

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 548/91.

Dt. of Decision : 19.7.94.

Mr. K. Narasinga Rao

.. Applicant.

Vs

1. General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.
2. Divisional Railway Manager (BG)
Mechanical Branch,
Secunderabad.
3. Sr. Divisional Mechanical Engineer,
(Power), BG/SC, Divisional office(BG)
Mechanical Branch, 4th Floor,
Sanchalan Bhavan, Secunderabad. .. Respondents.

Counsel for the Applicant : Mr. C. Venkatakrishna

Counsel for the Respondents : Mr. Jalli Siddaiah, SC for Rlys.

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN : MEMBER (JUDL.)

THE HON'BLE SHRI A.B. GORTHY : MEMBER (ADMN.)

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OA 548/91.

Dt. of Order:19-7-94.

(Order of the Division Bench passed by Hon'ble
Shri A.V.Haridasan, Member (J)).

* * *

The applicant who has rendered 31 years of service in the Railways was, by order dt.9-6-88 of the Respondent No.3, removed from service on a charge of unauthorised absence from duty. As the applicant did not deny the charge, the enquiry authority held the applicant guilty of charge and it was on that basis the order dt.9-6-88 (Annexure-I) was issued. Aggrieved by this, the applicant filed an appeal to the Respondent No.2, who, by order dt.26-5-89 (Annexure-5), rejected the appeal. A revision made to the Respondent No.1 also met with the same fate by the rejection order dt.21-2-90 (Annexure-8). It is under these circumstances that the applicant has filed this application seeking to quash these orders. It has been alleged in the application that the applicant has not been given a fair and reasonable opportunity to defend himself, that the punishment awarded for alleged unauthorised absence of 4 months and 18 days is unduly harsh and that the appellate authority has not considered the mitigating circumstances brought out in his appeal.

2. The Respondents resisted the grant of prayer on the ground that the penalty was imposed only after following the procedure prescribed in Railway Servants (Discipline & Appeal) Rules, and that therefore no interference by the Tribunal is warranted.

....3.

[Signature]

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3. Having heard the learned counsel for the parties at considerable length and having gone through the pleadings and also the file relating to the enquiry we find that the Appellate Authority has not bestowed proper attention to the grounds raised by the applicant in his appeal. When an appeal is filed against an order of the disciplinary authority, the appellate authority is ^{to} bind to examine whether the enquiry has been held properly, whether the finding is warranted by the evidence, and whether the punishment awarded is adequate or grossly disproportionate to the proved misconduct. We find that the appellate authority in this case has not discharged the statutory duty properly. He rejected the appeal on the ground that the applicant could be a source of danger to safe running of the Train and to himself and that he did not give any ground for reconsideration of the case. We are of the considered view that this appellate order being laconic and devoid of application of mind is liable to be set aside. The revising authority also has not gone into all the relevant details of the case. Here is a case where a Railway Servant who has rendered more than 31 years of service has been removed from service for a misconduct of "unauthorised" absence of four months and 18 days. There is no finding or even a charge that the unauthorised absence was wilful. It is also evident from the penalty order, Annexure-I itself that he had applied for leave which was refused. It is not alleged in charge or established that, his absence was wilful. It is not

.....4.

3rd P.
Pee

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known whether the applicant could have been present for work even if he wanted to. So even if unauthorised absence is proved whether in the circumstances, a punishment of removal from service rendering him ineligible for retiral benefits is justified or not was a matter ^{which} whether the appellate authority and revisional authority should have seriously considered while disposing of the appeal and revision. This having been not done by them we are convinced that the orders of the appellate authority and revising authority have to be set aside. The matter should go back to the appellate authority for a fresh consideration and disposal of the appeal. While disposing of the appeal we expect the appellate authority to take into account, the imputation of misconduct in the charge sheet, whether the unauthorised absence was willful, what was the state of mental health of the applicant when he appeared before the enquiry officer, and if the unauthorised absence is proved against him, whether a lesser punishment like compulsory retirement from service would or would not be a sufficient and balanced punishment to be awarded.

4. In the result, the application is disposed of with the following declarations and directions :-

(i) the appellate order and revisional order are set aside;

(ii) the appellate authority, the second respondent is directed to dispose of the appeal afresh, bearing in mind the observations made in the foregoing paragraphs after giving the applicant an opportunity to be heard in person within a period of three

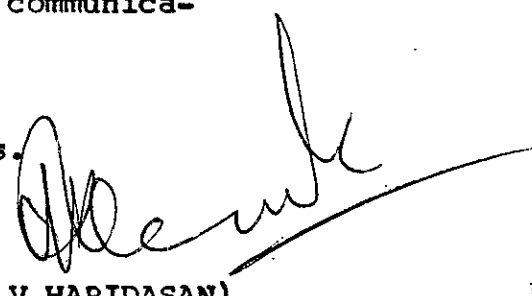
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Phe

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months from the date of communication of this order;

5. There is no order as to costs.


(A.B. GORTHI)
Member (A)

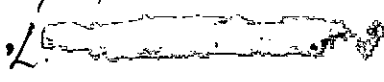

(A.V. HARIDASAN)
Member (J)

Dt. 19th July, 1994.
Dictated in Open Court.

avl/


25-7-94.
DEPUTY REGISTRAR(J)

Copy to:

1. The General Manager, South Central Railway, Railnilayam, Secunderabad.
2. Divisional Railway Manager, (BG), Mechanical Branch, Secunderabad.
3. Sr. Divisional Mechanical Engineer (Power) BG/SC, Divisional Office (BG), Mechanical Branch, 4th Floor, Sanchalan Bhavan, Secunderabad.
4. One copy to Mr. C. Venkata Krishna, Advocate, 
5. One copy to Mr. Jalli Siddaiah, SC for Railways, CAT, Hyderabad.
6. One copy to Library, CAT, Hyderabad.
7. One spare copy.

YLKR

SM page
No 25/7/94.

7- 1-571, Subhash road, Secbad-3

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR.A.V.HARIDASAN: MEMBER(J) ✓

AND

THE HON'BLE MR.A.B.GORTHY : MEMBER(A) ✓

Dated: 19.7.94 ✓

~~ORDER~~/JUDGMENT. ✓

~~M.A./R.D./C.P.NO.~~

G.A.NO. 548/91 in
T.A.~~NO.~~ ✓

(~~W.P.NO.~~)

Admitted and Interim Directions
Issued.

Allowed.

Disposed of with directions.

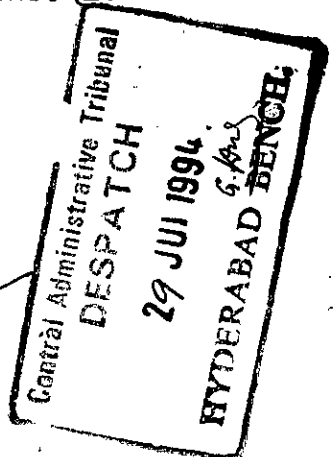
Dismissed.

Dismissed as Withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.



Per 25/7/94.
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25/7