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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:: HYDERABAD BENCH ::
AT HYDERABAD

O.A.No.334/90.

Date of Judgment: 7-2-1992

Between:

D.Venkateswarlu .. Applicant

Vs.

1. Union of India per General Manager, South Central Rly., Rail Nilayam, Sec'bad.
2. Addl. Divisional Rly. Manager, S.C.Rly, Vijayawada.
3. Sr. Divisional Mech. Engineer (L), S.C.Rly., Vijayawada.
4. Divisional Mechanical Engineer (Carriage & Wagons), S.C.Rly, Vijayawada

.. .. Respondents

For the applicant : Shri G.Ramachandra Rao, Advocate

For the respondents : Shri N.R.Deva Raj, Standing Counsel for Railways.

CORAM:

HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER (ADMN.)

HON'BLE SHRI C. J. ROY, MEMBER (JUDL.)

X JUDGMENT OF THE BENCH AS PER HON'BLE SHRI C.J.ROY, MEMBER (J) X

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This is an application filed under section 19 of the Administrative Tribunals Act, 1985 for quashing the proceedings dt. 8-3-1988 bearing No.B/P.Con.227/II/87/5 passed by 4th respondent and subsequent orders passed in appeal enhancing the penalty and for consequential directions to treat the period of suspension of applicant as duty for all purposes.

2. The applicant was initially appointed as Junior Clerk on 7-8-1959, promoted as Senior Clerk on 20-1-1974, and further as Head Clerk with effect from 1-10-1980. The applicant was attached to the 4th respondent office by orders dt. 31-12-85

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The applicant was placed under suspension by 4th respondent pending investigation. It is alleged that a statement was recorded from the applicant on 9-9-1986 by the Vigilance Inspector in respect of certain alleged irregularity in maintenance of pass books in the office of the Assistant Mechanical Engineer/C&W/Depot, South Central Railway, Vijayawada and that subsequently a charge-memo dt. 15-4-1987 was issued to the applicant alleging that the applicant failed to exercise supervision on the work of one Sri C.Rama-krishna Rao, Fitter which resulted in the excess/irregular issue of 2nd class privilege passes to Railway Staff and outsiders. The applicant states that he had submitted an explanation dt. 23-4-1987 denying the charges levelled against him and that an enquiry officer was appointed to enquire into the charges. An enquiry was conducted. In the course of the enquiry at Vijayawada, the applicant is stated to have admitted the charge allegedly under some inducement. Thereafter enquiry officer submitted enquiry report to the respondents on 18-11-87. The applicant states that suspension was revoked with effect from 2-1-1988 by the 4th respondent and subsequently by order dt. 8-3-1988 the said respondent imposed the penalty of reducing the post of applicant to the post of Senior Clerk from the post of Head Clerk as well as pay from Rs.1560-00 to Rs.1470-00. The applicant states that the punishment was to remain operative for a period of 40 months and that period of suspension was treated as suspension only. The applicant preferred an appeal dt. 19-4-1988 against the orders of punishment to 3rd respondent. The applicant alleges that the said respondent enhanced the duration of the penalty for a period of 48 months with effect from 12-3-1988 i.e. till the date of retirement of applicant 31-3-1992. The applicant also preferred further appeal to 2nd respondent against the orders of the appellate authority dt. 26-10-1988 which was rejected on 27-3-1989. He also filed a petition

before the 1st respondent on 30-3-1989 but the said authority also rejected the petition by order dt. 9-1-1990. The applicant filed the present O.A. against the above orders passed by the respective authorities.

3. The applicant alleges that the 4th respondent is not the competent authority to issue any charge-memo to him, and also that the 3rd respondent is also not the competent authority to impose any penalty on the applicant. The applicant also averred that the slack supervision cannot be termed as misconduct under the Rules and alleges that the impugned order is illegal, invalid and without jurisdiction.

4. The respondents filed counter affidavit and opposed the application. The respondents state that the applicant accepted the charge before the enquiry officer, and based on the enquiry report punishment was imposed on him reducing the applicant to the post of Senior Clerk for a period of forty months with loss of seniority. The respondents also state that the appellate authority enhanced the period of penalty for 48 months and that the subsequent appeal and revision filed by him were rejected. The respondents justify their action and state that the action is legal, valid and as per rules and desired the application be dismissed.

5. We heard Shri G.Ramachandra Rao, learned counsel for the applicant and Shri N.R.Deva Raj, ~~learned~~ Counsel for ~~res-~~ ~~pondents~~ and perused the records carefully. During the course of hearing, our attention was drawn to the fact that the disciplinary authority had not furnished the report of the Enquiry Officer before imposing the punishment by orders dt. 8-3-1988. We also find from page-21 of the material papers filed along with the application that the enquiry report was

furnished to the applicant along with the said order of punishment, thus no opportunity was provided to the applicant to make a representation against it. On this point Sri N.R.Devaraj, learned counsel for respondents argued that in-as-much-as the applicant had admitted the charge, principles of natural justice are ^{not} violated by not furnishing an ~~enquiry~~ enquiry report where there is no contradiction. We do not agree with this in view of the clear finding of the Hon'ble Supreme Court of India in the Judgment Union of India and others Vs. Ramzan Khan, 1990(4)SC 456 Judgments Today which is reproduced hereunder -

"Para-18: 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 natural justice and make the final order liable to challenge hereafter."

In the same Ruling at para-15 Their Lordships observed that -

"Para-15: Deletion

...
We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendations, if any in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof..... "

6. Based on the above principles of rulings, this Tribunal in a case filed by one Shri K.Nagarajan in O.A.No.301 of 1988 against the Divisional Commercial Superintendent, South Central Railway, Vijayawada and others allowed the application by Judgment dt. 8-3-1991. Review petition filed against the said

To
1), The General Manager, Union of India,
S.C.Railway, Railnilayam, Secunderabad.

2. The Addl. Divisional Railway Manager,
S.C.Rly. Vijayawada.
3. The Sr. Divisional Mech.Engineer (L)
S.C.Rly, Vijayawada.
4. The Divisional Mechanical Engineer (Carriage &
Wagons), S.C.Rly, Vijayawada.
5. One copy to Mr.G.Ramachandra Rao, Advocate, CAT.Hyd.
6. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.Bench.
7. One spare copy.

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Judgment was also dismissed on 24-12-1991. We are proposing to dispose-of the application on the legal contentions raised, before going into merits of the case. Applying the aforesaid principles in the rulings, it would follow that the impugned order dt. 8-3-1988 bearing No.B/P.Con.227/II/87/5, issued by Respondent No.4 and subsequent orders passed by the appellate authority in appeal which were confirmed in a Revision Petition by the concerned authority, is illegal and contrary to the provisions of natural justice and accordingly quashed.

7. This order, passed by us, however, will not preclude the respondents (disciplinary authority) from proceeding with the enquiry from the stage of receipt of the enquiry officer's report. Since the enquiry officer's report has already been made available to the applicant, the question of furnishing it once again does not arise. If the disciplinary authority proposes to continue with the enquiry he shall give reasonable opportunity to the applicant to represent against the enquiry report and only thereafter proceed with the enquiry and complete the same from that stage. 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.

8. With the above directions, the application is disposed-of with no order as to costs.

R. Balasubramanian
(R. BALASUBRAMANIAN) —
MEMBER (A)

W Roy
(C. J. ROY)
MEMBER (J)

Dated: 7th February 1992

grh.

8-7-1992
Deputy Registrar

per 6

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TYPED BY
CHECKED BY

COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. V.C.
THE HON'BLE MR.R.BALASUBRAMANIAN : M(A)
AND
THE HON'BLE MR.T.CHANDRASEKHAR REDDY :
M(JUDL)
AND
THE HON'BLE MR.C.J.ROY : MEMBER(JUDL)

DATED: 7-2-1992

ORDER/JUDGMENT :

R.A/C.A/ M.A.N.

in

O.A.N. 334/90.

T.S.N. (W.P.NO.)

Admitted and interim directions
issued.

Allowed

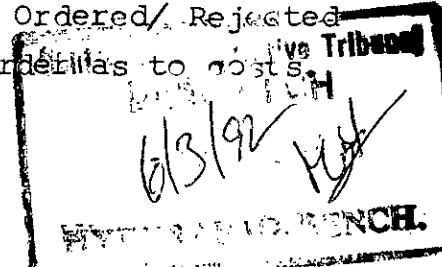
Disposed of with directions.

Dismissed

Dismissed as withdrawn

Dismissed for Default.

M.A. Ordered/ Rejected
No order/mais to costs.



PVM