

39

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD.

O.A.No.1172/91.

Date of Judgement 28-12-91

R.Subhan

.. Applicant

Vs.

1. Union of India, Rep. by
General Manager, S.C.Rly.,
Rail Nilayam,
Secunderabad.
2. Dy. Chief Mech. Engineer,
Carriage Repair Shop,
S.C.Rly., Tirupathi,
Chittoor District.
3. Divl. Engineer (Constn),
Carriage Repair Shop,
S.C.Rly., Tirupathi,
Chittoor District. .. Respondents

Counsel for the Applicant : Shri T.Pandurangachary for
Shri G.Ramachandra Rao

Counsel for the Respondents: Shri N.Rajeswara Rao for
Shri D.Gopal Rao, SC for Rlys.

CORAM:

Hon'ble Shri A.B.Gorthi : Member(A)

Hon'ble Shri T.Chandrasekhara Reddy : Member(J)

I Judgement as per Hon'ble Shri A.B.Gorthi : Member(A))

The applicant, who after due screening was found suitable for absorption in the Technical category against vacancies in the Mechanical department, CRS has filed this application with a prayer that the respondents be directed to effect his absorption in the Technical category without further delay.

2. The applicant has been working as a Khalasi with temporary status under Inspector of Works, Administration of Buildings, CRS, S.C.Rly., Tirupathi eversince 1982. His screening test was held on 15th & 16th February, 1991 at which he was found suitable for absorption in the Technical category. Whereas some others similarly screened and found fit for absorption have been relieved for such absorption the applicant

8

.....2

was not allowed to be so relieved.

3. The respondents in their reply affidavit have substantially admitted the facts relating to the screening of the applicant but have stated that in the year 1987 a charge memo was issued to the applicant containing the allegation that he procured his initial employment in the Railways in 1982 by producing false casual labour service card. An Enquiry Officer was appointed and the applicant submitted his explanation to the charge memo denying the charges. Thereafter, the Sr. DEN came to the conclusion that there were certain infirmities in the charge and accordingly cancelled the charge memo. The order cancelling the charge memo states that it was being cancelled without prejudice to fresh DAR action at a later stage. Thereafter, on the basis of the vigilance advice a fresh charge memo dt. 18.4.88 on the same old allegation was served upon the applicant. The respondents' contention is that in view of the fact that a disciplinary enquiry is pending against the applicant, he was not relieved to be absorbed although he was screened and found fit for such absorption.

4. The learned counsel for the applicant vehemently contended that the issuance of the second charge memo to the applicant is legally not tenable. In this context he has drawn our attention to the judgement of the Tribunal in the case of R.B.Parmar Vs. Union of India & Others [AISLJ(2)(CAT)47]. In that case it was held that as the Disciplinary Authority, while cancelling the initial charge memo had neither indicated nor expressed his intention to issue a subsequent fresh charge, the second charge on the same allegation could not have been issued. It is apparent that the facts in the instant case are different to the extent that the Disciplinary Authority in this case had clearly indicated that the cancellation of the first charge memo was without prejudice to the rights of the

Disciplinary Authority to issue a second charge memo. We, therefore, find that the case of R.B.Parmar will be of no assistance to the applicant's case.

5. Further reliance has been placed by the applicant's counsel on the judgement of the Tribunal in the case of Dwijendra Lal Chakladar Vs. Union of India 1989(6)SLR(CAT)307. In that case, a major penalty charge-sheet was issued to the delinquent employee but the enquiry was not completed even after a lapse of about 3 years. According to a circular of the Railway Board issued on 25.6.86, a time limit of 150 days was laid down for concluding a departmental enquiry against a Railway employee. In view of the Railway Board circular, the Tribunal came to the conclusion that as the enquiry was not concluded even after a period of 3 years it should be taken as dropped.

6. The learned counsel for the respondents states that the charge against the applicant is indeed very serious and involved moral turpitude. The applicant should not, therefore, be allowed to be absorbed until and unless the departmental disciplinary enquiry is concluded. The facts of the case clearly indicate that the alleged misdemeanour on the part of the applicant pertained to the period prior to 1982. The department took almost 5 years to realise that the initial employment of the applicant was on the basis of a false casual labour service card. A charge memo was issued and an Enquiry Officer was also appointed but instead of proceeding further with the enquiry and concluding the same expeditiously the competent authority deemed it fit to cancel the charge memo. Thereafter, it was only when some vigilance advice was rendered a second charge memo was issued against the applicant on 18.4.88. More than 4½ years have lapsed but admittedly there is no tangible progress in the matter of enquiry on the charge. According to the respondents' reply, the applicant was once again asked to give

Copy to:-

1. General Manager, South Central Railway, Union of India, Rail Nilayam, Secunderabad.
2. Dy. Chief Mechanical Engineer, Carriage Repair Shop, S.C.Railway, Tirupathi, Chittoor District.
3. Divisional Engineer(Constrn), Carriage Repair Shop, South Central Railway, Tirupathi, Chittoor District.
4. One copy to Sri. G.Ramachandra Rao, advocate, 3-4-498, Barkatpura chaman, Hyd.
5. One copy to Sri. D.Gopal Rao, SC for Railways, CAT, Hyd.
6. One copy to Deputy Registrar(Judl.), CAT, Hyd.
7. One copy to Hon'ble Mr. A.B.Gorthi, A.M., CAT, Hyd.
8. One copy to Hon'ble Mr. T.Chandrasekhar Reddy, J.M. C.A.T., Hyd.
9. Copy to Reporters and All Benches as per standard list of CAT, Hyd.
10. One spare copy.

Stamp
Rsm/-

This explanation to the charge memo on 20.4.92. The manner in which the respondents have been proceeding in the matter relating to the disciplinary enquiry against the applicant would clearly show that for no fault of the applicant the threat of disciplinary action against him is being prolonged unduly and he is being made to suffer such consequences as denial of his absorption for which he was duly screened and found fit. In the case of State of M.P. Vs. P.V. Bani Singh [AIR 1990 SC 1308] the Hon'ble Supreme Court quashed the disciplinary proceedings on the ground of undue delay for which there was no satisfactory explanation. While we may not go to the extent of quashing the disciplinary proceedings pending against the applicant, we do find it just and proper to direct the respondents to give effect to the result of the screening and to absorb the applicant in the Technical category with effect from the date on which juniors to him have been absorbed. It shall, however, be open to the respondents to proceed further in the matter of the disciplinary enquiry against the applicant.

7. The application is allowed with the above direction but with no order as to costs.

than30/12/92
(A.B.Gorthi)
Member (A).

T. Chandrasekhara Reddy
(T.Chandrasekhara Reddy)
Member (J).

Dated: 25 December, 1992.

4
Dy. Registrar (27/12/92)

H.G.G.

contd. 57