

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT
HYDERABAD.

C.A. NO. 854/92

DATE OF JUDGMENT: 14.7.95

BETWEEN:

K.Krishna

Applicant

AND

1. The General Manager
(Personnel Branch),
South Central Railway,
Secunderabad.

2. The Divisional Railway Officer,
Divisional Office,
Personnel Branch,
SC Railway,
Guntakal.

Respondents

COUNSEL FOR THE APPLICANT: SHRI C.Venkatakrishna

COUNSEL FOR THE RESPONDENTS: SHRI NR Devaraj
Sr/Adv. CGSC.

CORAM:

HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN
HON'BLE SHRI A.B.GORTHI, MEMBER (ADMN.)

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O.A.NO. 854/92.

JUDGMENT

Dt: 14.7.95

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN)

Heard Shri C.Venkatakrishna, learned counsel for the applicant and Shri N.R.Devaraj, learned standing counsel for the respondents.

2. The charge memo No.G/P.227/III/84/A/36, dated 20.6.1984 was issued to the applicant who was working as Fireman 'A' for unauthorised absence from 19.1.1981 to 18.6.1984. It is stated for the respondents that on receipt of the said charge memo, the applicant submitted written statement of his defence on 15.12.1984 and when the said explanation was not found satisfactory, the inquiry was ordered.

3. The Inquiry Officer issued the letter No. TNR/Jan/1/185, dated 16.8.1985 addressed to the applicant informing him that the inquiry will be commenced on 3.9.1985. When the applicant did not appear before the Inquiry Officer on 3.9.1985, the witness for the department was inquired as to whether the said letter was communicated to the applicant and then it was submitted that as the applicant was not on duty, the same was not served on him and it was exhibited

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on the notice board. On the basis of the record produced before the Inquiry Officer, it was held that the charge of unauthorised absense was proved. Basing on the same, the disciplinary authority passed the order dated 23.10.1985 removing the applicant from service with effect from 31.10.1985.

4. It is submitted for the applicant that he preferred appeal memos on 6.2.1986, 24.7.1986, 10.11.86 and 16.11.1987, and when he had not received any communication in regard to the same, he sent the appeal memo dated 28.7.1988 under Registered Post with Acknowledgment Due. It is stated for the respondents that only the appeal memo dated 28.7.1988 was received by the appellate authority and the ^{other} ~~alleged~~ appeal memos referred to for the applicant were not received.

5. The appellate authority by the order dated 28.9.1988 observed as under:-

- " (i) Findings of the disciplinary authority are warranted by the evidence on record.
- (ii) Please advise him his appeal is time-barred and cannot be considered at this juncture."

The revisional authority had given personal hearing to the applicant and rejected the revision by the order dated 18.5.1989. The same is assailed in this OA which was presented on 25.10.1990. The delay in re-presentation

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was condoned and ultimately this OA was registered on 24.9.1992.

6. The main thrust of the arguments for the applicant is that the entire inquiry is vitiated as no effort was made to send ^{the} notice in regard to the date of hearing before the Inquiry Officer, to the last known address of the applicant. Such a plea was not raised either before the appellate authority or the revisional authority. As such neither the appellate authority nor the revisional authority adverted to it.

7. It is true that the appellate authority observed that the findings of the disciplinary authority are warranted by the evidence on record, and the learned ~~exem~~ counsel for the applicant is right in contending that it is not a speaking order. If the appellate authority had not observed that the appeal is time barred and hence it cannot be considered ~~ex~~ at this juncture, the matter would have been remitted to the appellate authority for ^{fault} consideration. Whenever the order of any authority is subject to appeal or revision, then the same authority deal with regard to the merits also even in holding that the proceeding ^{is} barred by limitation. The order of appellate authority is ⁰ subject to revision. Hence, no fault can be found with the appellate authority when he had also adverted to the merits.

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8. It is true that the revisional authority had not specifically referred to the finding of the appellate authority that the appeal is barred by limitation. The order of the revisional authority does not disclose that the applicant had given any convincing reason for the delay in preferring the appeal. The tenor of the order of the revisional authority indicates that he was prepared to grant relief to the applicant if there are justifiable grounds for the ~~any~~ unauthorised absence of the applicant. Having not ~~been~~ satisfied with the explanation given by the applicant for the absence during the relevant period, the revision was rejected especially when it is a case where the applicant belongs to essential service.

9. Further, para-2 of the order of the revisional authority indicates that the order of the ~~disciplinary~~ authority as ^{affirmed} ~~confirmed~~ by the appellate authority, is confirmed.

10. As there is nothing to indicate that there is no basis for the appellate authority to come to the conclusion that the appeal is barred by limitation, the question of going into the merits by this Tribunal does not arise. So, we do not wish to express in regard to the contention for the applicant that the inquiry is vitiated as no attempt was made to serve the letter about the date of hearing before the Inquiry Officer, to the last known address of the applicant.

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11. While it is stated for the applicant that the General Manager is having discretion to grant ex-gratia pension even in case of removal, it is submitted for that the respondents/as the qualifying service of the applicant for pension is less than 10 years, none of the officers is empowered to order ex-gratia pension.

12. In the result, this OA is dismissed. But if the General Manager or any authority superior to him is having discretion to grant ex-gratia pension even if the qualifying service for pension is less than 10 years, then such authority has to consider the same. No costs.//

Abhishek
(A.B.GORTHI)
MEMBER (ADMN.)

Kishore
(V.NEELADRI RAC)
VICE CHAIRMAN

DATED: 14th July, 1995.
Open court dictation.

July 18, 1995
Deputy Registrar (J) CC

To

vsn

1. The General Manager, (Personnel Branch)
S.C.Railway, Secunderabad.
2. The Divisional Railway Officer, Divisional Office,
Personnel Branch, S.C.Railway, Guntakal.
3. One copy to Mr.C.Venkatakrishna, Advocate, 7-1-571
Subhash Road, Secunderabad.
4. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

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CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE CHAIRMAN

A N D

THE HON'BLE MR.R.RANGARAJAN: (M(ADMN))

DATED 14/7/1995.

ORDER/JUDGMENT:

M.A./R.A./C.A.No.

in
OA.No.

854/92

TA.No.

(W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No order as to costs.

No Space copy

