

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
AT HYDERABAD

D.A. 762/91.

Dt. of Decision : 22.11.94.

V. Venkata Subbaiah

.. Applicant.

Vs

1. Assistant Works Manager,
Wagon Work Shop, SC Rly,
Central Railway,
Guntupalli.
2. Works Manager,
Wagon Workshop,
SC Rly, Guntapalli.
3. Deputy Chief Engineer,
Wagon Workshop, SC Rly,
Guntupalli.
4. Chief Workshops Engineer,
SCRly, Rail Nilayam,
Secunderabad.

.. Respondents.

Counsel for the Applicant : Mr. G.V. Subba Rao

Counsel for the Respondents : Mr. V.Bhimanna, Addl.CGSC.

CORAM:

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

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

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OA 762/91.

Dt. of Order: 22-11-1994.

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

* * *

In this application filed under section 19 of the A.T.Act, 1985, the order dt.10-12-1988 of the Respondent No.2 removing the applicant from service with effect from 20-12-88 is under challenge. Shortly stated, the case of the applicant is as follows :-

The applicant while working as Highly Skilled Fitter Grade II in the scale of Rs.1,200 - 1,800 applied for a day's Casual Leave on 27-1-1987 and proceeded to his native place for seeing his ailing mother. The condition of mother was bad. He sent a letter to his immediate superior seeking extension of leave. As his mother died, he got mentally up-set and became a psychiatric patient. He was taken to Madras and treated under a Psychiatrist. In the meanwhile, the Respondent No.1 issued a memorandum of charges for a major penalty proceedings on the ground of unauthorised absence. This charge sheet was not personally served on the applicant. However, coming to know that an enquiry against the applicant was pending, the applicant's wife in December, 1988, made a request for postponement of enquiry proceedings by one month. The applicant did not hear anything further. When he became physically and mentally alright, he reported for duty on 10-4-1989 with a private medical certificate as well as a fitness certificate from the Railway Doctor. He was not permitted to join duty. The Dy.C.M.E. informed the applicant

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vide his letter dt.3-10-1989 that he had been removed from service with effect from 2-12-1988 for unauthorised absence from 28-1-1987 to 31-12-1987 and that the applicant's letter dt.17-9-1989 was treated as an appeal and that it was rejected. The applicant filed a revision petition to the Chief Workshop Engineer, S.C.Railway, Secunderabad, which was also rejected. Under these circumstances, the applicant has filed this application seeking to quash the order of removal from service on the ground that Asst.Works Manager was not competent to initiate disciplinary proceedings against him ~~and~~ ^{held} that the enquiry was ⁱⁿ violation of principles of natural justice, the charge-sheet was not served on him, that the enquiry authority held him guilty without verification of records and that the punishment of removal from service is disproportionate to the alleged misconduct. The applicant prays that the impugned order may be set aside and he may be ^{be} directed to ^{re}-instated into service with full back wages and other service benefits.

2. The Respondents in their reply admitted that the memorandum of charges was not personally served on the applicant as the same was returned unserved and ^{that} the enquiry was held ~~ex parte~~ ^{ex parte} as the notices issued to the applicant ~~were~~ returned unserved. However, they contended ~~that~~ that as the guilt of the applicant was established in the enquiry held, ~~As the guilt of the applicant proved,~~ the penalty of removal from service is justified and no intervension is called for.

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They have also contended that the appeal and revision were also considered and rejected.

3. We have perused the pleadings and documents annexed thereto as also the enquiry file. We have heard Shri G.V.Subba Rao, learned counsel for the applicant and Shri V.Bhimanna, learned standing counsel for the Respondents.

4. It is a fact beyond dispute that the charge sheet was not served on the applicant and that the order of removal from service was also not served on the applicant personally until he was informed by the Dy.CME that the applicant was removed from service. A perusal of the enquiry report makes it clear that the enquiry authority has not held the enquiry in conformity with the rules. From the report it is seen that no witness was examined and no document was exhibited in support of the charge. With a mere statement that the imputations against the applicant was that he absented unauthorisedly from duty as stated in folio-5 as a statement enclosed to the D.A.R.file, without considering any evidence, the E.O. has entered a finding that the applicant was guilty. It is not mentioned by the Enquiry Authority as to whether any valid document was marked in evidence, in support of the charge. Shri V.Bhimanna, learned counsel for the Respondents argued that as the charge against the applicant is one of unauthorised absence, the only evidence that can possibly be adduced is a statement of the Asst.Works Manager, and this statement has been enclosed to the enquiry file and therefore it cannot

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be held that this is a case of nil evidence. ~~It is necessary~~
~~that the Enquiry Authority be established as a Disciplinary Authority~~
~~xxxxxx~~ In an order in a disciplinary proceedings, the reason
for the finding should be recorded. The evidence in support
and against it should be discussed. At least in the report of
the E.O., such discussion must be there. In this case neither
the Disciplinary Authority in his impugned order nor the
Enquiry Authority in his enquiry report has discussed any
evidence, and it is seen that no evidence at all was recorded.
A finding of guilt can be arrived at only on the basis of
legally acceptable evidence. The Asst. Works Manager who has
allegedly sent a statement to the effect that the applicant
was unauthorisedly absent should have been called as a witness
and the veracity of the statement should have been tested by
examining him. The statement should have been proved and
exhibited in evidence. After taking the evidence in support
of the charge even in an ex parte enquiry, it is necessary to
give an opportunity to the delinquent employee to adduce
defence evidence. A copy of the ex parte proceedings should
have been sent to the employee. This has also not been done.
Under these circumstances, we are of the considered view that
the manner in which the Inquiry was held is highly irregular
and improper and that even in that irregular inquiry, the finding
arrived at cannot be supported for want of legal evidence.
Hence we set aside the impugned order dt.10-12-1988 removing
the applicant from service with effect from 20-12-1988. We
consider that a direction to re-instate the applicant in

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Copy to:-

1. Assistant Works Manager, Wagon Work Shop, S.C.Railway, Central Railway, Guntupalli.
2. Works Manager, Wagon Workshop, S.C.Rly, Guntupalli.
3. Deputy Chief Engineer, Wagon Workshop, S.C.Rly, Guntupalli.
4. Chief Workshops Engineer, SCRailway, Rail Nilayam, Secunderabad.
5. One copy to Sri. G.V. Subba Rao, adocate, CAT, Hyd.
6. One copy to Sri. V. Bhimanna, Addl. CGSC, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

Rsm/-

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service forthwith with a further direction to treat him as under suspension from the date on which date he reported to duty and with a liberty to respondents to proceed against the applicant de novo from the stage of issue of a charge sheet will meet the ends of justice in the circumstances of the case. In the result, the application is disposed of with the following declarations and directions :-

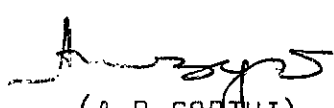
(a) the impugned order dt. 10-12-1988 of the Respondent No. 2 is quashed and set aside;

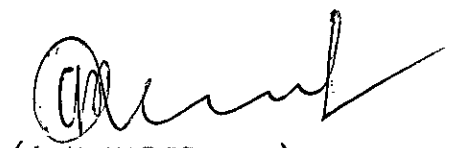
(b) the Respondents are directed to re-instate the applicant forthwith;

(c) the Respondents shall treat the applicant as on suspension with effect from 10-4-1989 till this date and to pay him subsistence allowance as admissible as per rules within a period of three months from the date of communication of this order;

(d) the Respondents will be at liberty to proceed against the applicant for his alleged unauthorised absence on the basis of the memorandum of charges after duly communicating the memorandum of charge to the applicant; and if the Respondents decide to conduct such a de-novo proceedings, the same shall be completed within a period of six months from the date of communication of this order.

3. There is no order as to costs.


(A.B. GORTHI)
Member (A)


(A.V. HARIDASAN)
Member (J)

Amalav
DY. Registrar (J)

Dt. 22nd November, 1994.
Dictated in Open Court.

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OA-762/91

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Checked by

Computed by
Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

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

DATED: 22/11/94

~~ORDER/JUDGMENT.~~

~~M.A/R.P/C.P.No.~~

O.A.NO. 762/91
~~T.A.NO.~~

- Admitted and Interim Directions issued.
- Allowed.
- ~~Disposed of with Direction.~~
- Dismissed.
- Dismissed as withdrawn
- Dismissed for default
- Rejected/Ordered
- ~~No order as to costs.~~

No 2
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 Central Administrative Tribunal
 DESPATCH
 22 DEC 1994
 HYDERABAD BENCH
 YLKR