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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.581 of 1990

DATE OF ORDER: 16.8.1990

BETWEEN:

Mr. T.G.R.Chary

Applicant

Vs.

1. Divisional Railway Manager/BG,
Commercial Branch, S.C.Railway,
Secunderabad.

2. Senior Divisional Commercial
Superintendent/BG, S.C.Railway,
Secunderabad.

3. Divisional Commercial Superintendent/BG,
S.C.Railway, Secunderabad

Respondents

FOR APPLICANT(S): Mr. S.Venkateshwara Rao, Advocate

FOR RESPONDENTS: Mr. N.R.Devaraj, SC for Railways

CORAM:

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

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

ORDER OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI B.N.JAYASIMHA, VICE CHAIRMAN

The applicant ~~XXXXXXXXXX~~ is a Senior T.T.E. in the
Secunderabad Division of the South Central Railway.

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A charge memo dated 11.7.1986 consisting of two charges was issued to him. An Enquiry Officer was appointed and after enquiry, he found the applicant guilty of the first charge viz., that he was found in possession of excess cash at the time of check to the extent of Rs.38/-. The Enquiry Officer exonerated the applicant on the second charge. The 3rd respondent (Disciplinary Authority) disagreeing with the findings of the Enquiry Officer held the applicant guilty of both the charges for reasons recorded by him. He imposed the penalty of reduction to the grade of Ticket Collector in the pay scale of Rs.950-1500 for a period of five years with cumulative effect and loss of seniority. The applicant preferred an appeal against the order of the 3rd respondent to the 2nd respondent. The 2nd respondent modified the penalty to that of reduction to the bottom of the grade of T.T.E. i.e., in the same pay scale of Rs.1200-2040 for a period of five years with cumulative effect and loss of seniority. The applicant preferred a revision petition to the 1st respondent. The 1st respondent dismissed the review petition by the order dated 30.5.1989. The applicant questions these orders in this application.

2. At the admission stage, Shri S.Venkateswar Rao, learned counsel for the applicant contends that although the applicant has raised several grounds to attack the impugned orders, the application is liable to be allowed on the ground of the well-settled law viz., where the disciplinary authority differs from the findings of the enquiry officer, he shall issue a notice to the delinquent officer giving reasons for differing from the conclusions of the enquiry officer and give an opportunity to the delinquent officer to make representation on those reasons. He relies on a decision of the Supreme Court in "Narayan Misra Vs. State of Orissa (1969 SLR 657)".

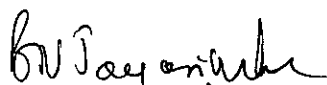
In the circumstances, he urges that the impugned orders should be set-aside and the matter remanded to the Disciplinary Authority for fresh disposal after complying with the law as laid down. Shri Devaraj has taken notice at the admission stage at our direction. He contends that the requirement under Rule 10(3) of the Railway Servant's (Discipline & Appeal) Rules, 1968 is only that the Disciplinary Authority has only to record reasons for disagreeing with the findings of the enquiry officer and it is not incumbent on that authority to issue notice giving those reasons to the applicant before passing the penalty order. The requirement of natural justice is met as the applicant can raise his objections over the order of the disciplinary authority in appeal. The Disciplinary Authority has forwarded to the applicant not only a copy of the enquiry officer's report but also the reasons why he has differed from the conclusions of the enquiry officer.


3. We have given our careful considerations to these submissions. In Narayan Misra Vs. State of Orissa (1969 SLR 657), the Hon'ble Supreme Court noticed that the petitioner therein had been acquitted of two charges out of three charges framed against him. The disciplinary authority differed from the findings of the Inquiry Officer and without having him that he was going to use these charges (of which he was acquitted) issued a show cause notice as to why he should not be dismissed from Government service. This, it was held, was against all principles of fair play and natural justice. Accordingly, the order was set-aside and the case was remitted to the Disciplinary authority, observing that if the Conservator of Forests (Disciplinary Authority) wants to take into account two other charges, he shall give proper notice to the appellant affording him an opportunity to explain them.


4. Further, the Full Bench of this Tribunal has held that an order passed by a disciplinary authority who is not the Inquiry authority, without furnishing a copy of the enquiry officer's report and affording an opportunity to the accused employee of reporting against the report of the Inquiry authority is violative of principles of natural justice and therefore not valid (Premnath K.Sharma Vs. Union of India and others - 1988(6) ATC 904). It is all the more a requirement of natural justice, that the disciplinary authority furnishes a copy of the report of Inquiry Officer together with reasons for differing from the findings of the Inquiry Officer where he proposes to impose a penalty differing from the report of the Inquiry Officer.

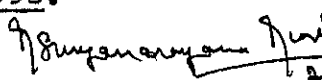
5. In the result, we set-aside the orders of the disciplinary authority in Memorandum No.CON/SC/C/29/86 dated 11.10.1988 and consequently the orders of the appellate authority dated 24.1.1989 and that of the Reviewing authority dated 22.1.1990. If the disciplinary authority wishes to continue the disciplinary proceedings, he shall give a proper notice to the applicant intimating that for the reasons he has already communicated, he is differing from the conclusions of the Inquiry Officer and affording him an opportunity of explaining them.

6. The application is allowed. No costs.


(B.N.JAYASIMHA)
Vice Chairman


(D.SURYA RAO)
Member(Judl.)


Dated: 16th August, 1990.


Sd/- Deputy Registrar(Judl.)

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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; MEMBER (J)

AND

THE HON'BLE MR. J. NARASIMHA MURTY: M(J)

AND

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

DATE: 16/8/90

ORDER/JUDGMENT:

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

in

T.A. No.

W.P. No.

O.A. No.

581/90

Admitted and Interim directions issued
Allowed. ✓

Dismissed for Default

Dismissed as withdrawn.

Dismissed.

Disposed of with direction.

M.A. Ordered/Rejected.

No order as to costs.

