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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 224 of 1990

~~Tx No.~~

Date of Decision :

Mr. M. Nagaraja Rao

Petitioner.

Mr. G.V. Subba Rao

Advocate for the
petitioner (s)

Versus

The General Manager, S.C.Rly, Secunderabad Respondent.
and 4 others

Mr. N.R. Devaraj, SC for Railways

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. J. Narasimha Murthy, Member (Jud.)

THE HON'BLE MR. R. Balasubramanian, Member (Admn.)

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)

HJNM
M(J)

HRBS
M(A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO. 224 of 1990

DATE OF JUDGMENT: 31-1-91

BETWEEN:

Mr. M. Nagaraja Rao ..

Applicant

AND

1. The General Manager,
South Central Railway,
Secunderabad.
2. The Chief Personnel Officer,
South Central Railway,
Secunderabad.
3. The Divisional Railway Manager (Personnel),
South Central Railway,
Hubli.
4. The Assistant Mechanical Engineer (Loco),
South Central Railway,
Hubli.
5. The Loco Foreman,
South Central Railway,
Castle Rock. ..

Respondents

FOR APPLICANT: Mr. G.V. Subba Rao, Advocate

FOR RESPONDENTS: Mr. N.R. Devaraj, SC for Railways.

CORAM: Hon'ble Shri J. Narasimha Murthy, Member (Judl.)
Hon'ble Shri R. Balasubramanian, Member (Admn.)

 JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI J. NARASIMHA MURTHY, MEMBER (JUDICIAL)

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This is a petition filed by the petitioner to call for the entire file of papers relating to proceedings of the Senior Divisional Railway Manager, South Central Railway, Hubli No.H/P.90/IV/89/50 dated 16.2.1990 and quash the same by declaring that the penalty of removal from service with effect from 15.11.1988 as illegal, arbitrary, unconstitutional and violative of Articles 311(2), 14 and 16 of the Constitution of India and direct the respondents to reinstate him into service with effect from 15.11.1988 with all consequential benefits, such as arrears of pay and allowances etc. The contents of the petition are briefly as follows:-

The applicant was appointed as a Junior Clerk in the Personnel Branch at Kazipet on compassionate grounds consequent on the death of his father while in service. He was transferred to Hubli Division on mutual exchange. While working at Hubli Division he was sick for some periods with serious ailments like Jaundice and T.B., for different periods and this period of sickness continued upto 9.12.1986. Later he submitted a representation to the Chief Personnel Officer, South Central Railway, Secunderabad who advised vide his letter No.P/MST/177 dated 20.11.1977 to reappoint him as a Clerk. He was reappointed as a Clerk and posted in the office of the Loco Foreman, Castle Rock.

2. The applicant joined duty as a Clerk on 20.1.1988 and on 21.1.1988 due to some discomfort in the stomach, he had taken a tablet which produced reaction and consequently he became giddy with recalling sensation resulting in a fall in the office. The Loco Foreman who was present in the office, without any sympathy, started abusing him ~~and shouting~~ using obscene language. He made a false allegation that the applicant was drunk. He called a RPF Rakshak and directed

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the applicant to the ADMO, Castle Rock for medical examination. The applicant was taken to the platform where the AME was present and the Loco Foreman made a false complaint to the AME who also without going into the facts of the case directed the applicant to be taken to ADMO.

3. There was no certificate obtained by the competent Medical Authority regarding the applicant being under the influence of intoxication. This was purely an allegation which was not substantiated by any medical opinion. The applicant was taken to the Railway Dispensary and as the ADMO was not available he was asked to remain in the RPF office as per the instructions of the Loco Foreman, which is illegal and unlawful. On the following day i.e., on 22.1.1988 the Loco Foreman orally instructed the applicant to meet the AME at Hubli. He was not given even a pass for his journey but the applicant came to Hubli on 23.1.1988 and the AME was not available since that day happened to be a Holiday. The applicant met the AME at his residence and informed him that the Loco Foreman directed him to see the AME. The AME asked the applicant to 'get-out' from his residence without giving him a chance to represent his case. The applicant was completely upset with the attitude of the officials and became sick mentally and physically. As there was no assistance for him at Hubli and was not in a position to maintain himself and also obtain medical treatment, he came away to Secunderabad where he underwent medical treatment under a private Doctor from 25.1.1988 to 17.9.1989. The applicant sent an advise to the AME, Hubli that he was sick and undergoing treatment. He subsequently submitted a certificate issued by the Doctor. The applicant after recovering from the sickness approached the AME, Hubli with the duty certificate issued by the private Doctor for the period from

25.1.1988 to 17.9.1989. The AME instead of sending the applicant for medical examination to the Railway Doctor ~~to~~ to get a duty certificate, prevented the applicant from resuming duty which is highly irregular, arbitrary and unconstitutional. Pending the production of duty certificate he is deemed to have been put back to duty. The moment the applicant approached the authorities with a private medical certificate, he should have been taken to duty and if they are not satisfied with the private certificate produced by the applicant, they would have initiated disciplinary action as per rules for unauthorised absence if it was proved. The AME has no right in preventing the applicant from resuming duty. When the applicant requested the AME to permit him to resume duty he informed the applicant to get out stating that he was removed from service. The applicant gave a representation on 18.9.1989 to the Divisional Railway Manager with a copy to AME, Hubli, DPO/Hubli and ADRM along with the copies of the medical certificate issued by the private Doctor. The applicant has not been directed to the Railway Doctor to get a duty certificate and he has been prevented from resuming duty with effect from 18.9.1989 the date on which he appeared before the authorities with the private medical certificate. The applicant filed O.A.No.811 of 1989 challenging the oral orders of the AME, stating Hubli/that the applicant was removed from service without any written advise and prayed for quashing of the oral removal orders. The Tribunal by its order dated 20.10.1989 dismissed the application as premature with a direction to the respondents to dispose of the representations made by the applicant within three months from the date of the receipt of the said orders. The DRM, Hubli vide his letter dated 16.2.1990 advised the applicant that he was removed from service vide Penalty Order No.H/P.227/IV/LOCO/94 dated 9.11.1988 which was

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confirmed by him as the appellate authority. According to the applicant, the penalty of removal from service cannot come into operation unless it has been duly notified and acknowledged by the applicant. The applicant has not been served with a copy of the penalty advice and it cannot come to force unless it is served and acknowledged by him and it cannot have retrospective effect. So, he filed this application for the above said reliefs.

4. No counter has been filed by the respondents in this matter.

5. Shri G.V. Subba Rao, learned counsel for the applicant, and Shri N.R. Devaraj, SC for Railways on behalf of the respondents, argued the matter. The learned counsel for the applicant relied upon a Judgment of the Supreme Court reported in "Judgments Today 1990 (4) S.C. 456" (Union of India and others Vs. Mohd. Ramzan Khan), wherein their lordships held as follows:-

"We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter."

As the petitioner was not served even with the dismissal order, nor any disciplinary action was initiated against him, following the above decision of the Supreme Court, we set-aside the

To

1. The General Manager, South Central Railway, Secunderabad.
2. The Chief Personnel Officer, South Central Railway, Secunderabad.
3. The Divisional Railway Manager (Personnel), South Central Railway, Hubli.
4. The Assistant Mechanical Engineer (Loco), South Central Railway, Hubli.
5. The Loco Foreman, South Central Railway, Castle Rock.
6. One Copy to Mr. G. V. Subba Rao, Advocate. H. No. 1.1230/33, Chikkadpally, Hyderabad.
7. One Copy to Mr. N. R. Devaraj, SC. for Railways.
8. One Spare Copy.

VGB

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penalty order of removal from service with effect from 15.11.1988 in No.H/P.90/IV/89/50 dated 16.2.1990 passed by the Senior Divisional Railway Manager, South Central Railway, Hubli. This, however, will not preclude the respondents from supplying a copy of the enquiry report to the applicant and give him an opportunity to make his representation and proceeding to complete the disciplinary proceedings from that stage. The application is allowed to the extent indicated above but in the circumstances, we make no order as to costs. If the respondents choose to continue the disciplinary proceedings and complete the same, the manner as to how the period spent in the proceedings should be treated would depend upon the ultimate result. Nothing said herein would affect the decision of the Disciplinary Authority. At the same time, we hasten to add, that this order of the Tribunal is not a direction to necessarily continue the disciplinary proceeding. That is entirely left to the discretion of the Disciplinary Authority.

N.S

(J. NARASIMHA MURTHY)
Member (Judl.)

R. Balasubramanian
(R. BALASUBRAMANIAN)
Member (Admn.)

Dated: 31-1-1991

11/1/91
S. D. B. (J)

CHECKED BY

APPROVED BY

TYPED BY *NAB*

COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH 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)~~

Dated: 31 - 1 - 1991.

~~ORDER / JUDGMENT:~~

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

in

T.A. NO.

W.P. No.

O.A. No. *224/90*

Admitted and Interim directions issued.

Allowed

Disposed of with direction

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered / Rejected.

No order as to costs. *5/2/1991*

