

16

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT : HYDERABAD

O.A.No.402/90

Date of order: 26-3-1991.

Between

K. Venkataswamy

.. Applicant

Vs.

1. The Secretary,  
Railway Board,  
New Delhi.

2. The Divl. Rly. Manager (T),  
B.G.) Secunderabad.

3. The Sr. Divisional Operating  
Superintendent, S.C.Railways,  
Secunderabad.

4. The Chief Personnel Officer,  
G.M's office, Personnel Branch,  
S.C.R. Secunderabad.

.. Respondents.

Appearance:

For the applicant

: Sri E.Madan Mohan Rao, Advocate

For the respondents

: Sri N. R. Deva Raj, S.C. for  
Railways.

Coram:

THE HON'BLE SHRI B.N. JAYASIMHA, VICE CHAIRMAN

THE HON'BLE SHRI D. SURYA RAO, MEMBER (JUDICIAL)

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proceeded against him. In regard to the point made by the applicant that the late remittance to the Bank was due to the fact that the bank had closed by the time <sup>the cash</sup> was taken to the bank the respondents say that in that case the applicant should have handed over the cash to the on duty Asst. Station Master or Commercial Clerk. Further the applicant being an Asst. Station Master in the scale of Rs.1400-2300/- the authority to impose the penalty of removal from service is Sr. Divisional Operating Supdt., (B.G)/Secunderabad/ <sup>and that</sup> the Divisional Operating Supdt., is competent to impose the penalty of removal from service. The Divisional Railway Manager (B.G)/Secunderabad Division is the Appellate authority. A copy of the enquiry officer's report was furnished to the applicant alongwith the penalty order dt.6.2.'89.

3. We have heard the learned counsel for the applicant Sri E. Madanmohan Rao, and Shri N.R. Deva Raj, Standing Counsel for Railways. At the outset Sri Madan Mohan Rao states that he is not pressing the plea that the order of the disciplinary authority is vitiated for the reason a copy of the Inquiry Officer's Report was not given to the applicant before the disciplinary authority passed the order of removal and thus the applicant was denied the opportunity of representing on the Enquiry Officer's Report. His main arguments are that the Enquiry Officer's conclusion holding the applicant guilty of the charges cannot be sustained as there is no evidence on record to substantiate the charges. The letter dt.10.6.'86 relied upon by the Enquiry Officer was not in connection with the incident relating to Rs.3,200/- but it related to some other matter. He

As regards late remittance, the applicant has since obtained letter from the bank to show that the bank did not accept the remittances as the money had been taken to the bank after the

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applicant to the said Sri Rama Rao, does not in any way implicate him in regard to the charges against <sup>as</sup> the transaction mentioned therein was a purely private transaction between the applicant and Sri S. Rama Rao. He also states that the said letter was planted at the instance of some of the rival employees who are bent upon removing the applicant from service. As regards late remittance and accounting less cash in the D.T.C Book (Daily Trains Cash Book), he states that there was no less cash and there is no evidence to establish that there is less cash in the D.T.C. Book. While admitting that there were one or two delays on some occasions, the applicant states that it was neither deliberate nor wanton. As the bank was closed when the money was sent to the bank the cash could not be remitted on the same day and the cash was remitted on the next working day. This was also the position in regard to the delay in remitting the sum of Rs.9342/-. He also contends that the competent authority had not passed the impugned order dt.6.2.1990. The appointing authority to the post of ASM is the Divisional Manager (Railways) whereas the punishment was imposed by Sr. DOS/B.G/S.C. A further contention is that the copy of the Enquiry Officer's report was not furnished to him by the disciplinary authority thereby violating the principles of natural justice. Finally he states that the punishment is disproportionate to the gravity of charge.

2. In the reply to the contentions of the applicants, the respondents say that the charge that the applicant misappropriated the Railway Cash Rs.3,200/- on 10.6.'86, has been established in the enquiry. The applicant himself admits this in his letter dt.10.6.'86 addressed to Sri S. Rama Rao. Disciplinary action was also initiated against Shri Rama Rao, but he expired in the meantime. The enquiry could not be

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Please do not do like that. To-day  
please send Sri D.Saibaba to Bank.

Yours faithfully,

Sd/-

10.6.'86.

ASM : PDPL., "

The applicant contradicts himself by saying that his letter relates to a private transaction between the applicant and Shri Rama Rao and also by saying that it was planted at the instance of some of the railway employees who are bent upon removing him from service. The record shows that on receipt of this letter, the Station Supdt., had sent a complaint to the higher authorities against the applicant. In his letter dt.28.2.'89 (A.III) the applicant states that the letter quoted to have been written by him to the S.S.PDPL, was not at all concerned <sup>with</sup> by any kind of money but only to arrange a man to go to bank for remittance. While admitting that the letter is his, he does not offer any explanation for the same. In these circumstances it cannot be said that Enquiry Officer should not have placed reliance on this letter and that his conclusion in holding the charge proved is not sustainable. Similarly in respect of late remittances also, the Enquiry Officer's conclusions are based on relevant evidence. The applicant's contention that there is no evidence at all to hold him guilty has to be rejected. It is well settled that the High Court/Tribunal is not a court of appeal over the decisions of the authorities holding departmental enquiry. When there is some evidence which the departmental authority holding the enquiry has considered and evaluated and accepted for holding the delinquent officer guilty, the High Court will not reappreciate evidence to arrive at a fresh findings in proceedings

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close of the banking hours. Shri Deva Raj on the other hand states a perusal of the letter leaves no doubt in regard to the transaction and if two views are possible, the view taken by the Enquiry Officer cannot be questioned before this Tri- bunal. As regards applicant's contention that the remittances were not accepted by the banks due to the fact that they were taken after the closing banking hours, he should have produced the relevant material at the time of enquiry. He therefore contends that the contention of the applicant that there is no material on which it could be said that the charges are proved has no basis.

5. We have given our careful consideration to the arguments advanced and also perused the records which have been placed before us by the respondents. As the letter dt.10.6.1986 is one of the important document relied upon by the Enquiry Officer we may notice its contents. The letter is in Telugu and a free translation reads as follows:

"To Shri S.S., PDPL (S.R) With salutations.

I had been to my brother in laws for money. I tried my best to return today itself before the close of bank hours. But I am not able to come. So, for this one day please adjust in any way and send to bank. I will have to stay here for this day because of non-availability of money. Tomorrow I will come along with cash either by 18 DN or atleast before the close of bank hours. I feel sorry for troubling you. In future I will not trouble you in this respect. Please help me for this day. I will not forget your help in my entire life. I will definitely arrange entire amount tomorrow before bank time. To-day please mark 12 hours duty and one C.R. Please do not get angry. If you get angry all will come to know.

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Under Art.226 of the Constitution. In the result,  
we do not find any merit in the case and accordingly  
dismiss the case. No order as to costs.

CERTIFIED TO BE TRUE COPY

.....*[Signature]*.....

Date.....*2/4/91*.....

Court Officer

Central Administrative Tribunal  
Hyderabad Bench  
Hyderabad.

1. The Secretary, Railway Board, New Delhi.
2. The Divl.Railway Manager (T), (D.C.D. Secunderabad.
3. The Sr.Divisional Operating Superintendent, S.C.Rly., Secunderabad.
4. The Chief Personnel Officer, G.M.s Office, Personnel Branch, S.C.Rly, Secunderabad.
5. One copy to Mr. E.Madanmohan Rao, Advocate, 1-1-650/17, Gandhinagar, New Bakaram, Hyderabad.
6. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.Bench.
7. One spare copy.

pvm