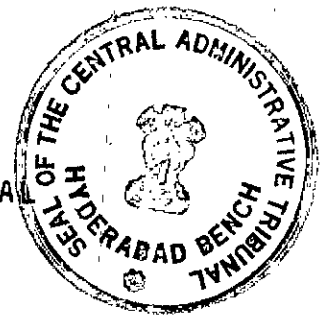


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD



DA 1099/92.

Dt. of Order: 21-1-94.

D. Bhaskara Rao

....Applicant

Vs.

1. Union of India rep.
by the Secretary, Railway Board,
Rail Bhavan, New Delhi.
2. The Divisional Safety Officer,
SC Rlys, Vijayawada.
3. Sr. Divisional Safety Officer,
SC Rlys, Vijayawada.
4. The General Manager,
SC Rlys, Rail Nilayam,
Sec'bad.

....Respondents

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

Counsel for the Respondents : Shri N.B. Devraj, SC for Rlys

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CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

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3. After rehearing the case on ~~all its aspects~~, OA 172/88 was again allowed on the plea that a copy of the Inquiry Officer's report was not given to the applicant. It was by following the judgment in Ramzan Khan's case*. The question as to whether Ramzan Khan's case was applicable in regard to the orders of punishment prior to the date of the judgment in that case was not raised in OA 172/88. Any how, when it was ordered in OA 172/88 that the inquiry can be continued after furnishing a ~~copy~~ copy of the report of the Inquiry Officer, it was complied with and again the order of removal was passed on 16.12.1992. The same is challenged in this OA.

4. When this OA had come up for consideration before this Hyderabad Bench comprising Shri A.B.Gorthi, Member (Admn.) and Shri T.Chandrasekhara Reddy, Member (Judl.), both of them held that the DSO was not competent to initiate the disciplinary proceedings as the applicant was in operating wing but not in the safety wing and accordingly both the learned members held that the impugned order is liable to be set-aside. But the learned administrative member observed as under in the operative portion:-

"This application (OA 172/88) was heard twice and each time it was ordered to be remitted back to the Department. Now in 1993, it will neither be fair nor just to once again subject the applicant to the grind of fresh disciplinary proceedings. With these observations we allow the application and direct the Respondents to take back the applicant into service within a period of 30 days and give him

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as TA 972/86. Four of the various contentions raised for the applicant are ^{that:} (1) the order of appellate authority is not a speaking order; (2) it is only the General Manager who is the appointing authority, who is competent ~~and~~ to pass the order dismissing the applicant from service; (3) the DSO is not competent to initiate disciplinary proceedings ~~and~~ as he was not the head of the operating section in which the applicant was working; and (4) there is an infirmity in not furnishing a copy of the report of the Inquiry Officer before passing the order of punishment.

2. In TA 972/86 it was held that the order of the appellate authority was not a speaking order and accordingly it was set-aside and the matter was remitted to the appellate authority. Later, the appellate authority passed a reasoned order confirming the order of dismissal. Then the applicant filed OA 172/88 challenging the same. On the basis of the Judgment of the Full Bench, Central Administrative Tribunal in Gafoor Mia Vs. Union of India reported in 1988(2) SLJ 277 (CAT), the order of dismissal was set-aside as it was not ^{held by} the General Manager who is ~~competent~~ the authority that was held as competent to order dismissal of an employee in the category of ASM ~~as per the judgment in Gafoor Mia's case and accordingly the order of dismissal was set-aside~~ and the liberty was given to the competent authority to initiate disciplinary proceedings, as per the order in OA 172/88. But the same was ~~set-aside~~ as per the order dated 8.10.1990 in the Review Petition which was filed when the Judgment in Gafoor Mia's ~~case~~ was set-aside by the Supreme Court in SLP 8414/88 ~~on~~ on 10.4.1990.

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based on the grounds that the accident had taken place as early as in 1981 and the applicant had approached the Tribunal more than once. In the other OAs also as already indicated, the accident had taken place in the year 1981 and 1983 but in approaching the Tribunal for more than once, the applicant is not entitled for a differential treatment from the hands of this Tribunal, as the applicant stands similarly situated in all respects to the applicants in OA 509/86 and TA 7/92 respectively. Hence, this OA is disposed of as hereunder:-

"The order dated 16.12.1992 passed by the Sr. Divisional Safety Officer, South Central Railway removing the applicant from service w.e.f. 27.12.92 is set-aside. OA is accordingly allowed. However, it is open for the competent authority to take consideration of all the matters before coming to a decision as to whether after reinstatement of the applicant, a denovo enquiry is to be initiated as against him or not."

In view of the above difference, the matter was referred to the Hon'ble Chairman and in exercise of the powers under Section 26 of the A.T.Act this matter was referred to me.

6. The learned counsel for the applicant submitted that the C.C.No.319/84 on the file of SJFCM for Rlys., Vijayawada was filed for the offence under Section 304(A) IPC in regard to the very incident which is referred to in

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all the consequential benefits within a period of three months from the date of communication of this order."

5. ^{While} ~~But~~ the learned Judicial Member observed as under in regard to the same aspect:-

"Nodoubt, the applicant herein had approached the High Court and the Tribunal prior to the filing of this OA as already indicated. But whether denovo enquiry has to be ordered or not is a decision that should be taken by the competent authority bearing in mind the said facts and other circumstances. But as could be seen the applicant in this OA and the applicant in OA 509/86 and TA 7/92 are similarly placed in all respects. As a matter of fact, the accident in TA 7/92 occurred in 1981 and the accident in OA 509/86 occurred in 1983. In other two similar matters when the Bench has taken the view of leaving it open to the competent authority whether to start denovo enquiry ~~xxx~~ or not, there is absolutely no need to deviate from the said well established principle. Ofcourse in this OA an argument is advanced that the applicant is liable to be reinstated with full back wages and thus giving no scope to the respondents to hold denovo enquiry as against the applicant herein. The said argument is

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If the entire material available with the department was produced in the criminal case and the same was discussed by the said court while ordering acquittal, no purpose will be served in ~~xxxx~~ further continuing the inquiry or ordering denovo inquiry. Keeping in view the above principle, it is necessary to direct the competent authority, if it inclines to initiate denovo inquiry in regard to the incident referred to in the charge memo dated 7.2.1982 to peruse the judgment in CC No.319/84 which had become final, before taking a decision for initiation of the denovo inquiry.

8. In the result, the order dated 16.12.1992 passed by the 3rd respondent removing the applicant from service w.e.f. 27.12.1992 is set-aside and steps have to be taken for taking the applicant into service from the date of receipt of this order or from the date a copy of this order is produced by the applicant, whichever is earlier for it is not proper to keep him under suspension in regard to the incident which took place ~~am~~ a decade back. But liberty is given to the competent authority to initiate denovo inquiry in regard to the incident referred to in the charge memo dated 7.2.1982, if the said authority after perusing the judgment in CC No.319/84 and after keeping in view the observations in this order decides that it is the case where denovo inquiry has to be conducted. If denovo inquiry is not ordered, the applicant is entitled to consequent^{-ial} benefits. But if denovo inquiry is initiated, the intervening periods have to be dealt with as per rules.

9. The OA is ordered accordingly. No costs.

CERTIFIED TO BE TRUE COPY
P. S. S. Ramani
Date.....21.2.94.....
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

the charge memo dated 7.2.1982 against the applicant herein, the Guard of the passenger train No.423, and some others and by the judgment therein, the applicant herein and some others were acquitted, while the Guard of the passenger train was convicted. Thus, it is established that there was no negligence on the part of the applicant and he cannot be held responsible for the said collision. Thus, it has to be held that the learned administrative member is right in not giving liberty for conducting inquiry against the applicant in regard to the alleged negligence, urges the learned counsel for the applicant.

7. The question as to whether liberty has to be given for conducting fresh inquiry or for continuing the inquiry, when the matter comes before the Tribunal or Court after a decade or more after the incident, depends upon the gravity of the charge and as to whether there is any unreasonable delay on the part of the department. Keeping the same in view, the learned judicial member held that it is the case where liberty has to be given for denovo inquiry especially when similar view was taken by the Hyderabad Bench in OA 509/86 and TA 7/92. I feel with respect to the learned administrative member that the view of the learned judicial member has to be accepted as it is in conformity with well established principle and as the charge in this case is grave and there is no avoidable delay on the part of the department.

8. But it is well settled that whenever a criminal proceeding is initiated in regard to the very incident which is subject matter of the charge in the departmental proceeding and that criminal proceeding ends on acquittal, it is necessary for the disciplinary authority to look into the judgment of the court which decided that matter before determining as to whether it is the case where denovo inquiry has to be initiated or inquiry if any has to be continued. The reason behind it is as under:-

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Copy to:-

1. Secretary, Railway Board, Rail Bhavan, Union of India, New Delhi.
2. The Divisional Safety Officer, S.C. Railways, Vijayawada.
3. Sr. Divisional Safety Officer, S.C. Railways, Vijayawada.
4. The General Manager, S.C. Railways, Rail Nilayam, Sec'bad.
5. One copy to Sri. G.V. Subba Rao, advocate, CAT, Hyd.
6. One copy to Sri. N.R. Devaraj, SC. for Rlys, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

902211
Rsm/-

Central Administrative Tribunal : Hyderabad Bench

Enclt. No. CAT/Hyd/Jud/SC/35/95 Date: 11/7-95

The Order of the Supreme Court
of India in SLP. No. 8667/95 dt.
3-4-95 may be communicated to the
Concerned.

(Signature)
S. G.

(Signature)
DR (J)

(Signature)
Registrar

To

1. The Secy., Railway Board,
Rail Bhawan, Union of India
New Delhi. ✓
2. The Divisional Safety Officer,
S.C. Railways, Vijayawada. ✓
3. The Sr. Divisional Safety Officer,
S.C. Railways, Vijayawada. ✓
4. The General Manager,
S.C. Railways, Rail Nilayam, Sec bad. ✓
5. Mr. G.V. Subba Rao, Advocate, CAT Hyd.
6. Mr. N.R. Desai, SC for Rlys, CAT Hyd
7. One spare copy. —