

30

IN THE COURT OF THE CENTRAL ADMINISTRATIVE TRIBUNAL:
HYDERABAD BENCH

O.A.NO. 416 of 1990

Date: 21/06/1990

Between:

S.Abdul Hussain

..Applicant

and

1. Union of India, represented
by its General Manager,
South Central Railway,
Rail Nilayam, Sec'bad.
2. The Divisional Railway Manager
South Central Railway,
Guntakal,
Anantapur district.
3. The Senior Divisional Operating
Superintendent, South Central Railway,
Guntakal, Anantapur district.
4. The Enquiry Officer,
Traffic Inspector, New Station Suptdt.,
South Central Railway, Hyderabad (MG)
Division, Aurangabad.

..Respondents

..

For Applicant: Mr.T.Laxminarayana, Advocate

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

...

C O R A M:

HON'BLE SHRI B.N.JAYASIMHA: VICE CHAIRMAN

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

.....

(Judgment of the bench delivered by Hon'ble Shri D.Surya
Rao, Member(Judicial))

..

1. The applicant herein is an Ex-Station Porter,
Guntakal division, South Central Railway. While service
as Station Porter at Venkatampalle Railway Station,
he was served with a charge sheet dated 31-12-1985

12

contd...2

alleging drunkenness mis-behaviour with the Station Master on duty and leaving the station without permission or sanction of leave. He states that on his furnishing an explanation denying the charges, an enquiry was conducted and two witnesses were examined. The Enquiry Officer submitted his report after conclusion of evidence holding the applicant guilty of the charges framed against him. The applicant was thereafter removed from service by an order of the 3rd respondent dated 6-3-1987. The applicant preferred an appeal to respondent no.2 which was dismissed by the said respondent confirming the order of removal from service imposed by the 3rd respondent. The said order of the appellate authority/2nd respondent was set-aside by this Tribunal in C.A.No.99/88 on the ground that it is a non-speaking order. Thereafter, the appeal of the applicant was once again considered and disposed of by an order dated 6-5-1988. The revision preferred to the General Manager was rejected by an order dated 24-8-1989 communicated on 31-8-1989. It is these orders of removal from service as confirmed by the appellate authority and the revisional authority that are questioned in this application. It is alleged that the authorities failed to comprehend the evidence, that there was no proof to establish the guilt of the applicant, that the findings are based on surmises or imaginary grounds and that there was no proper application of mind by the authorities concerned.

contd...3

..3..

2. We have heard Shri Laxminarayana, learned counsel for the applicant and Shri N.R.Devaraj, Standing Counsel for the Respondents/Railways.

3. Apart from the various contentions raised, Shri Laxminarayana contends that the application can be disposed of on the single contention viz., that the matter is covered by the decision of the full bench of the Central Administrative Tribunal, Bombay Bench, rendered in Premnath K.Sharma's case, wherein it has been held that the report of the Enquiry Officer ought to have been furnished before the disciplinary authority passed the order of punishment to enable the applicant to assail the findings of the Enquiry Officer before the disciplinary authority passed the order of punishment. It was held in Premnath K.Sharma's case 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

..4..

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."

In view of the above 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 proceedings 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.


4. Since we are allowing the OA on the ground that the matter is covered by the Full Bench decision in Premánath K.Sharma's case, we are not taking up the other contentions raised. It is open to the

34

..5..

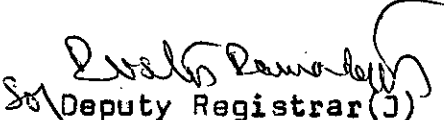
applicant to raise these contentions before the
Disciplinary Authority if further action is sought
to be taken against him.


(B.N. JAYASIMHA)
VICE CHAIRMAN


(D. SURYA RAO)
MEMBER (JUDL)

(Dictated in Open Court)
Dt. 21st June, 1990

SQH*


Deputy Registrar (J)

•To:•

1. The General Manager, (Union of India) south central Railway, Rail Nilayam, Secunderabad.
2. The Divisional Railway Manager, south central railway, Guntakal, Anantapur district.
3. The Senior Divisional operating superintendent, south central railway, Guntakal, Anantapur dist.
4. The Enquiry officer, Traffic Inspector, New Station Superintendent, south central railway, Hyderabad (MG) Division, Aurangabad.
5. One copy to Mr. T. Laxminarayana, Advocate, 2-2-185/54/1/B Bagh Amberpet, Hyderabad.
6. One copy to Mr. N. R. Devaraj, SC for Railways, CAT, Hyd.
7. One spare copy.

...

kj.

CHECKED BY ^{21/5} 21/5

APPROVED BY

TYPED BY

COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.G.N.JAYASIMHA:V.C.

AND

THE HON'BLE MR.O.SURYA RAO:MEMBER(JUDL.)

AND

THE HON'BLE MR.J.NARASIMAHAMURTHY:M(J)

AND

THE HON'BLE MR.R.BALASUBRAMANIAN:M(A)

DATE : 21-6-90

ORDER / JUDGMENT

~~T.A./R.A./C.A./No.~~

in

~~T.A.No.~~

~~W.P.No.~~

O.A.No. 416/90

~~Admitted and Interim directions Issued.~~

~~Allowed. No costs~~

~~Dismissed for default.~~

~~Dismissed as withdrawn.~~

~~Dismissed.~~

~~Disposed of with direction.~~

~~M.A. ordered/Rejected.~~

No order as to costs.

