

# Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 29 of 1991

Date of Decision :

~~Ex. No.~~

<u>Mr. Kothapalli Veera Krishna Prasad</u>	Petitioner.
<u>Mr. J.M.Naidu,</u>	Advocate for the petitioner (s)
Versus	
<u>General Manager, S.C.Rly, Secunderabad and 5 others</u>	Respondent.
<u>Mr. N.V.Ramana, SC for Rlys.</u>	Advocate for the Respondent (s)

CORAM :

THE HON'BLE MR. B.N.Jayasimha, Vice Chairman

THE HON'BLE MR. J.Narasimha Murthy, Member (Judl.)

1. Whether Reporters of local papers may be allowed to see the Judgement? *no*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgment? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal? *no*
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)

*bvt*  
HBNJ  
VC

*[Signature]*  
HJNM  
M(J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

ORIGINAL APPLICATION NO.29 of 1991

DATE OF JUDGMENT: 31<sup>st</sup> JANUARY, 1991.

BETWEEN:

Mr. Kothapalli Veera Krishna Prasad .. Applicant

AND

1. The Railway General Manager,  
South Central Railway,  
Secunderabad.
2. The Senior Divisional Personnel Officer,  
South Central Railway,  
Vijayawada.
3. The Divisional Railway Manager,  
South Central Railway,  
Vijayawada.
4. The Senior Divisional Electrical Engineer,  
Traction Rolling Stock,  
South Central Railway, Vijayawada.
5. The Divisional Electrical Engineer,  
Traction Rolling Stock  
(Now called as Asstt. Electrical Engineer  
(Coordination).,  
South Central Railway,  
Vijayawada.
6. The Assistant Electrical Engineer,  
Traction Rolling Stock,  
South Central Railway,  
Vijayawada. .. Respondents

FOR APPLICANT: Mr. J.M.Naidu, Advocate

FOR RESPONDENTS: Mr. N.V.Ramana, SC for Railways.

CORAM: Hon'ble Shri B.N.Jayasimha, Vice Chairman  
Hon'ble Shri J.Narasimha Murthy, Member (Judl.)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE  
SHRI J.NARASIMHA MURTHY, MEMBER (JUDICIAL)

This is a petition filed for a relief to call for the records relating to the proceedings No.B/P.87/II/TRS/89/3 dated 1.5.1989 passed by the 2nd respondent which was endorsed by the 4th respondent confirming the order of the 5th respondent vide his proceedings No.B/P.5/11/88/46/TRS dated 22.12.88 and 15.2.1989 and declare them as illegal, arbitrary and violation of Articles 14 and 16 of the Constitution of India and quash the same and to further direct the respondents to reinstate the petitioner into service with all attendant benefits. The facts of the case are briefly as follows:-

2. The applicant was a permanent employee of the South Central Railway. He did not attend duty from 22.6.1988 to 10.7.1988 due to some domestic problems and he joined duty on 11.7.1988 and was regularly attending duties thereafter. The 6th respondent issued a charge sheet stating that the applicant unauthorisedly absented from attending his duties for a period of 19 days commencing from 22.6.1988 to 10.7.88. An Enquiry Officer was appointed by the 6th respondent and he conducted the Enquiry on 15.11.1988. The Enquiry Officer instructed and directed orally the applicant not to engage any defence counsel and to depose that he did not attend for duties. The applicant states that he was mentally upset due to financial worries and he could not attend duties as his health condition was not permitted him to attend for duties for a period of 19 days.

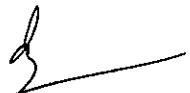
3. The Enquiry Officer submitted his enquiry report holding that the applicant admitted his charge. The applicant states that the Enquiry Officer misguided and directed him to admit the charge. He believed the version of the Enquiry

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Officer that by admitting the charge, the department may not take any action against him and if he refuses to admit the charge then severe action would be taken against him and that he might be removed from service. The applicant admitted the guilt as he was coerced by the Enquiry Officer.

4. The 5th respondent passed the removal order by his proceeding No.B/P.5/11/88/46/TRS dated 22.12.1988 without enclosing the Enquiry proceedings and the order was served on the applicant on 5.1.1989 removing him from service with effect from 31.12.1988. The 5th respondent once again passed orders No.B/P.5/11/88/46/TRS dated 15.2.1989 removing him from service with effect from 22.2.1989. The applicant states that the 1st removal order was passed by Shri S.S.Joshi the then 5th respondent and the second removal order was passed by Shri K.V.V.Satyanarayana duly enclosing the Enquiry Report. No show cause notice was issued before imposing the penalty and he was not given opportunity to explain his case. Non serving of the Enquiry Report before imposing penalty amounts to denial of opportunity to the delinquent employee. This view was taken in Premnath Sarma's case by the Full Bench of the Central Administrative Tribunal, Bombay Bench and it was confirmed by the Supreme Court of India.

5. The applicant states that he has submitted an appeal to the 2nd respondent and he confirmed the order of the 5th respondent without applying his mind to the facts of the case. The applicant preferred a revision application to the 3rd respondent on 11.7.1989 but no order was passed on the revision application till today. He preferred a mercy appeal to the 1st respondent on 7.2.1990 which was rejected by an order of the 2nd respondent. The applicant states that admission of the fact can be withdrawn when it was made under influence



and the same cannot be used as<sup>a</sup> weapon against him. The Supreme Court of India in several cases held that admission can be withdrawn. The applicant states that the punishment should be proportionate to the charges and that for a simple charge of absent he was made a scapegoat. So, the applicant states that the action of the respondents in passing the removal orders without giving him an opportunity to defend his case is illegal and violative of Articles 14 and 16 of the Constitution of India. Hence, he filed this petition.

6. Shri J.M.Naidu, learned counsel for the applicant and Shri N.V.Ramana, learned Standing Counsel for the Railways/  
 who takes notice at the admission stage  
 Respondents, argued the matter. The learned counsel for the applicant relied upon a Judgment of the Supreme Court reported in "Judgments Today 1990 (4) S.C. 456" (Union of India and others Vs. Mohd. Ramzan Khan), wherein their lordships held as follows:-

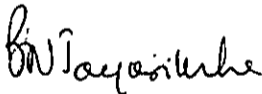
"We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter."


7. Following the above decision of the Supreme Court, we set-aside the order of removal passed by the 5th respondent in his proceedings No.B/P.5/11/88/46/TRS dated 22.12.1988 and

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dated 15.2.1989, and consequent orders dated 1.5.1989 of the 2nd respondent. We direct the respondents to reinstate the applicant into service and pay him all the attendant benefits within a period of two months from the date of receipt of this order. This decision may not preclude the disciplinary authority from revising the proceeding and continuing with it in accordance with law from the stage of supply of the inquiry report in case where dismissal or removal was the punishment.

8. The application is accordingly allowed. There will be no order as to costs.

  
(B.N. JAYASIMHA)  
Vice Chairman

  
(J. NARASIMHA MURTHY)  
Member (Judl.)

*rs by*  
Dated: 31<sup>st</sup> JANUARY, 1991.

*for Dy. Registrar (F)*

To

1. The Railway General Manager, S.C.Rly, Secunderabad.
2. The Senior Divisional Personnel Officer, S.C.Rlys, Vijayawada.
3. The Divisional Railway Manager, S.C.Rly, Vijayawada.
4. The Senior Divisional Electrical Engineer, Traction Rolling Stock, S.C.Rly, Vijayawada.
5. The Divisional Electrical Engineer, Traction Rolling Stock (Now called as) Assistant Electrical Engineer (Coordination) SC.Rly, Vijaya wada.
6. The Asst. Electrical Engineer, Traction Rolling Stock, SC.Rly, Vijayawada.
7. <sup>VSN</sup> One Copy to Mr. J.M. Naidu, Advocate, H.No. 18-11, Kamalanagar, near Dilsukhnagar, Hyderabad-60.
8. One Copy to Mr. N.V. Ramana, SC. for Rlys.
9. One Spare Copy

VGB.