

(Signature)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 869/91.

Dt.of Decision : 8-8-94.

Mr. D. Nageswara Rao

.. Applicant.

Vs

1. The Chief Workshops Engineer
SC Rly, Rail Nilayam,
Secunderabad.
2. The Dy. Chief Mechanical Engineer,
Wagon Workshops, SC Rly,
Guntupalli, Krishna District.
3. The Production Engineer,
Wagon Workshop, SC Rly,
Guntupalli, Krishna District.

.. Respondents.

Counsel for the Applicant : Mr. P. Krishna Reddy

Counsel for the Respondents : Mr. D. Gopal Rao, SC For Rlys.

CORAM:

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

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

(B)
O.A.No.869/91:

Dated : 8.8.1994

X As per Hon'ble Shri A.B.Gorthi, Member (Admn.) X

The applicant who was removed from service by order dt. 14.9.90 has filed this application with a prayer that the impugned penalty order, as also the orders of Appellate and Reviewing Authority confirming the penalty of removal be set aside and that he be reinstated in service with all consequential benefits.

2. The applicant was served with a charge memo dated 21.4.90 alleging that he remained unauthorisedly absent for 82½ days during the period of 2 years from 1988-89. In his explanation to the charge memo, the applicant stated that he was a chronic case of ^{was} Gastroenteritis and that his wife also ^{was} perpetually sick and as such he could not attend to his duty regularly. He further contended that he was reporting back to duty every now and then, whenever he was in proper health and he could not be treated as a habitual offender. The disciplinary authority instituted an enquiry under the Railway Service(B & A)Rules 1968 (DAR). In annexures 64 & A-3 of the charge memo ^{W/H} it was not mentioned that any witness would be examined or any documents would be produced in support of the charge memo. In the enquiry that was held no witness was examined for the prosecution nor any documents were aduced in evidence

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in support of the charge. The enquiry officer proceeded with the questioning of the applicant and based on the replies given by the applicant came to the conclusion that the applicant remained absent without leave for the period of 82 and $\frac{1}{2}$ days as alleged in the charge memo. The enquiry officer however came to the further finding that it cannot be said that the applicant was a habitual offender. According to the enquiry officer the applicant remained absent due ~~forced~~ to ~~circumstances~~ circumstances. The disciplinary authority however came to the conclusion, contrary to the finding arrived at by the enquiry officer, that the applicant was a habitual offender and for similar offences committed by him he was punished in the past also a number of times. There is however nothing on record to indicate when in the past the applicant ~~was~~ absent and what ~~were~~ the punishment, if at all, ~~was~~ awarded. The applicant's appeal was turned down by the appellate authority, ~~who~~ denied the request of the applicant for a personal hearing. The reviewing authority also rejected the representation of the applicant on similar grounds as was done by the appellate authority. The applicant's request for a personal hearing was also turned down by the reviewing authority.

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3. The respondents in their counter affidavit have merely stated that the applicant was absent for 82½ days during 1988-89 and that he was duly awarded the penalty of removal from service after a proper departmental disciplinary enquiry.

4. Heard learned counsel for both the parties. Mr. P. Krishna Reddy, learned counsel for the applicant has assailed the validity of the penalty order on several grounds. He firstly contended that the charge memo itself is defective because annexures 3 and 4, where the respondents ought to have cited the details of documents to be adduced in evidence and the names of the witnesses to be examined in support of the charge, were left blank. The enquiry conducted in the case is no enquiry at all because what all was done was questioning the accused as to the circumstances under which he remained absent. This was clearly in violation of the procedure as specified in DAR Rule 9 (17) which mandates that on the date fixed for the enquiry the oral and documentary evidence by which the article of charge was proposed to be proved shall be produced by or on behalf of the disciplinary authority.

5. Even in departmental disciplinary proceeding the onus of establishing the charge ~~beyond reasonable~~ ..5

✓ ~~does not~~ *✓* lies entirely upon the disciplinary ~~enquiry~~ authority.

The manner in which the enquiry officer preceeded to question the applicant without adducing any evidence in support of the charge is certainly prejudicial to the defence of the applicant and cannot be upheld.

6. Apart from the above serious infirmity in the conduct of the enquiry, our attention has been drawn by the learned counsel for the applicant to the fact that ~~though~~ the enquiry officer came to the finding that the applicant was not a habitual offender, the disciplinary authority ~~disregarded~~ the same and came to the conclusion that the applicant was a habitual offender. In fact it was for this reason that the disciplinary authority imposed the major penalty of removal, so contended the applicant's counsel. There is considerable merit in the objection taken by the applicant's counsel. In this regard we may refer to the judgement of the Hon'ble Supreme Court in Narayan Mishra vs. State of Orissa, 1969 SIR 657, wherein it was laid down that the disciplinary authority has to give a reasonable opportunity to the delinquent employee to explain why a different view should not be taken from what was stated in the enquiry officer's report. In the instant case, the record clearly indicates that the disciplinary authority without giving such an opportunity



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to the applicant came to a conclusion different from what was arrived at by the enquiry officer on an important aspect of the case.

7. We also find that the request of the applicant for granting a personal hearing was turned-down, without any justification in our considered view, by the appellate authority as also the reviewing authority.

8. For all the afore-stated reasons we find that the penalty order as also the order of appellate authority and that of the reviewing authority cannot be sustained. The same are hereby set aside. As the charge memo issued in this case was grossly defective, and the enquiry held in this case is in violation of the relevant Discipline and Appeal Rules, the same are also hereby set aside.

9. In the result, we direct that the applicant be reinstated in service immediately, on receipt of this order and in any case within 15 days thereafter. It is open to the disciplinary authority, if he so desires, to initiate de-nova disciplinary proceedings against the applicant.

10. As regards the manner in which the period from the date of removal to the date of

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reinstatement be treated and also on the question of backwages, the competent authority will decide the same in accordance with Rule 1344(1), (2) (i) and (ii) read with Sub-rule 5 of Rule 1343 of the Indian Railway Establishment Code Vol.2. Respondents to comply with these ~~above~~ directions within a period of 3 months from the date of communication of this order.

O.A. is ordered accordingly. No order as to costs.

Abhishek
(A.B.GONTHI)
Member (Admn.)

A.V.HARIDASAN
(A.V.HARIDASAN)
Member (Jud1.)

Dated: 8th August, 1994

Amulya 1994
(Amulya 1994)
DEPUTY REGISTRAR(J)

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Copy to:

1. The Chief Workshops Engineer, South Central Railway, Railnilayam, Secunderabad.
2. The Deputy Chief Mechanical Engineer, Wagon Workshops, South Central Railway, Guntupalli, Krishna District.
3. The Production Engineer, Wagon Workshops, South Central Railway, Guntupalli, Krishna District.
4. One copy to Mr.P.Krishna Reddy, Advocate, CAT, Hyderabad.
5. One copy to Mr.D.Gopal Rao, SC for Railways, CAT, Hyderabad.
6. One copy to Library, CAR, Hyderabad.
7. One spare copy.

YLKR

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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.GORTHI : MEMBER(A)

Dated: 8.8.94

ORDER/JUDGMENT.

M.R./R.P./C.P.NO.

C.A.NO. 869/91ⁱⁿ

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.

