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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 675/91.

Date of Decision :

T.A.No.

B. Venkataswamy

Petitioner.

Shri G. Vedantha Rao

Advocate for the
petitioner (s)

Versus

The General Manager, South Central Railway,
Secunderabad & another Respondent.

Shri N.R. Deva Raj, Standing Counsel for Rlys. Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. R. BALASUBRAMANIAN, MEMBER (A)

THE HON'BLE MR. C.J. ROY, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

RB
(HRBS)
M(A)

HCJR
(HCJR)
M(J)

(63)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: HYDERABAD BENCH ::
AT HYDERABAD.

O.A.No. 675/91.

Date of Judgment: 31-1-1992

Between:

B. Venkataswamy .. Applicant

Vs.

1. The General Manager, South Central Railway, Secunderabad.
2. The Financial Adviser and Chief Accounts Officer, South Central Railway, Secunderabad .. Respondents

.....

For the Applicant : Shri G.Vedantha Rao, Advocate
For the Respondents : Shri N.R. Deva Raj, Standing Counsel for Railways.

CORAM:

HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER (ADMN.)

HON'BLE SHRI C.J. ROY, MEMBER (JUDL.)

X JUDGMENT OF THE BENCH AS PER HON'BLE SHRI C.J.ROY, M(J) X

....

This is an application filed under section 19 of the Administrative Tribunals Act, 1985 for calling the records relating to Order No.P/SC/227/A/24 dated 23-4-1991 of the 1st Respondent and to quash the same, or any other or further orders.

2. The applicant is working as Assistant Accounts Officer in the respondent organisation from 20.6.1984 onwards. The respondents had initiated certain disciplinary proceedings by issuing a charge memo on 15.7.1988 stating that he ~~had~~ irregularly withdrew some amounts from the Provident Fund.

....2.

During the pendency of the disciplinary proceedings, some of the juniors to the applicant were promoted. The applicant averred that, the respondents by ignoring him, had promoted his juniors as Senior Accounts Officers, and therefore, he had to file an application before this Tribunal in O.A.No.1032/90, which was disposed of on 30-5-1991. The applicant states that he had filed the above referred O.A. on the grounds that the Enquiry Officer had exonerated the applicant of all the charges, disciplinary authority did not differ with the findings of the Enquiry officer except endorsing on the report ~~of~~ the Enquiry Officer calling upon the delinquent official, and no action was taken to close the disciplinary proceedings inspite of the fact that he had submitted an explanation. The applicant stated that in the counter filed by the respondents in the above O.A., had admitted that the promotion of the applicant was withheld pending disciplinary proceedings and that they are waiting for the advise of the Central Vigilance Commission to finalise the disciplinary proceedings. The applicant alleged that the respondents, based on the advise of the Central Vigilance Commission, had issued the impugned order dt. 23.4.1991 imposing the punishment of reduction of salary by two stages until retirement, without waiting for the decision of the Hon'ble Tribunal in the above O.A.

3. The applicant alleged that in pursuance of the Judgment of the Tribunal in O.A.No.1032/90, based on the observations therein that 'consultation of the Central Vigilance Commission is ~~an~~ illegal and that in the light of the enquiry report, it can be presumed no charges are proved and inordinate delay occurred and still the disciplinary authority wants to take the advise of the Central Vigilance Commission which clearly shows that the disciplinary authority is not fair enough to deal with the matter and if he comes to any

conclusion it can ~~be~~ ^{be} presumed that he has to come that conclusion at the instance of the Central Vigilance Commission. If the applicant's juniors were promoted pending disciplinary proceedings, the applicant should be promoted with retrospective effect from the date when his juniors were promoted and that he would get the arrears of pay and seniority etc."

4. The applicant averred that in pursuance of the Judgment of the Tribunal in the above O.A., ^{that he} had issued a legal notice dt. 14-6-1991 to the respondents to withdraw the proceedings dt. 23.4.1991 and to promote him to the post of Sr. Accounts Officer with effect from 27.1.1989. As the respondents did not accede to the request of the applicant, he has filed this O.A. on the ground~~s~~ that the impugned order is void and without jurisdiction, ultra vires of Railway Servants (Disciplinary & Appeal) Rules, 1968, malice in law and also ultra vires Sec.19(4) of the Administrative Tribunals Act, 1985. The applicant also states that he has availed all the remedies available to him under the service rules.

5. The respondents have filed counter affidavit on their behalf and oppose the application stating that the impugned order of punishment was imposed by the disciplinary authority after considering all the aspects and evidence placed before him. The respondents deny the allegation that the disciplinary authority was influenced by the advice of the C.V.C. and states that the said authority had taken entirely independent decision based on the material and evidence. The respondents alleged that the serious irregularities committed by the applicant were detected by the Vigilance organisation, proceedings were initiated at the instance of the said organisation, and therefore, it was necessary to seek the advice of the CVC.

The respondents further allege that the impugned order of punishment was issued on 23.4.1991 i.e. before the pronouncement of the Judgment in O.A.No.1032/90 the decision of the Tribunal is infructious. The respondents stated that the Tribunal had not granted any interim orders in the matter and, therefore, the said authority proceeded in the matter and issued the impugned order. With regard to the contention of the applicant that the disciplinary authority did not differ with the view of the Inquiry Officer while the same was communicated to him, the respondents state that an explanation was called for from the applicant as per the procedure. The respondents state that the applicant's case for promotion to a higher position does not arise as his integrity and trustworthiness were not beyond doubt and questionable. The respondents also further allege that the applicant suppressed the fact that he had filed an appeal dated 10.5.1991 to the Appellate Authority and state that he has simultaneously filed this O.A. The respondents justify their action in issuing the impugned order as the applicant is governed by Railway Servants (D & A) Rules, 1968 and desired the application be dismissed.

6. The applicant filed four annexures, A.I to A.IV Annex. A.I circular affidavit filed by the applicant dt. 3.5.1991, Annex. A.II Notice issued to the GM/SCR dated 14.6.1991, Annex. A.III Judgment in O.A.No.1032/90 dt. 30.3.1991, and Annex. A.IV dt. 23.4.1991 the impugned order bearing No.P/SC/227/A/24.

7. We heard the learned counsel for applicant Shri ^{Though his brother counsel Sri P.V. Gurumayya} G.Vedantha Rao and learned counsel for respondents Shri N.R. Devaraj and perused the records carefully.

Copy to:-

1. The General Manager, South Central Railway, Secunderabad.
2. The Financial Adviser and Chief Accounts Officer, South Central Railway, Secunderabad.
3. One copy to Shri. G.Vedantha Rao, Advocate, CAT, Hyd-bad.
4. One copy to Shri. N.R.Devraj, SC for Railways, CAT, Hyd-bad
5. One spare copy.
- b. one copy to D.R.(J).

Rsm/-

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The main issue in this case is when the disciplinary authority chose to differ from the Enquiry Officer who had exonerated the applicant from all the charges levelled, the disciplinary authority should have given an opportunity to the applicant to state his case before his differing with the findings of the Enquiry Officer or not. In a judgment, the Jabalpur Bench of this Tribunal vide ATR 1986(2) CAT 577 had held:

"It is true that under instructions contained in Rule 15(2) of the Rules, it is not necessary that the disciplinary authority cannot differ from or modify the findings of an Enquiry Officer, but when he has to do so he ought to fully examine the evidence on record and come to a conclusion that cannot be judicially questioned. In such cases, it would also be equitable that the disciplinary authority gives further opportunity of hearing to the delinquent official to explain his case. The test of prosecution evidence being established without any doubt has to be applied rigorously also in a departmental enquiry proceeding, and the disciplinary authority has to be satisfied about it."

We are in agreement with the conclusion of the Jabalpur Bench and hold that in this case also the disciplinary authority ought to have given ~~show cause notice~~ ^{a hearing} to the applicant before differing with the Enquiry Officer. In view of this serious lapse in the principles of natural justice we have to set aside the punishment order dated 23.4.91 and the subsequent orders thereon, ^{if any}. The respondents are, however, at liberty to proceed from the enquiry report stage by issuing a show cause notice to the applicant on receipt of which the disciplinary authority has to come to his own independent conclusion giving full and cogent reasons in case he chooses to differ from the Enquiry Officer's findings in the light of the representations made by the applicant. The application is thus disposed of with no order as to costs.

R.Balasubramanian
(R.Balasubramanian)
Member(A).

Dated 31st January, 1992.

ws my
(C.J.Roy)
Member(J).

87/2/92
Dy. Registrar (J.D.L.)