

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.366/90.

Date of Judgment: 1-1-1991

Syed Maqbool

...Applicant

vs.

1. General Manager, South Central Railway,
Railway Nilayam, Secunderabad.
2. Divisional Railway Manager (Broad Gauge),
South Central Railway, Secunderabad.
3. Assistant Mechanical Engineer (Diesel),
South Central Railway, Kazipet Junction,
Warrangal District.

...Respondents

Counsel for the Applicant : Shri S.Lakshma Reddy

Counsel for the Respondents : Shri Jalli Siddaiah, SC for Rlys

CORAM:

THE HON'BLE SHRI J.NARASIMHA MURTHY : MEMBER (J)(II)

THE HON'BLE SHRI R.BALASUBRAMANIAN : MEMBER (A)

(Judgment of the Division Bench delivered by
Hon'ble Shri J.N.Murthy, Member (J)).

This is an application filed for a relief to declare the applicant's removal from service with effect from 16.6.84 by the 3rd respondent which was upheld by the 2nd respondent by advise dt.31-10-84 and confirmed by the 1st respondent by proceedings No.P/90/SC/SM/947 dated 18-1-1990 as arbitrary, illegal and violation of the principles of natural justice and also in violation of the procedure laid down in Disciplinary and Appeal rules, 1968 and consequently direct the respondents to reinstate the Applicant to duty with all conse-

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quential benefits of seniority, promotion, arrears of pay etc.,.

The contents of the application is briefly as follows :-

The applicant was appointed as Diesel cleaner at Kazipet through direct recruitment on 16-11-76. The applicant due to overstrain has suffered mental depression while on duty on 14-7-83 and fell unconscious. He was immediately removed to Mahatma Gandhi Hospital, Warangal and undergone treatment for a period of one year upto 12-7-84. He states that the intimation of his illness was given by the Hospital authorities to the 3rd respondent. While he was undergoing treatment, the Senior D.M.E., Kazipet, has issued a notice to the Applicant dt.1-3-84 to attend the enquiry on 12-3-84. The said notice did not specify any charges or misconduct against the applicant. However he has intimated to the Senior D.M.E., that he will attend the enquiry with a defence counsel as he was not in fit state to attend the enquiry. The enquiry was adjourned and further notice dt.12-3-84 fixing the enquiry on 28-3-84 was issued, but the applicant could not attend the said enquiry as he was not in a fit condition. The applicant has reported to the Railway Medical Officer with a certificate from the M.G.M.Hospital on 12-7-84, but the Railway Medical authorities has kept the applicant under observation and issued fit certificate only

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on 7-8-84, With the fit certificate issued by the Railway Medical Hospital, the applicant approached the Senior DME (Diesel) Kazipet. He directed the applicant to approach the 2nd respondent, stating that the applicant was already removed from service. The applicant submits that no such removal order was ever served on him nor any notice or charge sheet was served on him. The applicant has made an appeal on the very same day to the additional Divisional Railway Manager (Technical) who is the competent authority over Class-IV employees. The Additional Divisional Railway Manager, has advised the applicant orally to wait for further orders. The applicant went on moving around the office for months together. However no orders or reply was issued to the applicant. Therefore he made a further appeal on 9-8-84 to the 2nd respondent. That was also not replied. In the circumstances the applicant had to make an appeal on 15-10-84 to the Chief Personnel Officer, South Central Railway, narrating all the facts with a copy to the Divisional Railway Manager. Again the applicant made an appeal to the 3rd respondent on 4-9-87 enclosing the copies of the Medical Certificates. Finally a reply was given by the 3rd respondent through letter dt.10-11-87 stating that the applicant's appeal ~~dt.10-10-84~~ was rejected by his letter dt.31-10-84, and it need not be altered. The applicant submits that he has not received the said letter dt.31-10-84 issued by the 3rd respondent, and he has preferred a further revision/ appeal before the 1st respondent with a copy to the Chief

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Mechanical Engineer and the 1st respondent has rejected his appeal/revision vide his order No.CPO/SCR/SC letter No.P.90/SC/SM/947 dt.18-1-90 stating that the order of the disciplinary authority dt.16-6-84 upheld by the 2nd respondent vide his advise dt.31-10-84 is confirmed. The reasons given by the 1st respondent for rejecting the appeal is that the applicant was absent for a long time and suddenly put up his appearance. The applicant contends that the reason given by the 1st respondent is totally without any factual basis and he did not at all applied his mind to the medical certificates issued by the Government Hospital as well as the Railway Medical hospital. It is further contended that the respondent has issued notice of enquiry without specifying any charges or misconduct under the disciplinary and appeal rules, and as such notice of enquiry is thoroughly vague and is in violation of the procedure laid down under D.A.R.Rules. The applicant further states that the removal order dt.16-6-84 said to have been passed by the 3rd respondent and the order dt.31-10-84 which is said to have been passed by the 2nd respondent upholding the removal order passed by the 3rd respondent is also not served on him and as such it is of no effect in the eye of law. Either the disciplinary authority or the Appellate authority has passed the order giving reasons for imposing punishment of removal from service after considering the evidence produced by the applicant particularly the Medical certificate produced by him. Hence this petition.

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A counter has been filed on behalf of the respondents stating that the applicant was remained absent from duty unauthorisedly from 14-7-83. The period of absence was not covered either by sanctioned leave or of a Railway certificate. he was issued with a major penalty charge sheet dt.10-10-83 and the same was sent to applicant's last known address under registered post, which was acknowledged by him on 9-12-1983. The applicant did not submit any written statement of defence. Though intimation letter dt.26-3-1984 was sent under registered post, it was returned with an endorsement that "party refused.". An enquiry officer was nominated to conduct an enquiry under Rule 9(2) of the D&A Rules, and the same was informed to the applicant. In turn the applicant has acknowledged it on 9-1-1984. The applicant was informed vide letter dt.1-3-84 under registered post to attend the enquiry on 12-3-84, at 10.00 hours. He was also permitted to attend enquiry along with his Defence Counsel. The applicant attended the enquiry in person on 12-3-84 and requested for an adjournment to enable him to nominate his Defence Counsel. Accordingly he was granted time and fixed the next date of hearing to 28-3-84 which was also acknowledged by the applicant. Neither the applicant nor his Defence counsel attended the enquiry. However the administration afforded another opportunity to the applicant to defend himself by allowing him to attend the enquiry on 11-4-84 vide letter dt.3-4-84 but the same was again returned undelivered with an endorsement.

gement 'party refused'. The respondent affixed the letter dt.3-4-84 on the notice board of the time office of the Diesel Loco Shed, Kazipet in the presence of two witnesses. Even after given time and opportunity on many occasions, the applicant did not attend the enquiry and also deliberately refused even to acknowledge the letters. The Enquiry Officer after examining the witness and also examining the muster sheets of the applicant's pay bill, held the applicant guilty of charges framed against him in the ex-parte enquiry. The disciplinary authority by order dt.16-6-84 imposed the penalty of 'removal from Service' after having come to the conclusion that the applicant is not a fit person to be retained in service. The penalty of removal was imposed based on the evidence on record and also that of the report of the Enquiry Officer was sent to the applicant under registered post but the same was returned with an endorsement as ' party out of Station'. The removal order also pasted in the notice board of his place of work in the presence of two witnesses. It is further stated that the applicant had made a representation to the authorities and a reply was sent to him that his appeal was already disposed. With these contentions the respondents pray to dismiss the application.

We have heard the learned counsel for the applicant Shri S. Lakshma Reddy and Shri Jalli Siddaiah, learned standing counsel for the Respondents. Apart from the averments made in the application, Shri Lakshma Reddy argues that the

enquiry officers report was served on the applicant along with the order of removal from service and thus he was denied the opportunity to represent against the Enquiry Officer's report. For this purpose he relies on the full bench decision rendered by the Bombay Bench of this Tribunal in Premnath K.Sharma Vs. Union of India (1988(6)ATC 904), which reads as follows :-

Even after the amendment of Article 311(2) by the 42nd Amendment, the Constitution guarantees a reasonable opportunity to show cause against the charges levelled against the charged officer during the course of the enquiry. In order to fulfil the constitutional requirement he must be given an opportunity to challenge the enquiry report also. The Enquiry Officer enquires into the charges, the evidence is recorded and the charged officer is permitted to cross-examine the witnesses and challenge the documentary evidence during the course of the enquiry. But the enquiry does not conclude at that stage. The enquiry concludes only after the material is considered by the Disciplinary Authority, which includes the Enquiry Officer's report and findings on charges. The enquiry continues until the matter is reserved for recording a finding on the charges and the penalty that may be imposed. Any finding of the Disciplinary Authority on the basis of the Enquiry Officer's report which is not furnished to the charged officer would, therefore, be without affording a reasonable opportunity in this behalf to the charged officer. It, therefore, follows that furnishing a copy of the enquiry report to the charged officer is obligatory

To

1. The General Manager, S.C.Railway,
Railway Nilayam, Secunderabad.
2. The Divisional Railway Manager (Broad Guage)
S.C.Railway, Secunderabad.
3. The Assistant Mechanical Engineer(Diesel),
S.C.Railway, Kazipet Junction,
Warangal District.
4. One copy to Mr.S.Lakshma Reddy, Advocate
3-4-548/3.behind YMCA, near Andhra Bank
Narayanguda, Hyderabad.
5. One copy to Mr.J.Siddaiah, SC for Rlys, CAT.Hyd.Bench
6. One copy to Hon'ble Mr.J.Narasimha Murty, Member(J)CAT.Hyd.
7. One spare copy.

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In view of the above said decision, we hold the enquiry in the instant case is vitiated and the order imposing the penalty of removal from service must be quashed. 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 may add that this order of the Tribunal is not a direction to necessarily continue the disciplinary proceedings. That is entirely left to the discretion of the Disciplinary Authority.

Since we are allowing the O.A., on the ground that the matter is covered by the Full Bench decision in Premnath K. Sharma's case, we are not taking up the other contentions raised. It is open to the applicant to raise these contentions before the Disciplinary Authority if further action is sought to be taken against him.

MS
(J. NARASIMHA MURTHY)
Member (Judl.)

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

Dated: 11th January, 1991.

Deputy Registrar (Judl.)
Deputy Registrar (Judl.)

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9/1/90
CHECKED BY
TYPED BY

Perf
APPROVED BY
COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT 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)

DATE: 24-9- (19) 1991

ORDER / JUDGEMENT:

M.A. / R.A. / C.A / No.
in

T.A. No.

W.P. No.

O.A. No. 366/90

Admitted and ~~Interim~~ directions
issued.

Allowed.

Dismissed for default.

Dismissed as withdrawn.

Dismissed.

Disposed of with direction: 15 JAN 1991

M.A. Ordered/Rejected.

No order as to costs.

