunity

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of crossexamining him and the conclusion of the Enquiry Officer based entirely on the statements of witnesses 3 and 4, in holding the applicant guilty of part II of the charge is therefore not valid. It is well settled that where a charge memo is based solely on the contents of a complaint, the complainant ought to be examined and the delinquent officer given an opportunity to cross-examine the complainant.

In regard to Part IV Shri Ramachandra Rao argued that no rule or instruction has been shown in support of the charge that the applicant has to be in uniform at all times. The applicant had contended that as per Rule 2.10 of the General Rules for Indian Railways, 1976 it is incumbent on the Railway Servant to wear badge and uniform if prescribed while on duty and there are no rules requiring wearing of uniform while not on duty. He urged the same contention before the appellate authority. Neither the Enquiry Officer nor the appellate authority have pointed out any rule which requires him to wear uniform when he is not on duty and he is to see a superior officer. We find that this contention also has merit and the respondents have not shown any rule/instruction in this regard. In the result, the finding of Enquiry Officer on Part IV also is without any basis.

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252

(68)

In the result, the application is allowed and the orders of the disciplinary authority/appellate authority dated 7/9.12.1987 and 12.5.1988 are set aside. No order as to costs.

B.N.Jayashimha
(B.N. JAYASIMHA)
VICE CHAIRMAN

D. Surya Rao
(D. SURYA RAO)
MEMBER (JUDICIAL)

Dt. 24 Dec. 1990

Deputy Registrar (J)
Smt. Deputy Registrar (J)

Mvs

To

1. General Manager, South Central Railway, Railnilayam, Secunderabad.
2. The Senior Divisional Operating Superintendent, (BG) Secunderabad Division, Railnilayam, Secunderabad.
3. The Divisional Operating Superintendent (BG), Secunderabad Division, South Central Railway, Secunderabad.
4. The Divisional Safety Officer (BG) Secunderabad Division, South Central Railway, Secunderabad.
5. One copy to Mr. G. Ramachandra Rao, Advocate, 3-4-498 Barkatpura Chaman, Hyderabad - 500 027.
6. One copy to N.R. Devaraj, Standing Counsel for Respondents. *C.A.T. Hyd. Bench*.
7. One Spare Copy.

srr/

Smt. Devaraj

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TYPED 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: 24-9-24/12/90

ORDER / JUDGEMENT:

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

in

T.A. No.

W.P. No.

O.A. No. 107/89

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. ✓

