

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~MANAKULAM BENCH~~

HYDERABAD BENCH

O. A. No. 109/1990 199  
XXXXXX

DATE OF DECISION 26.11.1991

38

L. Venkata Ramana Applicant (s)

Mr.V.Krishna Rao Advocate for the Applicant (s)

Versus

The General Manager, South Central Railway Respondent (s)  
Rail Nilayam, Secunderabad and 2 others

Mr.N.R.Deva Raj Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

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. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 1.2.1990 filed under Section 19 of the Administrative Tribunals Act the applicant who has been a Railway employee has prayed that the order removing him from service be set aside and he should be reinstated with effect from 14.8.1989 with all consequential benefits under FR 54. The brief facts of the case are as follows.

2. The applicant was appointed as Casual Labour substitute as Loco Khalasi in the scale of Rs.196-232 on 14.10.1976 and was granted temporary status with effect from 1.4.77 from which date he became eligible for passes, leave and annual increments at par with temporary employees. According to the applicant, he suffered an eye injury on 21.3.1982 and was admitted as <sup>an</sup> inpatient from 21.3.1982 to 25.3.1982 and as an outpatient

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in the Railway Hospital from 26.3.1982. He was sent to the Headquarters Hospital at Lallaguda for further treatment. On their advice he was further referred to Sarojini Devi Eye Hospital at Hyderabad where his eye was declared to be all right vide certificate dated 29.6.82. He was discharged from <sup>the</sup> Railway Hospital Lallaguda and directed to report to <sup>the</sup> Divisional Medical Officer, Railway Hospital, Vijayawada for further action. According to him while travelling by train on his way to Vijayawada a trunk fell on his back and he was seriously injured and became unconscious. He was advised by the co-passengers not to get down at Vijayawada but to go to Visakhapatnam for immediate treatment, where he was treated by the Civil Assistant Surgeon and Asst. Professor of Andhra Medical College for seven years from 1.7.1982 to 13.8.1989. He concedes that he could not send any intimation about his treatment and absence as his family members were illiterate but was surprised to find that he was removed from service with effect from 13.3.1982 due to his unauthorised absence even though he was actually on duty on 13.3.1982 and was under medical treatment in the Railway Hospital from 21.3.1982 to 29.6.82. Having attained temporary status his removal from service without going through Discipline and Appeal Rules is illegal. He was not given any reasonable opportunity to defend himself. He has referred to the Supreme Court decision in Robert D'Souza vs. Executive Engineer, Southern Railway (AIR 1982 SC 854) where striking off the name of a workman from the rolls was held to be retrenchment and absence without leave being a misconduct, it was held that termination of service without notice or enquiry is illegal. He was not given even one month's notice. He has also referred to the Full Bench decision in Gafoor Mia's case where it was held that the General Manager is the only competent officer to remove him from service.

3. In the counter affidavit the respondents have stated that the applicant remained absent with effect from 13.2.1982 and without informing the Controlling Officer went to <sup>the</sup> Railway Hospital and reported sick on 21.3.1982. He was discharged from sick list from 30.3.1982 as he did not continue the treatment. The medical certificate was also not handed over to the

Loco Foreman, Vijayawada under whom he was working. He was treated as on unauthorised absence from 13.3.1982 and was removed from <sup>the</sup> rolls under rule 732 of Indian Railway Establishment Code Vol.I. They have denied that he was sent to the Headquarters Hospital at Lallaguda which referred him to the Sarojini Devi Eye Hospital at Hyderabad. They have denied that he was a permanent employee but conceded that he was given temporary status.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. In Jayashanker vs. State of Rajasthan, AIR 1966 SC 492, it has been held by the Supreme Court that removal for overstaying one's leave is punishment and if no opportunity is given to the applicant to defend himself, Article 311 is violated. The concerned rule prescribing automatic termination of appointment for unauthorised absence beyond one month was struck down. In L.Robert D'Souza vs. Executive Engineer, Southern Railway, AIR 1982 SC 854, it was held by the Supreme Court that absence without leave constitutes misconduct and it is not open to the employer to terminate the service without notice or enquiry or at any rate without complying with the minimum principles of natural justice. It was further held that such a termination would be retrenchment warranting compliance of Section 25-F of the Industrial Disputes Act. Since in the instant case before us the applicant was never given an opportunity to put up defence against his termination of service, the order of termination is vitiated. Further the order of termination dated 5.1.1990 reads as follows:-

" While you were working as substitute under T.No.1905 in Loco shed at Vijayawada, you have remained unauthorisedly absent from duties from 13.3.1982.

It deems to be removed from service from 13.3.82 since it is more than 7 years you remained absent from duties."

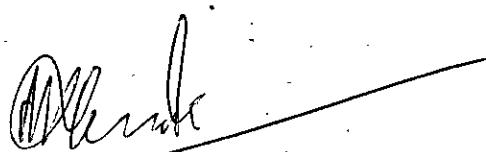
*h* The termination being with retroactive effect is ab initio void. *h*

5. In the facts and circumstances, we allow the application to the extent of setting aside the impugned order dated 5.1.1990 with the direction

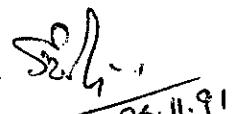
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.4.

to reinstate the applicant with effect from 13.3.82 and regularise the period of absence by grant of such leave with or without pay to which he is entitled within a period of two months from the date of communication of this order. The respondents will be at liberty to initiate disciplinary proceedings against the applicant for his unauthorised absence, if they are so advised and in accordance with law. There will be no order as to costs.



(A.V. Haridasan)  
Judicial Member



26.11.91

(S.P. Mukerji)  
Vice Chair

n.j.j



8/3/91  
Deputy Registrar (Judl.)

Copy to:-

1. The General Manager,  
South Central Railway,  
Rail Nilayam, Secunderabad.
2. The Divisional Railway Manager,  
South Central Railway,  
Vijayawada-520 001.
3. Loco Foreman,  
South Central Railway,  
Vijayawada-520001.
4. One copy to Shri.V.Krishna Rao, 12-11-1444, Boudhnagar,  
Secunderabad.
5. One copy to Shri. N.R.Devraj, Addl.CGSC CAT, Hyderabad.
6. One spare copy.
7. one copy to Deputy Registrar (Judl) C.A.T, Hyderabad.

Rsm/-



21/11/91

O.A. 109/90

R.R.  
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(W)

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. S.P. Mukerji

V.C

Ernakulam Ben

AND

THE HON'BLE MR. A.V. Hari dasan

M(J) d.

AND

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

AND

THE HON'BLE MR.

M(J)

DATED: 26/11/1991

ORDER/JUDGMENT:

M.A./R.A./C.A. NO.

O.A. No.

109/90

T.A. No.

Admitted and  
Issued