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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT : HYDERABAD

O.A.No. 411 of 1990

Dt. of Order: 10.4.1991

Between:-

G.Nagender Rao .. Applicant

and

1. The General Manager
South Central Railway
Rail Nilayam, Secunderabad-500371.
2. The Chief Workshop Engineer
South Central Railway, Rail
Nilayam, Secunderabad-500371.
3. The Dy.Chief Mechanical Engineer
(Personnel Branch), Wagon Repair
workshops, South Central Railway,
Guntupalli, Krishna District.
4. The Works Manager, Wagon Repair
workshops, South Central Railway,
Guntupalli, Krishna District.
5. The Assistant Works Manager,
Wagon Repair Workshops, South
Central Railway, Guntupalli,
Krishna District.

.. Respondents

Appearance:-

For the Applicant : Shri G.V.Subba Rao, Advocate.

For the Respondents : Shri N.R.Devaraj, Standing Counsel
for Railways.

CORAM:

THE HONOURABLE SHRI J.NARASIMHA MURTHY, MEMBER (J).

THE HONOURABLE SHRI R.BALASUBRAMANIAN, MEMBER (ADMN.)

(ORDER OF THE DIVISION BENCH DELIVERED BY HONOURABLE
SRI J.NARASIMHA MURTHY, MEMBER (J).)

1. This O.A. has been filed by the applicant for a relief to quash the impugned orders dated 10-8-1989 issued by the 4th respondent and order dated 22-3-1990 issued by the 3rd respondent as illegal, arbitrary and

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unconstitutional and without jurisdiction. The brief facts of the case are as follows:-

2. The applicant, while working as HS Grade Fitter-II, his wife died suddenly due to illness, leaving behind 2 small kids. Due to domestic difficulties, after the death of his wife, the applicant had borrowed some small amounts aggregating to Rs.5,000/- from his sister-in-law. A promissory note was also executed for the said amount. When there was some delay in repayment of the loan, in order to get her amount back, she made a complaint to the Divisional Railway Manager, Vijayawada, who transferred the same complaint to the Vigilance Department. The Vigilance Department contacted Smt. Satyavathi, who made this complaint. The said Satyavathi gave a letter dt. 23-3-88 requesting to withdraw the complaint as she has received the amount of Rs.5,000/- from the applicant. Inspite of the withdrawal of the complaint by the complainant, the Vigilance Department filed a charge against the applicant alleging misconduct. The applicant was given major penalty charge sheet by the Assistant Works Manager (5th respondent). The applicant denied the charge. An enquiry was conducted and a penalty of reduction in grade reducing the applicant to the lower grade of Rs.800--1150 on a pay of Rs.830/-p.m. for a period of 3 years with loss of seniority by an order dated 10-8-1989. When the applicant was contemplating to prefer an appeal on this order, the Deputy Chief Mechanical Engineer by his letter dated 12-2-1990 issued a show cause notice for enhancement of penalty on the ground that it is inadequate. The applicant submitted his representation to the show cause

notice on 20-2-1990. Without properly considering his representation, the Reviewing Authority, who conducted the suo moto review, imposed the penalty of removal from service on the applicant by his order dated 22-3-1990. Aggrieved by the said order, the applicant has filed the present application.

3. The respondents filed a counter with the following averments:-

That the applicant says that the issue pertains to his private life. The Railway Servants Conduct Rules 1966 inter-link the private life of the Government servant. It is an established fact that the applicant has borrowed from his sister-in-law a sum of Rs.5,000/-. In terms of para-16.4(1) (b) of Railway Servants Conduct Rules, 1966, there are restrictions in regard to lending/borrowing. This incident of borrowing money from his sister-in-law took place during 1985. At that time there was a ceiling limit of Rs.1,000/- to be borrowed by one non-gazetted staff from the nearer relation. The employee has not obtained any permission from the administration regarding the final transactions. Irrespective of the fact that the complaint has been withdrawn or not, the fact remains to be a fact which is against the conduct rules. Moreover, the reasons stated for the alleged borrowing is to secure a job to his sister-in-law's son by dubious and illegal means and it is not called a borrowing at all. It is totally opposed to conduct rules. In terms of para 8(2) of Discipline and Appeal Rules Broucher, the 5th respondent is empowered to initiate DAR Proceedings on

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the applicant. As the 5th respondent i.e. the Assistant Works Manager is not empowered to impose the penalty proposed to be imposed, the case has been drafted to the Works Manager, the higher authority (4th respondent). This is in order. The contention of the applicant that the charges are baseless is not correct. The procedure adopted in showing the documents is in conformity with the DAR procedure. However, with regard to the vigilance cases, the confidentiality and secrecy is to be maintained by not exhibiting certain documents to the charged employee. The penalty also has been imposed not in view of the vigilance report, but in view of the charges proved after following the DAR Procedure. There is no bar as to whether an officer belonging to a particular grade cannot nominate another officer of the same grade. As per the procedure in vogue, all the Senior Supervisors are empowered to conduct enquiry. The nomination of Enquiry Officers from the Vigilance Department does not tantamount to a biased nature and it is in accordance with the enquiry procedure followed in the Vigilance Department ~~by~~ by nominating Inquiry Inspector exclusively for the vigilance cases. The Deputy Chief Mechanical Engineer has initiated revision action proposing the enhancement of penalty by passing speaking order within 6 months from the date of original penalty i.e. he has passed orders on 13-1-1990, which is within six months. The enquiry and the punishment order and the order passed by the Revision Authority removing the applicant from service are in accordance with law. There are no illegalities or infirmities in the orders and there are no merits in the application and the application is liable to be dismissed.

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4. The learned Counsel for the applicant, Shri G.V. Subba Rao, and the learned Standing Counsel for Railways, Shri N.R.Devaraj, argued the matter.

5. The charge that was framed against the applicant is that during 1985-86 he committed a serious mis-conduct and acted in a manner unbecoming of a Railway Employee and failed to maintain integrity in that he accepted a sum of Rs.5,000/- and assured to arrange a job to his relative as detailed in the statement of imputation.

6. The contention of the applicant is that after the death of his wife, he faced financial problems in the family and borrowed smaller amounts now and then and executed a pro-note in favour of his sister-in-law for Rs.5,000/-. There is a considerable delay in repaying the amount. So his sister-in-law misrepresented things and to get earlier repayment, she made a report to the Railway Authorities alleging that he took the amount from her and promised that he will see that her son will be appointed in the Railway department. Meanwhile the applicant repaid the amount and discharged the debt. Immediately, the applicant gave a representation to the Railway authorities stating that he repaid her amount. Because there is a considerable delay in repaying the amount to her by the applicant, she twisted the matter and made a false complaint with a view in mind that the applicant may repay her the amount, being afraid of the department. The charge was denied by the applicant and she stated that he borrowed the amount for the family necessities and he never promised her to get a job for



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her son. The Railway department in its turn informed the news to the Vigilance Department. The Vigilance Department started the enquiry in this matter. In that ~~action~~, the Vigilance Inspector contacted Smt. Satyavathi, who made the complaint to the Railway Department. She gave a statement to the Vigilance Inspector that she has received her pro-note amount ~~and~~ on 23.2.1988 and she has no grievance against the petitioner and hence she was withdrawing the report given against the petitioner. But inspite of the fact, ~~the~~ the Vigilance Department gave a charge sheet on 1.8.1988 to the petitioner, more than five months after she gave the statement to the Vigilance Inspector that she is withdrawing the complaint given against the petitioner. She categorically stated that the petitioner ~~was~~ paid an amount of Rs.5,000/- after the death of his ~~father~~ for his family necessities and also since there ~~was~~ a considerable delay in repayment of the same and in order to collect the amount by putting him under a threat of the Department, she gave a false complaint against the petitioner and the petitioner never collected any amount from her to provide a job to her son. Inspite of the fact that Smt. Satyavathi gave a categorical statement before the Vigilance Inspector, the petitioner was charge-sheeted and enquiry officer was appointed who conducted the enquiry in this matter.

7. In the enquiry, Smt. Satyavathi who gave the complaint against the petitioner is the material witness. In fact, she was not examined in the enquiry. She is the sole witness who can speak about the allegation against the petitioner and she was not examined and non-examination of the material witness in the enquiry is fatal to the enquiry and on this

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ground itself, the enquiry vitiates. This reason is enough to quash the impugned order passed against the petitioner

8. The respondents raised a ground that ~~xxx~~ Railway employees cannot borrow Rs.5,000/- either from their relatives or from their friends without prior permission of the Department. In this case, the petitioner had not obtained permission and it amounts to violation of the Rules leading to misconduct. But the learned counsel for the petitioner stated that there is no bar to the employees to borrow amounts for their personal use and it is not misconduct at all and in support of his contention he also cited a Judgment of the Central Administrative Tribunal reported in 1988(1) ATLT 664 (P.S.Nair Vs. Bhabha Atomic Research Centre) in which their lordships observed that a loan of Rs.10,000/- taken from a friend does not constitute misconduct. There is no force in the grounds raised by the respondents in this connection. The applicant in his explanation to the charge sheet made a request to the respondents to supply him a copy of the Vigilance report based on which the charge sheet was issued and he requires the same for the purpose of his defence in the enquiry but the said report was not made available to him and it was also not marked as ^{an} exhibit in the enquiry. Non-supply of the important report based on which report the charges were framed against the petitioner, amounts to denying an opportunity to the petitioner to cross examine the witnesses and also amounts to violation of the principles of natural justice and in support of his contention, the petitioner also cited a decision of the Supreme Court reported in ATLT 1989 SC 406 (Prathama Bank Vs. Union of India) in which their

lordships observed that non-supply of the material documents initiates the enquiry. He also cited another Judgment reported in ATLT 1989 (CAT) 544 of the Central Administrative Tribunal, Ahmedabad Bench wherein their lordships held that an employee has right to claim for supply of materially important documents for his defence. In this case, the material documents are also not supplied to the petitioner. So, it is fatal to the enquiry. On this ground itself, the petition is liable to be allowed.

9. After the disciplinary authority gave the punishment, the reviewing authority reviewed the case and gave enhanced punishment and according to the petitioner, the reviewing authority did not conduct ~~the~~ review within the limitation period and it is barred by limitation. The review was conducted after six months ~~period~~ and the limitation period ~~is~~ the reviewing authority has to conduct the review is within six months. If a review is conducted after six months period, it is barred by limitation. Moreover, the petitioner contended that the said ~~view~~ review was conducted without jurisdiction under Rule 25 of the Discipline & Appeal Rules. To this, the General Manager or the Deputy Head of the Department and in the case of a Division, the Divisional Railway Manager ~~are~~ the competent authorities to conduct review within six months. Hence, the review conducted is not in accordance with the law and it is time barred. ~~The order given by the reviewing~~ ^{is} ~~the~~ ^{is} authority is not in accordance with the law. Besides this ground, the petitioner raised a number of grounds on various aspects with regard to the jurisdiction etc., and in this case there is no need to go into all those details. As the enquiry

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vitiated when the material witness was not examined in the ^{Material} enquiry and the documents were not supplied though the ^A petitioner made a representation to supply the same, the impugned orders are liable to be quashed. So, we hold that the impugned orders passed by the ^{disciplinary authority} appellate authority and also by the reviewing authority are illegal and arbitrary and we accordingly quash the same. The petitioner is entitled to continue in service with all consequential benefits such as restoration of seniority, promotion, arrears of salary and allowances etc. The respondents are directed to implement this order within a period of two months from the date of receipt of this order.

10. The application is accordingly allowed. There is no order as to costs.

(J. NARASIMHA MURTHY)
Member (Judl.)

(R. BALASUBRAMANIAN)
Member (Admn.)

Dated: 16/4/1991, Deputy Registrar (J) 1991

To

1. The General Manager, S.C.Railway, Railnilayam, Secunderabad
2. The ~~Ex~~ Chief Workshop Engineer, S.C.Rly, Railnilayam, Sec'bad-37
3. The Dy-Chief Mechanical Engineer (Personnel Branch), Wagaon Repair Workshops, S.C.Rly, Guntupalli, Krishna Dist.
4. The Works Manager, Wagon Repair Workshops S.C.Rly, Guntupalli, Krishna Dist.
5. The Assistant Works Manager, Wagon Repair Workshops, S.C.Railway Guntupalli, Krishna Dist.
6. One copy to Mr.G.v.Subba Rao, Advocate, CAT.Hyd.Bench.
7. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.Bench.
8. One copy to Hon'ble Mr.J.Narasimha Murty, Member (J)CAT Hyd.
9. One spare copy.

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CHECKED BY ~~12th~~ APPROVED 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 MURTHY: M(J)
AND
THE HON'BLE MR. R. BALASUBRAMANIANEM(A)

DATED: 10 ~~4~~ -1991.

ORDER / JUDGMENT.

M. A. / R. A. / D. A. No.

in

T. A. No.

W. P. No.

O. A. No. 611/90

Admitted and Interim directions issued.

Allowed.

Disposed of with direction.

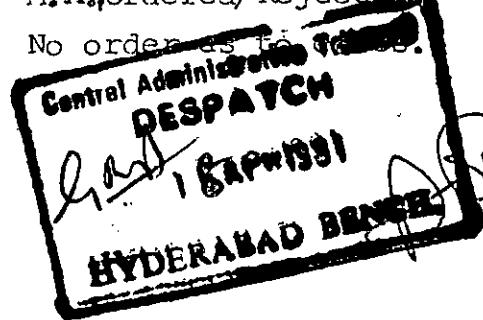
Dismissed.

Dismissed as withdrawn.

Dismissed for default.

M. A. Ordered/Rejected

No order as to costs.



12th
1991