

167

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.1001/91.

Dt. of Order: 7-7-92

G.Janardhan Reddy

....Applicant

Vs.

1. Assistant Operating Superintendent,
Metre Gauge, Hyderabad Division,
S.C.Railway, Secunderabad.
2. Divisional Operating Superintendent,
Hyderabad Metre Gauge Division,
S.C.Railway, Secunderabad.
3. Additional Divisional Railway Manager,
Hyderabad (M.G.Division), S.C.Railway,
Secunderabad.
4. Divisional Railway Manager, Metre Gauge,
S.C.Railway, Secunderabad.

....Respondents

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Counsel for the Applicant : Sri P.V.Krishnaiah

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

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CORAM:

THE HON'BLE SHRI R.BALASUBRAMANIAN : MEMBER (A)

THE HON'BLE SHRI C.J.ROY : MEMBER (J)

(Order of the Division Bench delivered by
Hon'ble Sri C.J.Roy, Member (J)).

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This application is filed under section 19 of the
Administrative Tribunals Act, 1985, to call for the records
relating to the impugned orders PRO.No.YT 194-I-88-90
dt.25-4-91 issued by the 1st Respondent, confirmed by the
2nd and 3rd Respondents vide their orders dt.25-6-91 and
16-8-91 respectively and quash the impugned proceedings as

47

arbitrary, illegal, offending Article 14, 21 and 311 of the Constitution of India and contrary to Rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968, and issue consequential direction to the respondents to reinstate the applicant, forthwith into service with back wages and all other consequential benefits such as seniority, promotion, etc. and pass such other relief or reliefs as this Hon'ble Tribunal deems fit and proper in the circumstances of the case.

The facts giving rise to this O.A. in brief are stated as follows :

2. The applicant was appointed as Yard Porter vide proceedings dt.14-3-84 issued by the Divisional Railway Manager, Metre Gauge, S.C.Railway, Secunderabad, which is Annexure-I to the O.A. He was posted at Wadiyaram Railway Station and was working since October, 1984.

3. One Sri P.Prithivi Raj was posted at the Wadiyaram Railway Station as Station Master. According to the applicant, himself and other staff members working in the Wadiyaram Railway Station were having difference of opinion as they did not accept the style and functioning of the said Sri Prithiviraj, Station Master, Wadiyaram Railway Station. The applicant alleges that as he is uneducated, the said Sri Prithviraj, Station Master, Wadiyaram Rly Station misled the applicant in various actions and at his behest finally resulted in mental agony and humiliation to the applicant and that he

(48)

was terminated from service following a charge memo dt. 24-10-90 issued by the 1st Respondent alleging the applicant that he failed to maintain devotion to duty and committed serious mis-conduct and behaved in a manner unbecoming of a Railway Servant.

4. According to the applicant, the said charge memo (Annexure-II) dt. 24-10-90 was served on him on 16-2-91, containing the following two articles of charge and directed the applicant to appear before the Enquiry Officer on 17-2-91, the very next day.

Article I Sri G. Janardhan Reddy, Yard Porter while working as Gateman at WDR Station failed to maintain devotion to duty committed serious misconduct and behaved in a manner unbecoming of a Railway servant in that due to his careless working the following trains were detained as shown hereunder.

- i) On 7-5-90, while working as Gateman caused 4 Mts. detention at Signal to 7569 Express due to no response from him.
- ii) On 1-8-90, 564 Up Passenger suffered 8 Mts at signal due to sleeping on duty.
- iii) On 8-8-90 he caused 05 Mts detention to 7551 Dn Express due to no response to phone calls.

Thus he has violated Rule 3(i) and (ii) of Railway Services Conduct Rules, 1966.

Article II Sri G. Janardhan Reddy, Yard Porter while functioning as Gateman was careless in his duties in that he has not showed any marked improvement though charge sheets for minor penalties were issued against him vide this office charge sheet Nos. Y/T/194/I/69/90. This has violated rule 3(i)(ii) of Railway

(149)

Service Conduct Rules, 1966.

5. A Departmental Enquiry was conducted and the Enquiry report dt.25-2-92 is filed as Annexure-III to the O.A. The Enquiry Officer in his report stated that the charges stand proved against the applicant.
6. It is pertinent to mention here that though the Enquiry Officer while coming to the conclusion held that the charges against the applicant are proved, in the reasons for findings extracted above and also under the heading "discussion of evidence", he stated that there was no lack of devotion to duty on the part of the applicant in respect of item-1 of Article-I of the charges. It is also pertinent to mention that while reaching the conclusion that the charges against the applicant stand proved, the Enquiry Officer mainly relied on the reports TI/NZB that the applicant deserted the gate without prior permission, which report was not furnished to the applicant during the enquiry nor was it the charge against the applicant. The finding was given by the Enquiry Officer on a charge which is different from the Articles of Charges framed against the applicant.
7. Based on the Enquiry Officer's report, the 1st respondent imposed the major penalty of removal from service vide (Annexure-IV) his proceedings dt.25-4-91 on the applicant and the applicant was removed from service with effect from 25-4-91.
8. The applicant states that only the disciplinary authority i.e., the Divisional Operating Superintendent, MG,

50

Secunderabad has powers to impose minor and major penalties and hence the orders of the Assistant Operating Superintendent, 1st Respondent herein, is arbitrary, illegal and contrary to Rule 6 of the Railway Servants (Discipline & Appeal) Rules and that the penalty imposed by the 1st Respondent is disproportionate to the charges levelled against him.

(Annexure-V)

9. The applicant preferred an appeal dt.1-5-91 to the Divisional Operating Superintendent, which was rejected confirming the penalty imposed by the Assistant Operating Superintendent (MG), Secunderabad vide order dated 25.6.91 (Annexure-VI). The applicant further submitted a review petition dt.2-7-91 to the 3rd respondent viz., Additional Divisional Railway Manager, MG Division, S.C.Railway, Secunderabad and the same was rejected vide (Annexure-VIII) orders dt.16-8-91 of the 3rd Respondent.

10. While citing the Appellate order the applicant further states that it is clear from the appellate order that the appellate authority while confirming the penalty of removal from service w.e.f.25-4-91 against the applicant imposed by the disciplinary authority took into consideration the punishment already imposed on the applicant for dereliction of his duties on earlier occasions ^{without} ~~leaving aside~~ discussing the articles of charges framed against the applicant vide memo dt.24-10-90 and also the report of the enquiry officer as also the punishment imposed by the disciplinary authority on the basis of the enquiry officer's report. The reviewing authority also did not discuss in detail ^{the charges framed} while

(51)

- 6 -

disposing of the review petition made by the applicant on 2-7-91 vide his orders dt.16-8-91, about the findings of the enquiry officer. Hence this Original Application.

11. The Respondents filed a counter stating that the applicant committed serious mistake by showing lack of interest to the duties for which the Disciplinary Authority removed the applicant from service as per Discipline and Appeal Rules, 1968. They denied the applicant's contention that he was appointed as Yard Porter under the proceedings dt.14-3-84 issued by the 4th Respondent but was appointed by the Asst.Personel Officer (Traffic) of the 4th Respondent's Office.

12. It is further averred that a charge memo^{for major penalty} was issued on 3-11-90 to the applicant stating that he was careless in his work on 7-5-90 as he caused 4 minutes detention at signal to 7569 Express due to no response from him and on 1-8-90 564 Up passenger suffered 8 minutes at signal due to sleeping on duty and further on 8-8-90, 5 minutes detention to 7557 Down Express due to no response to phone calling. They deny that the charge memo was issued only a day before the enquiry, but infact the same was served on the applicant on 1-2-91 itself. The Respondents also denied that there are difference of openion between the staff and Station Master.

13. The Respondents further aver that Enquiry Officer was appointed, enquiry was conducted, examined witnesses in detail and after considering the evidence of witnesses, the

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Enquiry Officer found that the charges are proved. So the applicant was found guilty of charges.

14. It is denied that the Enquiry Officer relied on the past record and also averred that it is not improper to see the past record of the employee as the record shows dislikeness and uninterest on the duties. Minor penalties were imposed previously and they are all relevant to the case but the Enquiry Officer did not totally relied on the past record. The applicant was found guilty on the impugned charges only. There is no illegality or irregularity in conducting the enquiry.

15. The enquiry Officer submitted his report on 25-2-91. Copy of the Enquiry Officer's report given to the applicant on 27-2-91 under acknowledgement. Basing on the Enquiry Officer's report the Disciplinary Authority imposed the penalty of removal as per Discipline and Appeal Rules, 1968. The imposition of major penalty is not illegal as the applicant found guilty of lack of devotion to duty.

16. It is further stated that the 1st Respondent is the disciplinary authority under the relevant rules for the Yard Porters and other Group 'D' categories of Hyderabad Division, as such the 1st Respondent is competent to issue the penalty order to the applicant. This point was ^{never} raised by the applicant. The allegation of the applicant that

neither the appellate authority nor the reviewing authority considered his case properly was also denied by the Respondents.

17. The appellate authority basing on the enquiry officer's report and other relevant material placed before him, confirmed the penalty order and the same was also confirmed by the revisional authority and the past record also substantiate the case of the applicant. So they desire that the case be dismissed.

18. We have heard Sri P.V.Krishnaiah, learned counsel for the applicant and Sri N.Rajeshwar Rao, proxy counsel for Sri D.Gopal Rao, learned counsel for the Respondents and perused the records. It is necessary to mention here that on a direction by the Tribunal the Enquiry file as well as the service register of the applicant are produced before us.

19. Pending disposal of the Original Application, Miscellaneous Application No.511/92 was filed by the applicant for interim directions to reinstate the applicant and the same is disposed of vide our orders on separate sheets. Miscellaneous Application No.763/92 was filed by the respondents for condoning the delay in filing counter affidavit which is also disposed of vide our orders on separate sheets by condoning the delay and the interim orders are not necessary, in view of the final decision on the case.

20. The applicant's objection that the first respondent acted without jurisdiction since he is not the appointing authority competent to impose penalty was answered by the respondents in their counter at ~~XXXXXXXXXX~~ Page-3 stating that under the relevant rules, for the post of Yard Porter and for the other Group 'D' categories, the disciplinary authority is the 1st respondent for Hyderabad Division and as such the 1st respondent is competent to issue the penalty order to the applicant. We have also seen the relevant ~~Schedule~~ ^{rules} which say that the 1st respondent is the appointing authority as per Schedule-II of "Schedule of Disciplinary powers and suspension of different grades of Railway Officers in respect of non-gazetted staff of Zonal Railways, C.M.W., D.L.W. and I.C.F. and Metropolitan Transport Projects (Railways)" and is competent to impose major penalties and also it indicates that the appointing authority or any equivalent authority to the appointing authority or higher authority can impose punishments. The appointing authority is the Assistant Officer for Group 'D'. Here, the applicant is the Yard Porter which is a Group 'D' post. Therefore, we hold that the 1st respondent is ^{the} competent disciplinary authority for the applicant, who is a Yard Porter, which is a Group 'D' category. The learned counsel for the applicant did not press this ground after looking into these rule of Railway Servants (Discipline & Appeal) Rules, 1968 at Page 92. Therefore, we hold that the 1st respondent is the competent authority and the objection taken by the applicant is not sustainable.

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21. The applicant raised several grounds questioning the appreciation of evidence by the disciplinary authority. This Tribunal is not a forum for re-appraisal of the evidence. However, ~~the evidence is discussed at~~ Page-3 in which we see the discussions of the evidence. We have also perused the file produced before us.

22. The evidence discussed under Article - I of the charge is,

"V. DISCUSSION OF EVIDENCE:

1. The delinquent employee stated that he was alert on duty and telephone was defective on 7.5.1990. Evidence in this case of Sri N.S.Sharma ASM on duty (Folio-30) that gateman responded to his call after granting line clear but did not respond when train left MZL. Sri B.Satyanarayana PM on duty who was directed to gate cross examined (Folio 28) and found that before he could reach gate, gate was closed and gate key released. Further ASM substantiated (Q21.F30) gate phone went defective same attended by ESM/WDR and rectified. It goes to say on seeing the ~~time~~ train detained the gate man was alert, could not release key in time but to reasons stated above. There was no lack of devotion to duty.

2. On 1.8.90 the gateman stated that he was suffering from pain in his knee and took medicine. He admitted that was due to his sickness. Evidences of Sri N.S.Sharma (Q23 F.30) and Sri Prithiviraj SM/WDR

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(Q.40.F27) are different. The gateman could produce any record of his sickness a memo to SM or doctors prescription. The detention of 8" admitted his not being alert due to ill health.

3. On 8.8.90 the gateman was 8/20 Hrs. duty. He stated that he was away on distant signal lighting up duty is denied by Sri D.Prithivi Raj SM that he has not directed. PM Sri SRK Sastry deposed that the gateman went for lighting up duty.

On the evidence, the reasons given for the findings are-

"VI. REASONS FOR FINDINGS:

1. On 7.5.90, No.7569 detained 4". The gate was alert at gate could not release key in time due to phone defect. It takes 3"-4" to close gate Barrier and release the key. There is no lack of devotion to duty. The cause is communication defect and not the gateman.

2. On 1.8.90, the gateman was sick. There is no evidence and admitted that he was not alert. The cause may be illhealth but he has not gone in sick list.

3. On 8.8.90 for No.7551 the gateman was away on distant light lighting. While leaving gate he failed to advise SM/ASM on duty of the same. He was not available

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57

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at gate to close the gate for 7351. A doubt arises as to he really went out on lighting duty."

The findings given by the enquiry officer are-

"VII. FINDINGS:

Considering the facts as laid above vis-a-vis the evidence recorded, the contributory factors are staff rivalry lack of coordination between SM and staff. Privileges such as leave sick pass should not be restrained so much so as it should effect punctual and safe working of trains.

There are reports of TI/NZB on record that Shri G. Janardhan Reddy, Y.P. deserted the gate without prior permission. The delinquent employee is lacking devotion to duty. He is ~~an~~ unmindful of his duty. the charges stand proved."

It appears ^{from} on the reasons given for findings by the Inquiry Officer on which the disciplinary authority has based on and the conclusions drawn by the appellate authority are not based on evidence. While discussing the evidence, the enquiry officer himself says that there was no lack of devotion to duty. In the 2nd para, he himself says that it is due to ill-health and in the 3rd para he says that the gateman went out on lighting duty. On the reasonings for findings at para-VI of

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58

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the enquiry report, the enquiry officer says that the cause is communication defect and not the gateman, the next one, the cause may be illhealth but he has not gone on sick list and the 3rd one, a doubt arises as ~~he~~ to he really went out on lighting duty. He further avers that the contributory factors are staff rivalry, lack of coordination between SM and staff and privileges such as leave sick pass should not be restrained so much so as it should effect punctual and safe working of trains but he relies totally on a report based on TI/NZB which is on record and which was not supplied to the applicant. Therefore, it appears to us that the findings are perverted, they are not based on evidence and relied on the record which was not put to the applicant. Therefore, we hold that the conclusion of the enquiry officer that the charges stand proved is perverted.

23. The disciplinary ~~authority~~ authority merely accepted the findings of the enquiry officer stating that the findings of the enquiry officer are accepted. He says, "inspite of previous warnings, he is not improved. Therefore, I impose upon you a penalty of removal from service." While imposing this punishment, the punishing authority has not specifically discussed the evidence. He has simply accepted the enquiry officer report without discussing the evidence and giving reasons.

24. The applicant preferred an appeal which is at Annexure-V. The appellate authority simply referred ^{to} the

59

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previous punishment and without discussing the evidence he accepted the findings of the enquiry officer and the punishing officer and thereby removal from service was confirmed. The applicant also filed a review petition and the reviewing officer ^{had} also similarly given a stamp of approval without giving any reasons. It is the duty of the appellate authority to apply his mind, consider the evidence, and if he does not consider and apply his mind to the various matters enumerated in Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 and does not marshal the evidence on record and merely and mechanically reproduced the provisions of the rule, it is bad in law as held in the case of "Ram Chander Vs. Union of India and others (ATR 1986(2) SC 252)" in which "R.P. Bhatt Vs. Union of India and others (ATR 1986 SC 149)" was also cited with approval which states that since the appellate authority did not apply his mind, the appellate order of removal from service was set-aside with the remark that the order of the appellate authority was in accordance with the rules. It was held that the appellate order was illegal as the appellate authority did not indicate due application of mind. In "M Vs. State Bank of India and others (SLR 1985(1) and Haryana High Court, ---" held that, the appellate authority is under obligation to indicate the reasons for holding that the findings arrived at by the punishing authority are justified. In "The Punjab State through Collector, Amritsar Vs.

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60

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Bahadur Singh, SLR 1985(2) Punjab and Haryana High Court Page 768", it is held that the law requires that since such matters are of quasi-judicial nature, the punishing authority should apply its own mind and give the process of reasoning for upholding the report of the Enquiry Officer. In "Mohan Singh Vs. Union of India and others (SLR 1986(2) CAT 512)", the Jodhpur Bench of the Central Administrative Tribunal held that the order of removal must be a speaking order. In "S.T.Dasadia Vs. Commissioner, Surat Municipal Corporation, (SLR 1983(2) Gujarat High Court, Page 616)", it is held that the disciplinary authority must apply his mind and weigh all the materials in proper perspectives.

25. Here, the main charge against the applicant is that he delay^{-ed} the trains. In addition to that charge, previous conduct was also framed as another charge against the applicant. The report of TI/NZB has not been put to the applicant which is used against him. It also appears to be quite^{un}usual and offends the principles of natural justice.

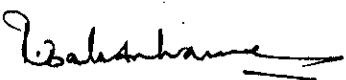
26. It appears to us that in this case the punishing authority has acted in drawing the conclusion based on no evidence. The dismissal from service which is a major penalty must be based on a proved charge rather than past chances doubts and surmises. Therefore, applying the said principles laid down in the above cases, we see that in this

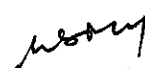
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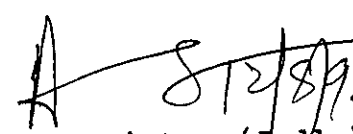
case the applicant has been denied natural justice and some extraneous evidence was used against him behind his backbasing on which the conclusions were drawn.

27. Therefore, we have no hesitation to quash the impugned proceedings of the 1st respondent dt. 25.4.91, of the 2nd respondent dt. 25.6.91 and of the 3rd respondent dt. 16.8.91. The impugned proceedings are accordingly quashed.

28. The applicant is entitled for all consequential benefits including his back wages. With these directions, the application is allowed. There is no order as to costs.


(R.BALASUBRAMANIAN)
Member (Admn.)


(C.J.ROY)
Member (Judl.)


Dated: 7th August, 1992. Dy. Registrar (Judl.)

Copy to:-

1. Assistant Operating Superintendent, Metre Gauge, Hyderabad Division, S.C.Railway, Sec-bad.
2. Divisional Operating Superintendent, Hyderabad Metre Gauge Division, S.C.Railway, Sec-bad.
3. Additional Divisional Railway Manager, Hyderabad (M.G. Division), S.C.Railway, Sec-bad.
4. Divisional Railway Manager, Metre Gauge, S.C.Rly, Sec-bad.
5. One copy to Sri. P.V.Krishnaiah, advocate, A.P.Administrative Tribunal, Hyd.
6. One copy to Sri. D.Gopal Rao, SC for Railways, CAT, Hyd.
7. One copy to Deputy Registrar (Judl.), CAT, Hyd.
8. One copy to Hon'ble Mr.C.J.Roy, Judicial Member, CAT, Hyd.
9. Copy to Reporters as per standard list of CAT, Hyd.
10. One spare copy.

Rsm/-

(62)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

M.A.No.511/92

Date of order: 7.7.92

in

O.A. No.1001/91

Between

Sri C. Janardhan Reddy

Applicant/Applicant

and

1. Asst.Opertg.Superintendent(MG)
Hyderabad Dvn,SCRly,Secunderabad
2. Divisional Opertg.Superintendent(MG)
Hyderabad Dvn,SCRly,Secunderabad
3. Addl.Divisional Rly Manager (MG)
Hyderabad Dvn,SCRly,Secunderabad
4. Divisional Railway Manager(MG)
SCRly,Secunderabad

Counsel for the Applicant : Sri PV Krishnaiah

Counsel for the Respondents: Sri N.Rajeshwar Rao,Proxy Counsel
for Sri D.Gopala Rao,SC for Rlys


CORAM:

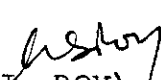
HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER(ADMN)

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

ORDER OF THE DIVISION BENCH DELIVERED BY HON'BLE SHRI C.J. ROY
MEMBER(JUDL.)

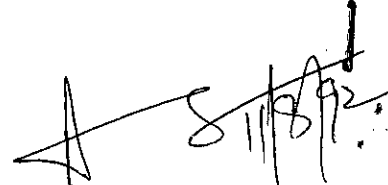
This application is filed by the learned Counsel for the Applicant for an interim direction to the respondents to reinstate the Applicant into service forth-with pending disposal of the main OA. In view of the ruling given in the Main OA 1001/91, this petition does not survive. With this observation, this application is disposed of with no order as to costs.


(R. BALASUBRAMANIAN)
MEMBER(ADMN)


(C.J. ROY)
MEMBER(JUDL.)

Dated: 7th July, 1992

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Dy. Registrar (Judl.)

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