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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.458/92

Date of Order:22.2.1994

BETWEEN:

M.Nagaraja Rao

.. Applicant

A N D

Union of India Represented by :

1. The General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.
 2. The Chief Mechanical Engineer,
South Central Railway,
Secunderabad.
 3. The Additional Divisional Railway
Manager, South Central Railway,
HUBLI.
 4. The Assistant Mechanical Engineer,
(Loco) South Central Railway,
Hubli.
 5. Loco Foreman, South Central Railway,
Castle Rock.
- .. Respondents.

Counsel for the Applicant

.. Mr.G.V.Subba Rao

Counsel for the Respondents

.. Mr.N.R.Devraj

CORAM:

HON'BLE SHRI V.NEELADRI RAO : VICE-CHAIRMAN

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

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OA 458/92

Judgement dated 22.2.94

{ AS PER JUSTICE SHRI V. NEELADRI RAO, VICE-CHAIRMAN }

Heard Shri G.V. Subba Rao, learned counsel for the applicant and Shri N.R. Devaraj, learned Sr. Standing counsel for the respondents.

2. The applicant was removed from service by way of punishment by order dated 27.1.92. of Respondent 3 (Additional Divisional Railway Manager, Hubli) and the same was confirmed by the appellate authority as per order dated 27.4.92. The same is challenged in this OA which was filed on 1.6.92.

3. The charge memo. was sent to the house address of the applicant at Secunderabad by Regd. post Acknowledgement due and the same was returned by the Postal authorities on 18.4.88 with remarks 'refused', according to the respondents. Senior Loco Inspector was appointed as Enquiry officer on 20.6.88. It is pleaded for the respondents that a copy of the proceedings of Respondent 3 appointing Shri E.A. Connor, Senior Loco Inspector as Enquiry Officer was affixed to the Notice Board. It is also pleaded for the respondents that the Enquiry officer fixed the enquiry on 13.9.88 and when the applicant was not present, he proceeded with the enquiry ex-parte and he held that the charge of unauthorised absence of the applicant from 20.1.88 ^{as} proved. Respondent 3 imposed

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the penalty of removal from service with effect from 15.11.88 as per order dated 9.11.88.

4. The applicant sent application dated 18.9.89 requesting the respondents to take him for duty. When the applicant was informed about ~~his~~ removal from service by order dated 9.11.88, he filed OA 224/90 before this Tribunal challenging the order of removal. The said application was allowed on 31.1.91 on the ground that the report of the enquiry officer was not furnished to the applicant and liberty was given to continue the enquiry after supply of the enquiry report to the applicant. After the report of the enquiry officer was furnished, the applicant submitted a representation and after consideration of the same, Respondent 3 passed the order dated 27.1.92 which was confirmed by the appellate authority by order dated 27.4.92.

5. The two fold contentions for the applicant are:

(1) that Respondent 3 is not competent to initiate the proceedings and pass the order of punishment of removal by alleging that ^{applicant} ~~he~~ was appointed by the General Manager and not by the Divisional Railway Manager.

(2) There is infirmity in proceeding with the enquiry ex-parte even without informing the applicant about the proceedings of Respondent 3 in appointing the enquiry officer as envisaged under rule 9 (9) (b) of Railway Service D&A rules and in view of the omission on the part of the

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enquiry officer in not informing the applicant about the date and venue of the enquiry and in not complying with the rules ^{9(11) and 9(12)} (D&A) rules) of the Railway services. Thus the enquiry is vitiated.

6. There is no force in the first contention. The proceedings dated 11.1.88 (vide page 21 of the material papers) whereby the applicant was re-appointed as Office Clerk was issued by the office of the Divisional Officer, Personnel Branch, Hubli. The relevant portion therein reads as under:-

"CPO/SC vide his letter No. P/MST/177 dated 20.11.87 has communicated his approval to re-appointment of Shri M. Nagaraja Rao (the applicant herein) Ex-Clerk DPO/C/UBL as Office Clerk as a fresh entrant."

7. It is urged for the applicant that as it is a case of re-appointment with the approval by the General Manager which was communicated by the C.P.O, it should be treated as a case of re-appointment by the General Manager. We cannot accede to the said contention ^{The order of} ~~that when the re-~~ ^{issued} ~~made~~ ^{made} by the Divisional officer, ^{Ceash} it does not seem to be an appointment by the Divisional officer merely because it was passed with the approval of the higher authorities. ^{to the effect} There is even a constitutional provision that a District Judge has to be appointed by the Governor after consulting the High Court. Merely because the Governor has to consult the High Court, it cannot be stated that it is not an appointment by the Governor. We have to ultimately consider as to who has issued the order

of appointment in order to determine as to who is the appointing authority and for that purpose it is not necessary to consider as to whether the said authority has to consult any authority or seek approval of any authority for appointment/re-appointment. Hence on the basis of the proceedings dated 11.1.88 referred to, it ^{has} ~~is~~ to be held that it is the Divisional Railway Manager, who ordered re-appointment of the applicant ^{is the appointing authority} ~~even though it is~~ a case of the re-appointment of the applicant by the DRM after obtaining the approval of the General Manager. Hence the contention for the applicant that the General Manager is the appointing authority in regard to his re-appointment is not ~~correct~~ ^{tenable}. As Respondent 3 is the appointing authority, he is competent to impose the penalty of removal from service.

8. Rule 9 9(b) of the Railway Services D&A rules reads as under:

" If no written statement of defence ^{is} submitted by the Railway servant, the disciplinary authority may itself enquire into the articles of charge or ~~or~~ may if it considers it necessary to do so, appoint under sub-rule an enquiry officer for the purpose and also inform the Government servant of his appointment. Rule 9 (11) reads that the Railway servant shall appear in person before the enquiring authority on such a date, and such a time within 10 working days from the date of appointment of the enquiring authority, as the enquiring authority may by a notice in writing may specify in this behalf or within such

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further time not exceeding ten days, as the enquiring authority may allow."

9. It is manifest from Rule 9(9) (b) that even in ^{as} ^{where} case a written statement of defence is not submitted, it is obligatory on the part of the disciplinary authority to inform the delinquent employee about the appointment of the enquiring authority for the purpose. The delinquent may appear before the enquiring authority as envisaged under Rule 9 (11) if he is informed about the date, time and venue of the enquiry by the Enquiring authority. Thus by reading those 2 sub-rules, it indicates that even when the delinquent employee has not submitted the defence statement, it is still necessary for the disciplinary authority to inform the applicant about the appointment of enquiring authority and it is also necessary for that enquiring authority to inform the delinquent official about the date, time and venue of the enquiry.

10. But Shri N.R. Devaraj, learned Sr. Standing counsel for the respondents is relying upon Rule 9 (23) which is as follows:-

"If the Railway servant, to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex parte."

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11. By referring to the said sub-rule, it is ^{urged} ~~that it is~~ open to the enquiring authority to proceed *exparte* when the written statement of defence was not submitted and there is no need to inform the applicant either about the proceedings in regard to the appointment of the enquiry officer or about the date, time and venue of the enquiry, and as it is a case of refusal of charge memo. ~~it is~~ ^{has} to be construed that the applicant was informed about the charge memo. and he failed to submit the written statement and hence *exparte* proceedings ^{though} cannot be held as vitiated even ~~the~~ proceedings about the appointment of enquiry officer and the ^{time and venue} date ~~of~~ the enquiry were not intimated.

12. But it is necessary to construe rule 9(9)(b) and rule 9 (23) harmoniously. When rule 9 (9) (b) is explicit to the effect that even when written statement of defence was not submitted, the applicant has to be informed about the proceedings in regard to the appointment of the enquiring authority, ^{it} ~~it~~ cannot be stated that on the basis of Rule 9 (23) ~~that~~ there is no need to inform the delinquent about the said proceedings for proceeding *exparte*.

13. When once it is necessary to inform the delinquent about the proceedings in regard to the appointment of enquiring authority, it has to necessarily be concluded that the enquiring authority has to inform the delinquent about the time, date and venue of the enquiry.

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The delinquent may participate in the proceedings even without submitting the defence statement. Rule 9 does not state that it is not open to the delinquent employee to participate in the enquiry ^{when} though he has not submitted any written statement of defence. On the basis of ~~mere~~ communication of charge, the delinquent cannot ~~know~~ as to whether the disciplinary authority himself is going to conduct the enquiry or whether he is going to appoint enquiring authority and as to when and where the enquiry is going to be conducted.

14. Keeping in view the principles of natural justice and on the basis of harmonious constr^uction of Rule 9 (9) (b) and 9 (23), we feel it proper ^{to hold} that even in a case where the delinquent has not submitted the written statement of defence, after he received the charge memo. or after he is deemed to have received the charge memo., it is obligatory upon the disciplinary authority to inform the delinquent employee about the proceedings in regard to the appointment of the enquiring authority as contemplated under Rule 9 (9) (b) and then it is necessary for the enquiring authority to inform the delinquent about the time, date and venue of the enquiry as envisaged under Rule 9 ⁽¹¹⁾ ~~above~~.

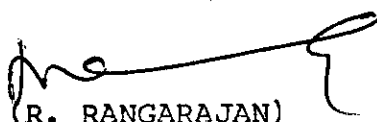
As the same was not complied with in the exparte enquiry proceedings against the applicant, the enquiry has to be held as vitiated and accordingly the order of punishment ~~has to be~~ set aside.// But it is a case where liberty has to be given to Respondent 3, the disciplinary authority to

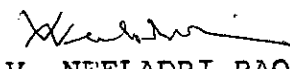
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proceed with the enquiry from the stage after
issual of charge memo. Of course, if the appli-
cant requests, he may be given the copy of the
charge memo. If the earlier enquiring authority
is not available in the office, it is open to
Respondent 3 to appoint another enquiring authority
~~and that fact has to be mentioned~~ and the fact
as to whether the enquiring authority will continue
or whether another enquiring authority is appointed
has to be intimated to the applicant. It is
needless to say that the enquiring authority has
to inform the applicant about the time, date
and venue of the enquiry and proceed in accordance
with the rules.

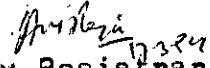
14. The OA is ordered accordingly. No costs.


(R. RANGARAJAN)
Member (Admn.)


(V. NEELADRI RAO)
Vice-Chairman

Open court dictation

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Deputy Registrar(Judl.)

Copy to:-

1. The General Manager, South Central Railway,
Union of India, Rail Nilayam, Secunderabad.
2. The Chief Mechanical Engineer, South Central Railway,
Secunderabad.
3. The Additional Divisional Railway Manager, South
Central Railway, Union of India, Hubli.
4. The Assistant Mechanical Engineer, (Loco), South Cen-
tral Railway, Hubli.
5. Loco Foreman, South Central Railway, Castle Rock,
6. One copy to Sri. G.V.Subba Rao, advocate, CAT, Hyd.
7. One copy to Sri. N.R.Devaraj, SC for Rlys, CAT, Hyd.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

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

AND

THE HON'BLE MR. A. B. GORTHY : MEMBER (A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

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

Dated: 22/2/1994.

ORDER/JUDGMENT: —

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

O.A.No.

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.

