

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH

AT HYDERABAD

O.A. No. 283/90

Dt. of Decision 29/6/93.

~~T.A. No.~~

D. Charless

Petitioner

Sh. P. Krishna Reddy

Advocate for
the petitioner
(s)

Versus

The Div. Ply. Manager, S.C. Ply. Works
S. another

Respondent.

Sh. N. R. Devanar, CGSC

Advocate for
the Respondent
(s)

CORAM

THE HON'BLE MR. Justice V. Neeladri Rao, Vice-Chairman

THE HON'BLE MR. P.T. Thiruvengadam, member(A)

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
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.)

ns

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M(A)

HVNRS
VC

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: HYDERABAD BENCH ::

O.A.No.283/90.

Date of Decision: 29.6.93

Between:

D. Charless .. Applicant

And

1. The Divisional Railway Manager,
South Eastern Railway,
Waltair.
2. The Sr. Divisional Mech. Engineer
(Diesel), South Eastern Railway,
Waltair.

.. Respondents

APPEARANCE:

Counsel for the applicant : Sri P.Krishna Reddy, Advocate

Counsel for the respondents : Sri N.R.Devaraj, SC for Rly.

CORAM:

THE HON'BLE MR. JUSTICE V. NEELADRI RAO, VICE CHAIRMAN

THE HON'BLE MR. P.T. THIRUVENGADAM, MEMBER (ADMN.)

(Judgment of the Division Bench delivered by Hon'ble Sri
P.T.Thiruvengadam, Member(A))

...

The applicant in this O.A. was functioning as Chargeman
Gr. 'A' in Diesel Loco-shed, Visakapatnam, South Eastern
Railway. A charge memo dated 29-12-1984 was issued to him

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with the following Statement of Article of Charge:

"The said Shri D.Charles, Chargeman Gr. 'A' (Adhoc) of Diesel Loco Shed, Waltair, committed an act of serious misconduct on 29-11-84 during 1600 hrs. to 2400 hrs. shift duty by leaving the workspot (shed) from 1730 hrs. to 20-30 hrs. and when asked about his whereabouts during the above period by the Shift Incharge Shri T.Dwarakanath, F.O.(B), he shouted at him stating that he (T.Dwarakanath) is no body to question him and also attempted to assault him which could be avoided due to the intervention of some co-workers and thereby violated the Rule 3(i)(iii) of the Railway Services (Conduct) Rules, 1966."

An enquiry was conducted and enquiry report was submitted on 4-7-1986. The disciplinary authority issued the order of reversion reverting the applicant from the post of Chargeman Gr. 'A' to the post of Chargeman Gr. 'B' in the scale of Rs.1400-2300 on pay of Rs.1900/- for a period of two years with cumulative effect. Against this, an appeal was submitted by the applicant on 19-10-1987 and it was disposed by the appellate authority on 26-12-1987 upholding the orders of the disciplinary authority. Aggrieved by this, the applicant filed O.A.No.20 of 1988 before this Bench, which was disposed-of vide orders dt. 29-11-1989 by holding the appellate authority order was non speaking order and accordingly has to be set-aside. The matter was remanded to the appellate authority for passing appropriate speaking order. In pursuance thereof, the appellate authority heard the applicant and passed orders

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dt. 9.2.1990 upholding the original orders passed by the disciplinary authority. The applicant has filed present O.A. for quashing the orders dt. 9.2.1990 of the appellate authority and prayed for all consequential benefits.

2. The learned counsel for the applicant raised number of grounds challenging the disposal of ~~xx~~ the appeal by the appellate authority on 9.2.1990. One of the main grounds relied upon is that the Enquiry Officer had not given any findings about the absence of the applicant during the period. Even with regard to the other charge of attempted assault, reliance has been placed in contradicting the defence witnesses rather than analysing the evidence of prosecution witnesses. This approach of the Enquiry Officer has been endorsed by the appellate authority also.

3. On behalf of respondents, a counter has been filed denying the claim of the applicant.

4. We have heard the respective counsels and perused the records carefully.

5. With regard to the ground raised ~~the~~ by the learned counsel for the applicant referred supra, we find that there is considerable force in the point raised, as the Enquiry Officer in his report dt. 29.12.1984 has only analysed the defence witnesses. The whole approach has been as if the onus of proof rests with the applicant, ignoring the basic principle that the establishment of

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charge has to be based on the analysis of the prosecution witnesses.

6. As regards the charge that the charged official has not been available in the place of work at the relevant time, the only remark made by the Enquiry Officer in his finding is that "on the basis of recorded evidence during the enquiry it is proved that the employee was not available in the place of work." A perusal of the ~~enquiry~~ enquiry proceedings which are available ~~xx~~ on the file, would also indicate that it had not been established that the party left the work-spot. As regards the other charge of attempted assault, apart from refuting the statements made by the defence witnesses, the only remark made with regard to prosecuting witnesses is that the statements of S/Sri G.H. Manuel and S.Appa Rao, both prosecution witnesses prove that Sri D.Charles lost his cool and could have assaulted Sri T.Dwarakanath had Sri D.Charles not been pacified. Thus, the findings would not substantiate the charges.

7. The learned counsel for the applicant mentioned that the long delay in various stages of the disciplinary proceedings caused prejudice to the applicant. This has been denied in the counter filed on behalf of respondents wherein it has been mentioned that some delay had been caused arising out of the procedure and also frequent change of the incumbents for the post of Sr.Divisional Mechanical Engineer, who happened to be the disciplinary authority in the case. It has also been mentioned that prejudice has been caused to the applicant as none of the juniors ^{got} promoted during the period in question.

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8. The learned counsel for the applicant pointed out that the disciplinary authority had not applied his mind in ordering the notice inflicting punishment. It is by now established that where the enquiry report is accepted by the disciplinary authority, detailed reasons are not necessary, if the enquiry officer had given a reasoned report. However, in this case, having found the enquiry findings unsatisfactory, we find that the disciplinary authority should himself have analysed the enquiry proceedings properly, which he has failed to do.

9. The learned counsel for the applicant also pointed out similar lacuna on the part of the appellate authority, who had elaborately analysed the defence witnesses rather than the prosecution witnesses. A perusal of the disposal of the appeal by the appellate authority in his order dated 9.2.1990 would support the above contention.

10. In view of the above, the punishment order dated 8.10.1987 and the order of the appellate authority dated 9-2-1990 are set aside.

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Sanjay

11. It is now necessary to consider as to whether the matter has to be remitted to the disciplinary authority or whether the same can be disposed of by this Tribunal. The charge memo. was issued to the applicant in regard to misconduct that has taken place on 29-11-84 is about seven years back. It has to be further seen that when the applicant approached this Tribunal earlier the matter was remitted to the appellate authority and there is infirmity in the order of the appellate authority also as he too has not considered as to whether there is any evidence to prove the guilt and his approach also indicates that he is of the impression that it is for the delinquent to disprove the charge. Further as the incident is a minor incident and as it calls for only a minor penalty we felt that instead of remitting it about seven years after the incident, it is just and proper for us to look into the material placed before the Enquiry Officer in order to find out whether the charges are proved or not and to impose necessary punishment. The material on record discloses that it is established that the applicant ^{attempted} assaulted his colleague and in view of the circumstances the incident has taken place, we feel that the imposition of punishment of withholding of two increments without cumulative effect will be just and proper.

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GEP
8/12/84

12. Accordingly the impugned order is set aside and a punishment of withholding of the last two increments ^{is imposed.} before compulsory retirements (The learned counsel for the applicant submitted that the applicant is no longer in service because of compulsory retirement).

13. The OA is ordered accordingly. No costs.

P. T. Thiruvengadam

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

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

Dated : June , 1993

Deputy Registrar

To

1. The Divisional Railway Manager,
South Eastern Railway, Waltair.
2. The Sr. Divisional Mechanical Engineer (Diesel),
South Eastern Railway, Waltair.
3. One copy to Mr. P. Krishna Reddy, Advocate, CAT. Hyd.
4. One copy to Mr. N. R. Devraj, SC for Rlys. CAT. Hyd.
5. One copy to Library, CAT. Hyd.
6. One spare copy.

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page 30
7.6.93

TYPED BY

COMPARED BY

CHECKED BY

(7)

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. *P. T. Venugopal*
~~R. BALASUBRAMANIAN~~ :
MEMBER (ADMN)

AND

THE HON'BLE MR. T. CHANDRASEKHAR
REDDY : MEMBER (JUDL)

DATED: 29-6 -1993

~~ORDER~~/JUDGMENT

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

in

O.A.No.

283/90.

T.A.No.

(W.P.No

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Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed as withdrawn.

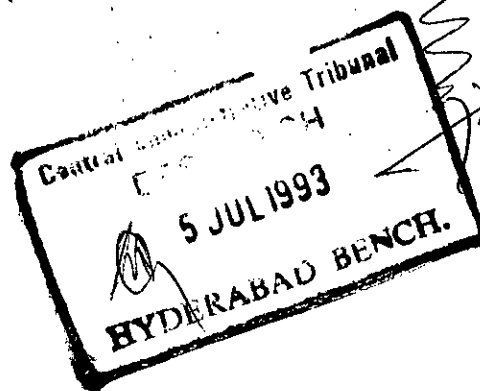
Dismissed

Dismissed for default.

Ordered/Rejected.

No order as to costs.

pvm



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"The said Shri D.Charles, Chargeman Gr. 'A' (Adhoc) of Diesel Loco Shed, Waltair, committed an act of serious misconduct on 29-11-84 during 1600 hrs. to 2400 hrs. shift duty by leaving the workspot (shed) from 1730 hrs. to 20-30 hrs. and when asked about his whereabouts during the above period by the Shift Incharge Shri T.Dwarakanath, F.O.(B), he shouted at him stating that he (T.Dwarakanath) is no body to question him and also attempted to assault him which could be avoided due to the intervention of some co-workers and thereby violated the Rule 3(1)(iii) of the Railway Services (Conduct) Rules, 1966."

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6 Annexure RA-1
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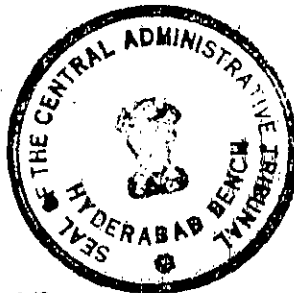
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2. The Sr. Divisional Mech. Engineer
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Applicant

Respondents

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THE HON'BLE MR. P.T. THIRUVENGADAM, MEMBER (ADMN.)

(Judgment of the Division Bench delivered by Hon'ble Sri
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