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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

O.A.No.1109/93

Date of Order:2.11.93

M.Baburao

.. Applicant

Vs.

1.Production Engineer, Office of Chief Work
Shop Manager, Loco Carriage and Wagon Workshop,
Lalaguda, Secunderabad.

2.Assistant Work Manager-III, Office of Chief Work
Shop Manager, Lalaguda, Secunderabad.

.. Respondents

Counsel for the Applicant : Mr.S.Lakshma Reddy

Counsel for the Respondents : Mr.N.V.Ramana
SC for Rlys.

CORAM:

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

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

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O.A.NO.1109/93

JUDGMENT

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

Heard, the learned counsel for the applicant, Shri S.Laxma Reddy and the learned Additional Standing Counsel for the respondents, Shri N.V.Ramana.

2. The applicant herein was working as Khalasi in Loco Shed, Lalaguda, Secunderabad. Charge memo dated 29.4.1993 was issued to the applicant and the material portion of the same is as under:-

"Whereas Sri M.Babu Rao, S/o Mandaiah, T.No. 47443, Khalasi, Foundry Shop/Lallaguda was involved in Crime Cases registered by the Lallaguda Police Station and convicted by the courts as detailed below:-

i) On 11.3.91 in Case No.115/91 U/S 9 of Andhra Pradesh Satta Gaming Act convicted and fined Rs.100/- by Honourable XIV MM Court/Secunderabad vide STC No.256/91 dt. 13.2.91.

ii) On 21.7.91 in Case No.293/91 u/s 9 of AP Gaming Act convicted and fined Rs.50/- by Honourable XIV MM Court, Secunderabad vide STC No.571/91, dt. 22.7.91.

iii) On 12.8.91 in case No.319/91, u/s 70'B' of C.P.Act convicted and fined Rs.30/- by Special XV MM Court, Secunderabad vide STC No.818/91 dt. 13.8.91.

iv) On 22.11.91 in case No.391/91 u/s 9 of AP Gaming Act convicted and fined Rs.50/- By the Honourable XVth MM Secunderabad vide STC No.1041/91 dt. 23.11.91.

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v) On 14.1.92 in case N_o.10/92 u/s 70'A' CP Act convicted and fined Rs.25/- by the Honourable XIV MM Court/Secunderabad vide STC No.26/92.on 20.1.92.

2. Besides, a ~~Row~~ Sheet has been opened against the said Sri M.Babu Rao on 14.3.93 by the P.S.Lallaguda to curb his criminal activities and to check his movements in the interest of public justice as he became danger to the society, creating fear amongst general public.

3. Whereas now it is considered that the conduct of the said Sri M.Babu Rao, which has led to his conviction in Criminal Cases by the Courts as stated above is as such as to render him further retention in the Public service undesirable.

4. Whereas the said Sri Babu Rao has suppressed the facts by not notifying to the administration about his conviction in the above said crime cases. Therefore, in exercise of the powers conferred by Rule 14(i) of the Railway Servants (D&A) Rules, 1968, the undersigned has provisionally come to the conclusion that the said Sri M.Babu Rao is not a fit person to be retained in Railway service and proposes to impose on him the penalty of removal from service.

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5. Sri M.Babu Rao, T.No.47443, Khalesi, Foundry/LGDS, is hereby given an opportunity of making representation on the penalty proposed which he may wish to make will be considered by the undersigned before passing the final orders."

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On receipt of the said charge memo, the applicant submitted his explanation. The disciplinary authority passed the order dated 25.5.1993 removing the applicant by way of punishment. The appeal thereon was dismissed. It is challenged in this OA.

3. It is manifest that the action was taken under Rule 15 of the Railway Servants (Discipline & Appeal) Rules on the basis that the charge memo is in view of the penalty imposed upon the applicant in the five STC cases referred to. But it is evident from the charge memo that the rowdi sheet opened on 14.5.93 in regard to the applicant by the Police Station, Lalaguda, Secunderabad is also referred to as one of the charges. But the rowdi sheet cannot be treated as penalty imposed on the basis of conviction of criminal charge. Rule 14(1) of the Railway Servants (Discipline & Appeal) Rules, 1968 reads as under:-

"Notwithstanding anything contained in Rules 9 to 13:

(i) Where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) xxxx xxxx xxxx xxxx xxx

(iii) xxxx xxxx xxxx xxxx xxx

The disciplinary authority may consider circumstances of the case and make such orders thereon as it deems fit;"

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It lays down that no inquiry need be conducted in accordance with the rules 9 to 13 if action is contemplated on the basis of the penalty imposed on a railway servant on the ground of misconduct which had led to his conviction on criminal charge. But, thereby it cannot be inferred that the inquiry under Rules 9 to 13 can be dispensed with even in cases where action is taken not only on the basis of the punishment imposed by the criminal courts but also on the basis of some other acts or omissions on the part of the employee or any material with regard to the employee.

Rule 9(1) states that no order imposing any of the penalties specified in clauses 5 to 16 of Rule 6 which are generally referred to as major penalties shall be made except after an inquiry is held, as far as may be, in the manner provided in Rules 9 and 10. Removal is one of the major penalties.

~~When~~ ^{one} The said major penalties ^{are} contemplated, inquiry under Rules 9 and 10 ^{is} ~~as~~ mandatory unless an exception is provided in the Railway Servants (D&A) Rules. Rule 14 is in the nature of an exception to the rules provided under Rules 9 and 10. It is evident from the non-Obstante clause referred to in Rule 14, if rule 14 has to be invoked, the authority has to be satisfied that the matter strictly comes within the ~~px~~ purview of this rule. Rule 14(i) is ^{un-} ~~as~~ ambiguous. It is applicable only in a case where punishment has to be awarded on the basis of the conviction of criminal charge if it is in regard to the conduct of a Railway servant. The reason behind is that when one ~~an~~ employee is convicted, there was already an ~~agxxxxxxx~~ adjudication in regard to the matter which was the subject matter of the criminal proceeding and hence, there is no need to have separate inquiry in regard

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to the same when it is also the subject matter of the disciplinary proceeding. But it cannot be stated that there is such an adjudication if some other matter which was not considered by any court is also referred to as a charge in addition to the misconduct which is led to the conviction ^{of} ~~on~~ the Railway employee on a criminal charge. When the matter is not decided by any court, it has to be necessarily a matter for inquiry if disciplinary proceeding is initiated in a case where major penalty is contemplated. Thus, when disciplinary action is intended to be taken on the basis of some material besides penalty imposed in the conviction of criminal charge, it is necessary to conduct inquiry in accordance with the rules 9 to 13. As no such inquiry was conducted in this case when the charge memo refers to rowdi sheet besides convictions, the entire proceeding culminating in the order of removal has to be held as vitiated and accordingly it is set-aside.

4. But this order does not debar the disciplinary authority to take action on the basis of the charge memo dated 29.4.1993 by conducting inquiry in accordance with the rules 9 to 13.

5. In the result, the order dated 25.5.1993 removing the applicant from service as confirmed by the appellate authority is set-aside and the applicant has to be reinstated. If the disciplinary authority is going to proceed with the inquiry under Rules 9 to 13, Rule 5 is attracted in regard to the intervening period i.e., from the date of removal till the date of reinstatement. If no such inquiry is conducted, the

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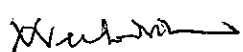
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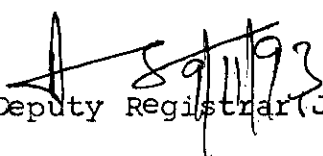
applicant is entitled to full salary and the allowances for the period from the date of removal till the date of reinstatement and that period counts for seniority, increments, pension and retiral benefits. Time for compliance is by 6.12.1993.

6. The OA is ordered accordingly. No costs.


(R. RANGARAJAN)
MEMBER (ADMN.)

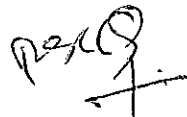

(V. NEELADRI RAO)
VICE CHAIRMAN

DATED: 2nd November, 1993.


Deputy Registrar (J)

vsn
To

1. The Production Engineer,
O/o Chief Work Shop Manager,
Loco Carriage and Wagon Workshop,
Lalaguda, Secunderabad.
 2. The Assistant Work Manager-III,
O/o Chief Work Shop Manager,
Lalaguda, Secunderabad.
 3. One copy to Mr. S. Lakshma Reddy, Advocate, CAT. Hyd.
 4. One copy to Mr. N. V. Ramana, SC for Rlys, CAT. Hyd.
 5. One copy to Library, CAT. Hyd.
 6. One spare copy.
 7. one copy to deputy Registrar (J) CAT. Hyd.
 - 8) copy to All reporters as per Standard list of CAT. Hyd.
- pvm

Mr. S. Lakshma Reddy
per


TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

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

AND

THE HON'BLE MR. R. Ranga Rao A. B. GORTHI : MEMBER (A)

AND

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

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M (A)

Dated: 2-11-1993

ORDER/JUDGMENT:

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

in

O.A. No. 1109/93

T.A. No. (W.P.)

Admitted and Interim directions
issued

Allowed.

Disposed of with directions

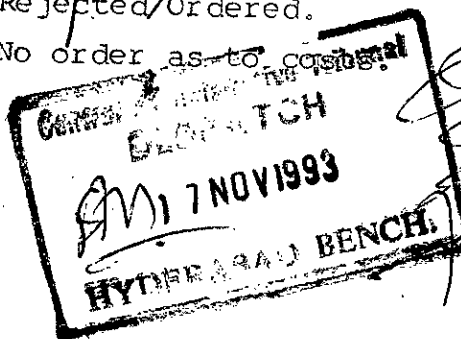
Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.



No impact on
operation slip of Sd HRRR MA