

(36)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 745/93

DATE OF ORDER : 12-11-1996.

Between :-

Syed Hakim Alisha

... Applicant

And

1. Sr.Divisional Electrical Engineer,
(Traction) S.C.Railway, Vijayawada.
2. Divisional Railway Manager,
S.C.Rlys, Vijayawada.
3. Chief Electrical Loco Engineer,
S.C.Rlys, Rail Nilayam, Sec'bad.
4. Chief Operating Manager,
S.C.Rlys, Rail Nilayam,
Sec'bad.

... Respondents

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

Counsel for the Respondents : Shri D.Francis Paul, SC for Rlys

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CORAM:

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI : VICE-CHAIRMAN

THE HON'BLE SHRI H.RAJENDRA PRASAD : MEMBER (A)

(Order per Hon'ble Justice Shri M.G.Chaudhari, VC)

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Shri Yathi Raju for Shri G.V.Subba Rao for the applicant.

Standing counsel for the Respondents Shri D.F.Paul absent. The applicant Shri Syed Hakim Alisha was working at the material time as Traction Asst. at Bitragunta under the S.C.Railways.

He had joined the Railway service as a Khalasi in the year

- 2 -

1970 and in due course was promoted on 5-8-91. A disciplinary proceeding was initiated against him under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 for imposition of Major Penalty, on 1-10-91. The charge levelled against him was that while working with Driver D. Subbaiah as Assistant on 5/6-8-91 for 477 Passenger Ex. MAS BTTR, he performed Shunting with lock No. 20757/WAG-I unauthorisedly in the absence of Driver on the Loco while coming on to the formation of 477 which caused heavy bump at GDR resulting in the injuries to Railway Staff and passengers and had thus committed serious mis-conduct thereby violating GR 4.20 item No. I and GR 5.13 Item 3 and SR 5.13 (III) and (I)(ii) and 3(I)(ii) of Railway Servants (Conduct) Rules, 1966.

2, The applicant submitted his defence statement in reply to the charge memo. One Sri KSRK Murthy was appointed as Enquiry Officer. In his statement the applicant did not deny the occurrence of the mishap ^{but} and rather stated that he was fully aware that performing shunting by him was prohibited and sought to offer an explanation that he had obeyed the instructions of the Driver who had asked him to take up the shunting.

3. At the enquiry the applicant chose to defend himself personally. On behalf of the prosecution 3 witnesses were examined viz, D. Subbaiah, the passenger Driver VTTR, Sri B. Benjiman,  Shg. Jamedar/GDR and Sri P. Kondaiah, PMA/CRR and documentary evidence was introduced. The applicant was examined at the conclusion of the enquiry by the Enquiry Officer.

- 3 -

4. The Enquiry Officer held the charges proved. The Disciplinary Authority viz., Sr.Divisional Electrical Engineer, BZA, accepted the findings recorded by the Enquiry Officer and on his own part he carefully examined the proceedings and recorded his own reasons to hold that the applicant was proved guilty of charges levelled against him. In the light of that conclusion he awarded punishment of reversion as Khalasi at the bottom of scale Rs.750-960 (RSRP) i.e. Rs.750/- basis pay and totally debarring him to enter into running cadre in future with effect from 25-3-92. He directed that the applicant may be posted as Khalasi under TFR/BTTR. That order is dt.23-3-92.

5. An appeal preferred by the applicant against the order of punishment aforesaid was dismissed by the Divisional Railway Manager, vide memorandum dt.30-6-92. The appellate authority after considering the record and the appeal confirmed the penalty imposed and also held that as the applicant was not competent and was not authorised to perform shunting he had done so dis-obeying the rules despite having full knowledge of the rules and the act was totally against Safety Requirements and had to be dealt with severely. Hence he rejected the appeal and maintained the penalty imposed. The applicant preferred a revisional application under Rule-25 of the Railway Servants (Discipline & Appeal) Rules. However the same was rejected by the Reviewing Authority by order dt.12-3-93. The applicant seeks to challenge the above mentioned orders and prays that these being illegal, arbitrary, unconstitutional and violative of Article 311 (2), 14 and 16 of the constitution be quashed and the respondents be directed to restore him to his original grade with all consequential

[Signature]

....4.

benefits. It is unfortunate that the standing counsel for the respondents is not present to assist us. No officer of the Railways is present with the Enquiry Record. The learned counsel for the applicant was good enough to produce before us copy of the Enquiry Proceedings including the statements of the witnesses and we have gone through the same.

6. The Respondents however have filed their counter and we shall refer to the statements made therein at appropriate stage. The applicant has also filed a rejoinder in answer to the counter.

7. After going through the Enquiry Report, the statement of witnesses and the findings recorded by the 3 authorities below we find it difficult to take a view that the Enquiry has not been conducted in accordance with the Law. The record shows that the Enquiry was fairly elaborate and the witnesses were exhaustively examined. It is not open to us to re-appreciate the evidence in as much as we do not find any procedural irregularity or parvity in the enquiry proceedings or the orders passed by the authorities below. Once it is found that it is not open to interfere with the findings, it is also not open to us to enter into the question of proportionality of the punishment awarded or its quantum.

8. The learned counsel for the applicant however endeavoured to show that the enquiry proceedings were bad in Law as there was violation of principles of natural justice. The first point urged is that the applicant was not afforded

opportunity to cross examine the witnesses at the enquiry.

This contention was not raised in the appeal. In the revisional application it was alleged that he was not allowed cross examination of the witnesses to elicit the truth thus denying him the opportunity to put up the defence. While repelling this allegation it is stated in the counter by the respondents that firstly the applicant had accepted the charge vide answer to Question No.1 during the enquiry. However even so all the reasonable opportunities were offered to him and all the witnesses shown in the charge sheet were examined in his very presence. The applicant was given opportunity to say if he had anything further at the conclusion of the enquiry. He stated in reply to Question No.29 that he was satisfied with the mode of conduct of the enquiry. It is further stated that the applicant never raised the plea of not permitting cross examination either during the enquiry or in his review/appeal and the allegation was clearly an after thought. Although the statement is not accurate so far as the reference to review is concerned yet after going through the record of the proceedings particularly the statements of the witnesses we do not find that any such opportunity was sought or denied. We find that the witnesses were examined with reference to the evidence of the other witnesses and questions have been put which are in the nature of cross examination. The grievance made now also loses its value as in the rejoinder the applicant has not categorically refuted the contention made by the Respondents in the counter. A bold statement has been made in para-6 of the rejoinder that the applicant was not given reasonable

(44)

opportunity to defend himself and was not aware of the rules. The point of denial of opportunity to cross examine the witnesses has not been raised. Coming to the original application, also it is merely stated that the enquiry officer had conducted the enquiry by examining the witnesses without giving opportunity to cross examine the witnesses. We are not impressed by this statement for the circumstances mentioned above.

9. The second contention urged by Shri Yathi Raju is that the applicant was not given opportunity to have a defence assistant to conduct his defence and thus a fair opportunity had not being given to the applicant to defend himself at the enquiry. In the application it is averred that the applicant was not assisted by the defence counsel and he was not instructed to engage a defence counsel as per rules. However in that connection it is stated in the counter that the applicant indeed was questioned regarding defence counsel at Question No.2 at the enquiry but he had clearly stated that he would defend himself. That is also borne out from the answer given to Question No.2 as we notice from the record made available to us. The Question No.2 and its answer read as follows :

"Q. Are you assisted by Defence Counsel?"

"A. No. I can defend myself."

With this reply given by the applicant there is no substance in the grievance that he was not allowed Defence Assistant. No illegality in the proceedings can be read on that ground.

10. Shri Yathi Raju then submitted that the punishment awarded is contrary to the instructions and rules laid down in respect of imposition of major penalties. The instructions on

the point according to him prohibit imposition of penalty of reduction to a lower grade permanently. However the order of punishment here is not in the nature of permanently debarring the applicant for promotion declaring him unfit for the same. Although he is debarred for promotion for an indefinite period in the running cadre yet he is not debarred for promotion in other cadres. In that connection the respondents have clearly stated in para-3 (iii) of counter as follows :-

"He was reduced to lower post debarring him to running cadre only. This was not a permanent punishment. He was made ineligible to enter into running cadre only. The applicant can have his avenue of promotion only in non-running cadre only."

It is also stated in para-3 (ii) as follows :-

"It is denied that the applicant was permanently reduced to the lower cadre of Khalasi. The applicant can always seek for his promotion in other cadres except in running cadre."

11. Thus it cannot be held that no avenue of promotion is left open to the applicant. We therefore find it difficult to accept submission of the counsel for the applicant that the order of punishment is contrary to the rules.

12. The Original Application therefore is liable to be dismissed. We however notice that the applicant joined his service as Khalasi in the year 1970 and he had put in nearly 20 years service before the incident resulting in his suffering the penalty occurred in 1991. The applicant is also now unable to progress in running cadre. At the time when the order of punishment was passed he was in the scale of Rs.950-1500 and was drawing the pay of Rs.1275/- pm. Reduction ^{of pay to} ~~of~~ Rs.750/- at the bottom of the scale in the grade of Khalasi is by itself sufficiently harsh punishment. We therefore hope that the case of the applicant will be considered on its own merits without being influenced by the punishment awarded to him for promotion to which he may be eligible in non-running cadre as and when he seeks promotion of that nature as is open to him to do in view of the statement of the respondents in the counter quoted above. Since the respondents say that the applicant should seek such avenue, there is no doubt that it is open to the applicant to seek consideration of his case for promotion to which he may be eligible by approaching the Respondents by means of a proper representation. In the result subject to the observations made herein above, the O.A. is dismissed. No order as to costs.

H.Rajendra Prasad
(H.RAJENDRA PRASAD)
Member (A)

M.G.Chaudhary
(M.G.CHAUDHARI)
Vice-Chairman

Dated: 12th November, 1996.
Dictated in Open Court.

Deputy Registrar (D.R.)

45

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FILED BY

CHECHED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE M.G.CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD
MEMBER(ADMN)

Dated: 12-11-1996

~~ORDER~~ JUDGMENT

M.A./R.A/C.A. NO.

in
O.A.No. 745/93

T.A.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.

p.m.

