

(100)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

D.A. No. 353/92.

Dt. of Decision : 29.11.94.

R.V.RAMANA MURTHY

.. Applicant.

Vs

1. Divisional Operating Superintendent,
SC Rly, Hyderabad (MG) Division,
Secunderabad.
2. Divisional Railway Manager,
SC Rly, Hyderabad (MG) Division,
Secunderabad.
3. Chief Operating & Power Superintendent,
SC Rly, Rail Nilayam,
Secunderabad.
4. General Manager,
SC Rly, Rail Nilayam,
Secunderabad.

.. Respondents.

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

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

CORAM:

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

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

O.A.No.353/92.

Pre-delivery Judgment in the above O.A. typed as per
Hon'ble Sri R.Rangarajan, Member(A) for concurrence
please.

H.M. (A)

24/11/94

G. Rangaiah
(G. Rangaiah)
Senior P.A.

HVC

JUDGMENT

X as per Hon'ble Sri R.Rangarajan, Member(Administrative) X

Heard Sri G.V.Subba Rao, learned counsel for the applicant and Sri D.Gopal Rao, learned Standing Counsel for Railways.

2. The applicant while working as Station Master at Adilabad Section Sahasrakund station ~~in Mudkhed~~ was issued with a major penalty charge-sheet dt. 25.2.1988 for having detained the down ADB Special Goods Train at his station from 1820 hrs. of 13.1.1988 to 0635 hrs. of 14.1.1988. The charge-sheet which was signed by DOS/MG/Hyd. was actually served on the applicant on 21.12.1988. The charge-sheet reads as below:-

"Shri R.V.Ramana Murthy while working as Ag.SM/ SHSK failed to maintain devotion to duty and unbecoming of Railway servant in that he has detained Dn.ADB Goods on 13.1.1988 from 1820 hrs. to 0635 hrs. of 14.1.1988. Thus he has violated Rule 3(i) of Railway Service Conduct Rules, 1966."

3. Two documents namely TI/PAU report dt. 18.1.1988 and Guard/PAU report dt. 17.1.1988 were the listed documents to sustain the charges. Two witnesses namely S/Shri Padmanabham, TI/PAU and T.Satyanarayana, Guard/PAU were also cited in the charge-sheet as prosecution witnesses.

4. The enquiry officer was changed thrice due to various reasons, and finally A.O./Akola was appointed as the Enquiry Officer to go into the case, duly intimating the applicant. The enquiry officer submitted his report on 24.2.1990 and a copy of the enquiry report had been sent to the applicant

on 16.3.1990. The applicant submitted his detailed explanation on the enquiry report on 13.3.1990, denying all the charges. The disciplinary authority after going through the enquiry report and after considering his representation imposed the penalty of removal from service on the applicant with effect from 21.12.1990 as per the Memo No.Y/T/194/I/9/88 dt. 18.12.1990 (page-24 of the material papers). The applicant submitted an appeal to R-3 vide his appeal dt. 30.1.1991. This appeal was rejected by the appellate authority by his order dt. 4.6.1991 bearing No.P.94/HYB/RVRM/1399 (page-27 of the material papers). Thereafter he filed a Review Petition to R-4 which was disposed off confirming the penalty of Removal from service by order dt. 10.2.1992 (page-29 of the material papers).

5. Aggrieved by the above quoted orders, he has filed this OA assailing those orders and praying for quashing the same as illegal, arbitrary, and unconstitutional and violative of Article 311(2), 14, 16 & 21 of the Constitution and reinstate him into service with all consequential benefits.

6. To appreciate the contentions, it is necessary to understand the train working method in the section Mudkhed and Adilabad.

7. The section Mudkhed-Adilabad is an uncontrolled single line section worked on paper line-clear system. The central control at Secunderabad can contact on the control phone only the end stations Adilabad and Mudkhed on this section. The stations in between these two stations cannot be contacted by Central Control and any message to be sent to the in between stations has to be despatched

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through Guards of the scheduled Passenger trains. The trains are worked from station to station by obtaining line clear through the Morse telegraph instrument. The section is worked only during the day time from 0600 hrs. to 1830 hrs, and the Station Masters in this section are rostered under "Essentially Intermittent" classification. If any Goods Train is to run beyond rostered hours between 1830 hrs. to 0600 hrs. of next day morning suitable advance information has to be given to all the stations in the section for the station staff to be present during that period to receive and despatch the trains. Station staff working beyond their rostered duty hours have to be paid overtime.

8. With the above background, the contentions of the applicant have to be analysed. Number of contentions were raised both on technical and merit grounds. The main contention of the applicant on merit is that the findings of the enquiry report are based on no evidence.

9. The applicant contends that the important documents (TSR for short) to prove the charges viz. Train Signalling Register/of Sahasrakund and Himayathnagar stations" were not produced even when asked for. The train notice which informs in advance the running of Goods Trains during night time i.e. between 1830 hrs¹ of the previous day to 0600 hrs. of the next day was not issued to reach all the stations in that uncontrolled section as envisaged in the Station working instructions of Sahastrakund station. Only the report of the TI/PAU and Guard/PAU were listed as relied upon documents. He further states that the report of TI/PAU cannot be relied upon as he is biased towards him. Only S/Shri Padmanathan, TI/PAU and T.Satyanarayana, Guard/PAU were shown as prosecution

witnesses. At his instance only the Guard and the Driver of the Down Adilabad Goods Train were examined as defence witnesses. The very important witness viz. the Station Master of Himayathnagar Station, who was reported to have given the line clear to Sahasrakund Station at 1900 hrs. on 13.1.1988 was not included as one of the witness^{-es} to prove that the line clear was given by him as alleged by the respondents. An extract of the train entries signed by S.M./HEM at Folio 58 and his statement at Folio 59 was only produced. This was also not given to the applicant along with the charge-sheet or even at the time of enquiry to examine its authenticity.

10. Train Signalling Register is one of the important documents maintained at stations to record the timings of receipt and despatch of the trains from the station and it also gives the details of the private numbers exchanged for the receipt and despatch of trains date-wise. These documents will clearly show whether the Down Adilabad Goods Train had been granted line clear to move from Sahasrakund station to Himayathnagar station and if so, the details of receipt of the line clear by Sahasrakund station and the private numbers exchanged between the stations in this connection would have been recorded in the train signalling register of both Sahasrakund and Himayatnagar stations. The non-availability of the records at the Sahasrakund station has been admitted by the respondents themselves in the counter affidavit. Even the TI/PAU Sri S.Padmabhan, while being cross-examined during enquiry on 24.2.1990 has admitted in answer to question No.22 that the "records at present is not available." The Station Master, Himatnagar station who had reported to have given the line clear to

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Sahasrakund station on 13.1.1988 had already expired and hence his evidence was also not available at the time of enquiry as admitted by Shri Padmanabhan in his deposition. It is also reported that no report had been obtained from Station Master, Himayatnagar, immediately after the incident on 13.1.1988 or subsequently before the death of the Station Master, Himayatnagar in connection with the factual position regarding the granting of line clear to the said Goods Train on that day. In our opinion, the failure of the respondents or the concerned officials of the section in collecting and preserving the necessary evidence has resulted in the enquiry being conducted ~~perfunctorily~~. The only evidence that was produced in support of the line-clear having been given by the Himayatnagar station is the extract of the Train Entries Signed by S.M./HEM and his statement on the "Train Signalling Register." This extract is only in regard to the particular train and did not give any details regarding the receipt and despatch of the trains at Himayatnagar station on that day. There is every possibility that Station Master, Himayatnagar could have inserted the entry of giving line clear to this Goods Train to safeguard his position and to save his skin if an allegation is made against him regarding his failure to grant line clear to the Down Adilabad Goods Train. In order to ascertain the authenticity of this entry and to see whether the entry has been made properly without any overwriting, erasing or improper insertion, we had asked the learned counsel for the respondents to produce the original T.S.R. of Himayatnagar station. Though he offered to produce the said document, he later submitted that this Register is also destroyed during some riot in that station. The records of the Sahasrakund station

were also not available even at the time of enquiry. The applicant had no opportunity to examine these records. As regards Sahasrakund station, the applicant vehemently states that he did not get line clear and hence no entry has been made in the Station Register of Sahasrakund station on that day. In the absence of the above documents and death of the Station Master, Himayatnagar who was on duty at that station on 13.1.1988, we have to conclude that the enquiry report is not based on either reliable oral or documentary evidence. As the relied upon documents were not made available to the applicant even at the time of enquiry, it has to be held that the principle of natural justice is not followed.

11. The learned counsel for the applicant relying upon 1993(1)S.L.J.(CAT-Ernakulam) 171 - P.S.Gopala Pillai Vs. Union of India and 2 ors. I had stated that mere production of the extract of the TSR of the Himayathagar station without the competent witness to affirm the same cannot prove that the line clear was granted. As the Station Master, Himayatnagar had expired even before the enquiry he was not available to authenticate this document. Because of the view, we have already taken, there is no need to further go into this issue.

12. It is stated by the applicant in the OA that advance intimation of 12 hrs. had to be given in this section whenever any unscheduled trains are worked in that section. The extract of the Station working instructions of the Sahasrakund station in this connection is reproduced below:-

"Whenever a non-scheduled train is required to be worked advance intimation of 12 hours will be given. Attendance of staff must be arranged

and the signal lamps kept burning for passage of trains during nights."

13. The respondents in their counter affidavit have not denied such instructions having been incorporated in the Station Working instructions. It is only stated in the counter affidavit that the "intimation can be at times verbal since in Railway working most of the instructions are conveyed verbally and they are implemented by the Station Masters as the dictum of discipline warrants." This appears to be a unsatisfactory remark. In an uncontrolled section where the staff are rostered to work on EI Classification and there is no night working, it will be very difficult to arrange the Station staff if the instructions are conveyed verbally and that too at the last minute. In order to ensure availability of staff, the train working instructions stipulates the advance intimation of 12 hours. Sri Padmanabhan, TI/PAU in his deposition dt. 24.2.1990 in answer to question No.21 had stated that there is no record regarding issue of train message in connection with the working of the said goods train on 13.1.1988 and also the receipt of that message by Station Master, Himayatnagar. In view of the non-availability of the record of the issue of Train Message and its receipt by Station Master, Himayatnagar, there is a possibility that the line clear may not have been given by S.M./HEM. Nothing can be definitely said because of the fact of non-availability of record regarding issue of the T.N. message and the non-availability of the TSR of Himayatnagar station and Sahasrakund station.

14. The respondents in their counter affidavit stated that even if the Station Master, Himayatnagar has not given line clear for the Goods Train and there was no response from Himayatnagar station, the applicant should have taken recourse to the rule stipulated in Appendix III of G & S.R. to despatch the Down Adilabad Goods Train, from his station on that day. As per this rule, "the Station Master who has a train to despatch through the affected block section shall open communications by establishing contact with the Station Master of the Block Station at the other end of the affected block station by sending an engine or self-propelled vehicle or any other vehicle." This would mean that Station Master, Sahasrakund (applicant herein) should have despatched engine of the Goods Train to establish contact with Himayatnagar station when he did not get line clear from that station ~~and there is no response~~ from that station for his enquiries on the Morse instrument. As he failed to take recourse to this mode of despatching the Goods Train waiting in his station, he had failed to discharge his duties.

15. In the rejoinder by the applicant it is stated that the above said rule in Appendix III of the G & S.R. is resorted to only when all communications fail and as on that date in question, there was no failure of communication, the applicant did not take recourse to that rule and the Stations Himayatnagar and Sahasrakund were closed at 1830 hrs. as per rule.

16. In the Enquiry also we do not find any statement by any of the witnesses in regard to the above mode of working. No question had also been put to the applicant in regard to this mode of working. Even the Guard and Driver

of the Goods Train who were also supposed to be aware of this rule, did not appear to have sounded the applicant on that day to work following this rule.

17. Though, non-following of the above said rule as contemplated in Appendix III of G & S.R. at this juncture may not be construed as a violation of the above said rule, the applicant could have taken ~~the~~ initiative to take recourse to this rule. Under the circumstances explained above the omission in following this rule on his part in this connection may be an error of judgment. The applicant cannot be held responsible for this lapse as an error of judgment cannot be held against him.

18. In view of what is stated above, we conclude that there is no clear proof of the applicant having deliberately detained the Down ADB Goods Special on that day. Hence, we feel that the charges are not proved conclusively and hence the punishment has to be set aside. As we are disposing of this OA on merits there is no need to go into other contentions.

19. In the result, the impugned orders dt. 18.12.1990 of the disciplinary authority removing the applicant from service and confirmation of the same by the disciplinary authority by order dt. 4.6.1991 and the reviewing authority by its order dt. 10.2.1992 have been set aside. The applicant should be reinstated in service ~~forwards~~ with full back wages as per his entitlement. His original seniority has to be restored and if he is due for promotion on that basis he should be promoted from that date when his immediate junior was promoted following the rules for promotion.

20. The applicant should present himself with this order to R-1 for further posting by 6-12-1994. While reporting he should give his residential address for communicating him his place of posting by R-1. He should join at the place of posting after having got the posting orders from R-1 within a week from the date of receipt of the orders, failing which the period beyond ~~this~~ date will be debited to his leave account.

21. The OA is ordered accordingly. No costs.

Rangarajan

(R.RANGARAJAN)
MEMBER (ADMN.)

Neeladri Rao
(V.NEEELADRI RAO)
VICE CHAIRMAN

Date 29th November, 1994.

Grh.

Amriti
Deputy Registrar (J)

To

1. The Divisional Operating Superintendent, S.C.Rly, Hyderabad(MG) Division, Secunderabad.
2. The Divisional Railway Manager, S.C.Rly, Hyderabad(MG) Division, Secunderabad.
3. The Chief Operating & Power Superintendent, S.C.Rly, Railnilayam, Secunderabad.
4. The General Manager, S.C.Rly, Railnilayam, Secunderabad.
5. One copy to Mr.G.V.Subba Rao, Advocate, CAT.Hyd.
6. One copy to Mr.D.Gopal Rao, SC for Rlys, CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

pvm

Rangarajan