

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA.1261/93

date of decision : 15-6-1994

Between

D. Venkateswarulu .. Applicant

and

1. Union of India, rep. by
General Manager
South Central Railway
Rail Nilayam
Secunderabad

2. Chief Mechanical Engineer
South Central Railway
Headquarters Officer
Personnel Branch
Secunderabad 500371

3. Addl. Divl. Railway Manager-I
South Central Railway
Vijayawada (Krishna District) .. Respondents

Counsel for the applicant .. G. Ramachandra Rao
Advocate

Counsel for the respondents .. G.S. Sanghi,
SC for Railways

CORAM

HON. MR. JUSTICE V. NEELADRI RAO, vice Chairman

HON. MR. R. RANGARAJAN, MEMBER(ADMN.)

JUDGEMENT

I AS PER HON'BLE JUSTICE SHRI V. NEELADRI RAO,
VICE-CHAIRMAN]

Heard Shri G. Ramachandra Rao, learned
counsel for the applicant and also Shri G.S.Sanghi,
learned standing counsel for the Respondents.

2. The applicant who was working as ~~Casual Labour~~
in the South Central Railway at Guntur was issued
charge memo. dated 26-8-85 with the following charges.

That the said Shri D. Venkateswarlu while
functioning as Call Boy at ALF(R)/O/GNT from
1900 to 7-00 hrs. on 19/20-8-85 has committed
serious neglect of duty in that he failed to
give call to the outgoing crew of 265 passenger on
20-8-85. Thus he violated Rule No. 3(1)(ii) of
Railway Services (Conduct) Rules, 1966.

That during the aforesaid period and while
functioning in the aforesaid office the said Shri
D. Venkateswarlu has committed serious misconduct
in that he tried to assault Sri K. Nallappa Reddy,
H.C. of ALF/R/O/GNT at 9-30 hours on 21-8-85 abusing
Sri K. Nallappa Reddy, H.C. of ALF/O/R/GNT in slang
language in the presence of the staff. Thus he
violated the Rule 3(1)(iii) of Railway Services
(Conduct) Rules, 1968.

3. The disciplinary authority held that the
charge No. 1 is not proved. By holding that the
Charge No. 2 is proved, the disciplinary authority (R3)
(dated 13-8-92) passed the order of removal of the ~~Government serv-~~
~~rant~~ (dated 13-8-92) from service. The same was
confirmed by the appellate authority by order dated
4-2-93. The same is challenged in this OA. Shri
K. Nallappa Reddy, the complainant referred to in
charge 2, and 5 other witnesses were examined with refere-
to the said charge. After consideration of the eviden-
ces of those witnesses, the Inquiry officer observed
that Shri D. Venkateswarlu, the applicant is ~~held~~ res-
ponsible for mis-behaviour towards Shri K. Nallappa Reddy.

(S2)

On that basis the Inquiry officer held that the charge No. 2 is also proved.

4. Respondent 3, the disciplinary authority using vulgar, abusive and slang language and trying to assault the public servant on duty in front of public on the Railway platform tarnished the image of the Railways besides being highly condemnable" (vide page 31 & 32 of the material papers in the OA). Having so observed Respondent 3 found the applicant guilty of charge No. 2 and passed the order of removal.

5. The learned counsel for the applicant contended that none of the witnesses had spoken about the applicant using any vulgar, abusive and slang language and no one had spoken to with regard to attempt or holding of ~~short of~~ complainant the assault and hence it is a case where there is no evidence in regard to charge No. II.

6. Even in Annexure II to the charge memo. i.e. the statement of imputations of mis-conduct, the words used by the applicant which were said to be in vulgar language was not referred to. Even the ~~marked~~ complaint given by Shri Nallapareddy was not marked in the inquiry. The copy of the complaint of Shri Nallapareddy, if any, was not also furnished to the applicant. In Annexure III of the charge memo. i.e. the list of documents, the statement of Shri Nallapareddy was referred to. But the Inquiry Proceedings does not disclose that the same was marked. Be that as it may, none of the witnesses stated about the words said to have been used by the applicant at the time of alleged incident. The only evidence as can be seen from the Inquiry report is that the applicant had gone to Shri Nallapareddy in an angry mood and questioned him in the presence of others as to why he issued orders of suspe

(43)

against him and when he realised that the order of suspension was not issued by Shri Nallapareddy, he apologised. The Inquiry officer held that the said conduct of the applicant as submitted to by the witnesses amounts to mis-behaviour. If this is a case where the disciplinary authority held that what was proved is the misbehaviour as referred to ~~inquiry officer~~ by the applicant, then the question would have arisen as to whether the mis-conduct proved can be the basis for order of punishment when it is different from the mis-conduct alleged in the charge. But the order of Respondent 3 discloses that he held that it was proved that the applicant used slang language and tried to assault the public servant on duty. But there is force in the contention for the applicant that there is no evidence to hold that the applicant used slang language. Thus when the punishment of removal was awarded on the basis of the findings that the applicant used slang language and tried to assault the public servant i.e. Shri Nallapareddy in this case and when there is no evidence in support of the said finding, the order of removal has to be set aside.

7. In view of the above, there is no need to consider the disposal of this OA as to whether the punishment can be awarded in regard to the mis-conduct which has a less specific gravity than the mis-conduct alleged in the charge and if that proved mis-conduct also comes within the ambit and purview of the mis-conduct referred to in the charge and we leave it open for consideration as and when it arises.

8. In view of the above, there is no need to refer to ~~refer to~~ 1982 SC 1552 & 1984 SC 914 referred ^{relied} _{upon} for the applicant for consideration of this OA.

Copy to:

1. General Manager, South Central Railway, Rail Nilayam,
2. Chief Mechanical Engineer, South Central Railway,
Headquarters Officer, Personnel Branch, Secunderabad-500 371.
3. Addl. Divisional Railway Manager-I, South Central Railway,
Vijayawada (Krishna District.)
4. One Copy to Sri G. Ramachandria Rao, Counsel for the Applicant,
C.A.T. Hyderabad.
5. One Copy to Sri G. S. Sanghi, S.C. for Railways, C.A.T. Hyderabad.
6. One Copy to Library,
7. One spare.

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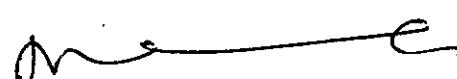
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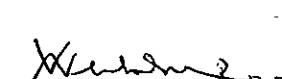
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9. Even the disciplinary authority observed that the applicant generally bore good conduct at other times. The Inquiry officer observed that the applicant realised his fault on the next day of the incident and approached Shri Nallapareddy and Asst. Loco Forman and begged them to pardon him with an apology letter. This was agreed to and the letter of compromise was also submitted. Thus it is clear that the applicant himself by his conduct, courted this enquiry and hence it is a case where backwages should not be allowed even though it is a case where the order of removal has to be set aside and accordingly reinstatement has to be ordered as there was no evidence in support of the finding given by the disciplinary authority in regard to charge No. II. In these circumstances, the period from the date of removal till the date of reinstatement as per this order should be treated as dies-non.

10. In the result, the order dated 13-8-92 of Respondent 3 as confirmed by the appellate authority vide letter dated 4-2-93 is set aside. The applicant has to be reinstated by 15th July, 1994, if he reports before 30th June, 1994 along with a copy of this OA. If the applicant is not taken to duty, he should be paid wages with effect from 15th July, 1994. The period from the date of removal till the date of reinstatement as per this order has to be treated as dies-non.

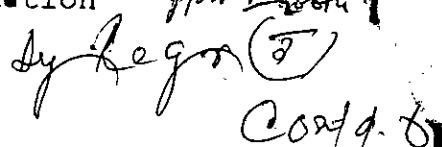
11. The OA is ordered accordingly. No costs. /


(R. RANGARAJAN)
Member (Admn.)


(V. NEELADRI RAO)
Vice-Chairman

NS

Dated the 15th June, 1994
Open court dictation


Sy. Rego (S)
Cord. 8

04.12.61/93
TYPED BY / COMPARED BY
CHECKED BY / APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

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

AND
THE HON'BLE MR.A.B.G.RTHI : MEMBER(A)

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

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

Dated: 15-6-1994.

ORDER/JUDGMENT:

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

in

O.A.No. 1261/93

T.A.No.

(A.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.

pvm

