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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA.157/90

date of decision : 17-6-1993

Between

K. Munuswamy

: Applicant

and

1. Union of India, rep. by
The Chairman
Railway Board
Rail Bhavan
New Delhi

2. The General Manager
South Central Railway
Rail Nilayam
Secunderabad

3. The Chief Operating Superintendent
South Central Railway
Secunderabad

4. The Divisional Railway Manager (BG)
South Central Railway
Secunderabad

5. The Senior Divisional
Mechanical Engineer,
South Central Railway,
Secunderabad.

: Respondents

Counsel for the applicant : P. Krishna Reddy
Advocate

Counsel for the respondents: D. Gopal Rao, Standing Counsel
for Railways

CORAM.

HON. MR. JUSTICE V. NEELADRI RAO, VICE-CHAIRMAN

HON. MR. P.T. THIRUVENGADAM, MEMBER (ADMINISTRATION)

Judgement

(As per Hon. Mr. Justice V. Neeladri Rao, Vice-Chairman)

Heard Sri P. Krishna Reddy, learned counsel for the
applicant and Sri D. Gopal Rao, learned counsel for the
respondents.

2. When the applicant was working as Driver at Ramagundam Loco shed, he was removed from service by order dated 17-10-1981 by the Disciplinary Authorities i.e. the Senior Divisional Mechanical Engineer, South Central Railways, Secunderabad. Therein it was stated by the disciplinary authority that he was satisfied that it was not reasonably practicable to hold inquiry and hence the same was dispensed with under Rule 14(2) of Railway Servants Discipline and Appeal Rules, 1968 (herein after referred to as Rules). The appeal thereon was dismissed. The same was assailed in Writ Petition No.8016/82 on the file of Andhra Pradesh High Court. The same was transferred to this Tribunal and registered as TA.455/86. One of the contentions raised therein is that the appellate authority had not given personal hearing. The said contention was ^{upheld} ~~held~~ and the TA.455/86 was allowed and order of appellate authority was set aside. Then the appellate authority restored the said appeal and passed order dated 15-2-1988 confirming the order of dismissal. While adverting to the point as to whether the inquiry at the stage of the appeal is reasonably practicable or not, the appellate authority observed as under in para 10 of the order dated 15-2-88 :

"I am of the view that holding of an enquiry at this late stage is not practicable in view of fact that some of the witnesses would not be available and those who are available would not be able to recall exactly the events that took place in view of the passage of over 6½ years. Intimidation of witness by the dismissed employees and other belonging to the unrecognised Loco Running Staff Association cannot be ruled out even at this stage as much is at stake.

The appeal is, therefore rejected."

3. There is force in the contention for the applicant that the reasons given by the appellate authority to hold that the inquiry is not reasonably practicable ^{are} ~~or~~ on the basis of extraneous facts and surmises. It was not even ascertained

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as to whether the witnesses are available or not and if such witnesses are available whether the applicant or others belonging to unrecognised association would be in a position to intimidate such witnesses. They are mere conjectures on the part of the appellate authority. It is also one of the surmises when it is stated as to whether the witnesses if available would be able to recall exactly the events that took place more than 6½ years back due to afflux of time. Hence, it had to be held that the appellate authority had not given proper reasons to hold that it was not reasonably practicable to hold an inquiry.

4. Even by the date this OA was filed, the applicant was aged 58 years and hence he crossed the age of superannuation. Hence, the question of either remitting to the appellate authority or even to disciplinary authority for holding inquiry does not arise.

5. In the circumstances, the order of dismissal as confirmed by the appellate authority is set aside.

6. In view of the order dated 20-8-1990 in the MA.89/90 in this OA, the applicant is not entitled to backwages/pension for the period from 15-2-1988 i.e. date of the impugned order till 21-2-1990, the date of filing of the MA. TA.455/86 was disposed of on 23-11-1987. But then the question of passing any order in regard to salary or backwages for the period from the date of dismissal till the date of disposal of TA.455/86 had not arisen as the order of dismissal was not set aside and ~~as~~ only the order in the appeal was set aside.

7. In a similar situation this Bench ordered as per in OA.24/86 and Batch cases judgement dated 5-9-1990 that such retired employees are entitled for salary for the period from the date of dismissal

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to the date of their attaining date of superannuation and thereafter to pension as if they had retired from service on attaining the age of superannuation. We feel that it is reasonable and just to pass similar order in this case also, but by keeping in view the order dated 20-8-1990 in MA.89/90.

8. In the result the order of dismissal dated 17-10-1981 as confirmed by the appellate authority is set aside. The applicant is entitled to his salary and other emoluments as per rules from 17-10-1981 to 14-2-1988 and he will be entitled to pension from 22-2-1990. The time for implementation of this order is four months from the date of receipt of this order.

9. The OA is ordered accordingly. No costs.

P. T. Thiruvengadam

(P.T. Thiruvengadam)
Member (Admn.)

V. Neeladri Rao
(V. Neeladri Rao)
Vice-Chairman

Date : June 17, 1993
Dictated in the Open Court

Dy. Registrar (Judl.)

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Copy to:-

1. The Chairman, Railway Board, Union of India, Rail Bhavan, New Delhi.
2. The General Manager, South Central Railway, Rail Nilayam, Sec-bad.
3. The Chief Operating Superintendent, South Central Railway, Secunderabad.
4. The Divisional Railway Manager (BG), South Central Railway, Secunderabad.
5. The Senior Divisional Mechanical Engineer, South Central Railway, Secunderabad.
6. One copy to Sri. P. Krishna Reddy, advocate, CAT, Hyd.
7. One copy to Sri. D. Gopal Rao, SC for Rlys, CAT, Hyd.
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