

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A.NO. 625 of 1987 ✓

Date of Order: 28/11/89

P.Xavier

Versus

..Applicant

The General Manager,
South Central Railway,
Railway Station, Secunderabad,
and 3 others

..Respondents.

...

For Applicant: Sri G.V.Subba Rao

For Respondents: Sri P.Venkatarama Reddy, SC for Railways.

...

C O R A M:

HON'BLE SHRI B.N.JAYASIMHA: VICE CHAIRMAN

HON'BLE SHRI J.N.MURTHY: MEMBER (JUDICIAL)

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(Judgment delivered by Shri B.N.Jayasimha, Vice Chairman)

1. The applicant who was an Assistant Commercial Inspector, South Central Railway, Secunderabad, has filed this application seeking quashing of the order issued by the Chief Commercial Superintendent, in his Memo no.C.415/E/R/Staff/B5, dated 20-4-1987, imposing a penalty of removal ~~him~~ from service and the order No.P.90/D&A/HQ/PX/761, dated 18-8-1987, issued by the Chief Personnel Officer, South Central Railway, Sec'bad - Appellate Authority, rejecting his appeal dated 18-6-1987.

2. The applicant states that while he was working as Assistant Commercial Inspector in the Chief Commercial Superintendent's (CCS's) office, he was suspended from duty by the Assistant Commercial Superintendent (Rates), with

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effect from 15-12-1984. He was served with a Major Penalty Charge-sheet no.C.415/E/R/Staff/85/P.Xavier, dated 5/13-9-1985, by the 2nd respondent alleging that he had instructed the Refunds Clerk Mrs.Vijaya Laxmi of CCS Office (Refunds) and got the Pay Order No.030880 of 14-9-1984 for Rs.625.50 issued in favour of Sri A.J. Aranha, delivered to Mr.A.Babu Mahender Rao, Senior Clerk of DRM's office; that ~~he~~ he influenced the complainant Sri A.J.Aranha to withdraw the complaint lodged by him. An enquiry was conducted by the Enquiry Officer viz., Senior Enquiry Officer, South Central Railway and on the basis of the report of the Enquiry Officer, the Disciplinary authority - 3rd respondent, removed the applicant from service by an order dated 20-4-1987. The applicant thereafter submitted a detailed representation dated 8-6-1987 to the appellate authority - 2nd respondent. In his appeal, the applicant contended that the decision of the appellate authority is based on defective findings of the Enquiry Officer, that the disciplinary authority had failed to give a personal hearing before issuing the penalty advice, that the Complainant Shri A.G.Aranha did not attend in all the three sittings of 16-6-1986, 24-6-86 and 14-7-1986 and as per Railway Board orders when the complainant did not attend the enquiry after giving him/her three chances, the enquiry has to be cancelled; that the Enquiry Officer as well as the Disciplinary authority ought not to have relied on the evidence of interested witness Shri B.K.Singh Vigilance Inspector ; that the disciplinary authority as well as the Enquiry officer ignored the evidence of Sri S.Babu Mahendra Rao, who had stated that the applicant was no where in picture in regard

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attributed to him. It is well established in the course of the enquiry that the applicant is behind the offence of his involvement cannot be denied and the statement of Miss. Vijayalakshmi was rightly believed by the Enquiry Officer. It is true that the complainant ~~had~~ did not turn up for the enquiry despite the notices sent to him, but that does not in any way dilute the effect of the original complaint read with Exhibits P10 and P11. The enquiry was conducted in accordance with Railway Servants (Discipline and Appeal) Rules and the findings of the Enquiry Officer were based upon evidence and preponderance of probabilities. The applicant cannot invite the Tribunal to appreciate evidence. For these reasons, the respondents oppose this application.

4. We have heard the learned counsel for the applicant Shri G.V. Subba Rao and the learned Standing Counsel for the Respondents Shri P. Venkatarama Reddy.

5. Shri G.V. Subba Rao mainly challenges the order of removal on the following two grounds:
Firstly the Disciplinary Authority was not competent to remove the applicant from service, he not being the appointing authority as defined in Rule 2(1)(a) of the Railway Servants (Discipline and Appeal) Rules. He relies upon the decision of the Full Bench of this Tribunal in Gaffoor Mia and others Vs. Director DMRL (1988(2)SLJ (CAT). The Full bench held as follows:

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to the transaction between Babu Mahendra and also complainant A.G.Aranha; and that the penalty of removal imposed on him is very harsh and deterrant and effect his livelihood. The appellate authority, however, passed the order dated 18-8-1987 rejecting the appeal of the applicant. Aggrieved, by this order, he has filed this application stating that according to the Rule 2(1)(a) of the ~~Discipline~~ Railway Servants (Discipline and Appeal) Rules, the General Manager alone is competent to initiate disciplinary proceedings against him and hence the orders passed by the Additional Chief Commercial Superintendent is without jurisdiction. He also contends that the charges levelled against him are false and absolutely baseless and it has been levelled against him with an ulterior motive to victimise him.

3. The respondents in their counter ~~contend that~~ state that the applicant failed to maintain absolute integrity and devotion to duty in that he purposely instructed the refunds Clerk, Miss. Vijayalakshmi and got the pay order bearing no.030880 of 14-9-84 for Rs.625-50 issued in favour of Sri A.G.Aranna delivered to Shri A. Babumahendra Rao Sr.Clerk of Sr.DEN(BG)/SC , who did not have any authority to get the refund of said amount and thereby attempted to defraud the Railway Administration in collusion with Sri A.Babumahendra. The contention of the applicant that he is in no way connected with grant of refunds or correspondence pertaining to the grant of refunds is not correct. It is the duty of the applicant to verify the particulars connected with coaching refunds preferred by the parties, and he is in a position to play his role in the commission of the mis-demeanour

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Secondly, Shri G.V.Subba Rao, contends that the order of the disciplinary authority is also vitiated because the disciplinary authority passed the impugned order without furnishing a copy of the Enquiry Officer report to the applicant and affording him an opportunity to represent on the Enquiry Officer's report before Disciplinary authority passed the final order. He relies upon the Judgment of the Full Bench of this Tribunal in Premnath K.Sharma Vs. Union of India and others (1986²(6)ATC²904), wherein it is held as follows:

"Even after the amendment of Article 311(2) by the 42nd Amendment, the Constitution guarantees a reasonable opportunity to show cause against the charges levelled against the charged officer during the course of the enquiry. In order to fulfil the constitutional requirement he must be given an opportunity to challenge the enquiry report also. The Enquiry Officer enquires into the charges, the evidence is recorded and the charged officer is permitted to cross-examine the witnesses and challenge the documentary evidence during the course of the enquiry. But the enquiry does not conclude at that stage. The enquiry concludes only after the material is considered by the Disciplinary Authority, which includes the Enquiry Officer's report and findings on charges. The enquiry continues until the matter is reserved for recording a finding on the charges and the penalty that may be imposed. Any finding of the Disciplinary Authority on the basis of the Enquiry Officer's report which is not furnished to the charged officer would, therefore, be without affording a reasonable opportunity in this behalf to the charged officer. It, therefore, follows that furnishing a copy of the enquiry report to the charged officer is obligatory"

* 13. Any doubt that may linger in this regard is cleared by the definition of the appointing authority contained in Rule 2(1)(a) of Railway Servants (Discipline and Appeal) Rules. Any authority mentioned in sub-clauses (i), (ii), (iii) and (iv) of Clause (a) of Rule 2(1) may be the appointing authority. But among them, for the purpose of these rules, unless the context otherwise requires, only the authority which is the highest authority would be the appointing authority. The definition takes note of the fact that at a given point of time, there may be only one Appointing Authority empowered to appoint to a post but in respect of another post, there may be several Authorities empowered to appoint. Where there is only one Authority, then undoubtedly the authority which appointed the government servant to such service, grade or post would be the "appointing authority". But in a case where there are several authorities competent to make appointments, if all of them take disciplinary proceeding or none takes, hoping that the other would institute, it would create confusion, uncertainty and indiscipline in the service. Evidently, to make the position certain, where there is more than one appointing authority, the Rule Making Authority thought it necessary to define the term "Appointing Authority" as the highest among them. It is by virtue of delegation that appointment to Class III & Class IV posts may be made by an officer subordinate to the General Manager but the General Manager also continues to be competent to make these appointments, and amongst the officers competent to appoint, the General Manager happens to be the highest authority. Hence, so far as Class III and Class IV Railway Servants are concerned, the General Manager alone would be the "Appointing Authority" within the meaning of the definition of "Appointing Authority" contained in Rule 2(1)(a)."

Applying the above, we find that the Additional Chief Commercial Superintendent is not competent to remove the applicant.

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Applying the above, it follows that order of the Disciplinary authority has to be set-aside.

6. In the result, we set aside the impugned orders dated 20-4-1987 and 18-8-1987 and allow the application. No order as to costs.

(Dictated in open court)

Sd/-X X X X
(B.N.JAYASIMHA)
Vice Chairman.

Sd/-X X X X
(J.NARASIMHA MURTHY)
Member: (Judl)

// True copy //

CERTIFIED TO BE TRUE COPY

Date Court officer. 11/12/89
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

TO:

1. The General Manager, South central railway, Rail Nilayam, Secunderabad.
2. The Chief commercial superintendent, south central Railway, Rail Nilayam, Secunderabad.
3. The Additional Chief commercial superintendent, south central railway, Rail Nilayam, Secunderabad.
4. The Chief personnel officer, south central railway, Rail Nilayam, Secunderabad.
5. One copy to Mr.G.V.Subba Rao, Advocate, 1-1-230/33, 'Jyothi Bhavan', Chikkadpally, Hyderabad-500 020.
6. One copy to Mr.P.VenkataramaReddy, SC for Railways, CAT, Hyderabad.
- ✓ One spare copy.

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Section Officer (2)

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