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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 454/93

Date of Order: 8.6.1993

BETWEEN :

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1. General Manager,
South Central Railway,
Secunderabad.
2. Divisional Railway Manager (Transportation),
M.G., South Central Railway, Hyderabad.
Division, at Secunderabad.
3. Senior Divisional Mechanical Engineer (MG)
Hyderabad Division, South Central Railway,
Secunderabad. .. Respondents.

Counsel for the Applicant

.. Mr.S.Lakshma Reddy

Counsel for the Respondents

.. Mr.N.V.Ramana

CORAM:

HON'BLE SHRI A.B.GORTHY : MEMBER (ADMN)

HON'BLE SHRI T.CHANDRASEKHARA REDDY : MEMBER (JUDL.)

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Order of the Division Bench delivered by
Hon'ble Shri A.B.Gorthi, Member (Admn.).

The applicant who at the relevant time was First Fireman is aggrieved by an order dated 30.3.1993 by means of which he was awarded the disciplinary penalty of compulsory retirement from service. In view of the penalty, he has filed this application under Section 19 of the Administrative Tribunals Act without however, exhausting the remedies available to him under the Railway Servants (D&A) Rules. On this aspect of the matter we have heard Mr. S. Lakshma Reddy, Advocate for the applicant at length. He has attempted to justify the non-utilisation of the opportunities under the relevant rules for seeking remedy with the departmental authorities, on several grounds.

2. The applicant was served with a charge memo on 18.4.1988. A regular enquiry was held at which the applicant participated. On the conclusion of the said enquiry, the Senior Divisional Technical Engineer imposed the penalty of reversion to the grade of Second Foreman for the period of two years. The Divisional Railway Manager (Second Respondent) exercising powers under Rule 25 of the X D&A, enhance^{Rules, proposed by} the punishment to that of removal from service. The applicant immediately represented against the same. The second respondent without applying his mind to the facts of the case imposed the penalty of compulsory retirement vide order dated 3.11.1988. The applicant preferred an appeal against the same to the Chief Operative Superintendent

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on 23.11.1988 and the same was dismissed under Rule 22 (2). However, on a petition by the applicant for a revision, the General Manager (First respondent) remitted the case back for fresh enquiry. After the said enquiry, DRM (Second respondent) again imposed the penalty of compulsory retirement while disagreeing the findings of the enquiry officer. The applicant preferred an appeal to the Chief Operative Superintendent on 23.1.1992, and the said authority set aside the order of DRM and remitted the case back to the disciplinary authority. In the enquiry that followed the ~~enquiry officer~~ ^{enquiry officer} was ~~biased~~ ^{biased} against the applicant and found ~~him~~ ^{him} guilty of charge. Based on the same, the second respondent once again imposed the penalty of compulsory retirement vide the impugned order dated 30.3.1993.

3. Learned counsel for the applicant has vehemently contended that the afore-said actions of the various authorities show that they were ~~xx~~ ^{biased} against ~~him~~ ^{him} and ~~kept on~~ ^{kept on} punishing him notwithstanding the merits of the case. It is the contention of the applicant's counsel that the ~~Appellate~~ ^{Appellate} authority improperly exercised the powers of disciplinary authority which is not permitted. In view of these circumstances it is his contention that the applicant is justified in not seeking any further appeal or review of the penalty of compulsory retirement imposed upon him.

4. We have heard Mr. N.V. Ramana, Standing Counsel for the respondents.

5. Section 20 of the Administrative Tribunals Act categorically lays down that the Tribunal shall not ordinarily admit an application unless it is satisfied

that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. Admittedly in this case the relevant service rules provide for appeal as well as review of the penalty imposed. The applicant should have ordinarily therefore availed of all the opportunities given in the service rules and should have approached the Appellate and Reviewing authorities for the redressal of his grievance. This has now is whether the applicant is justified in rushing to the Tribunal without exhausting the remedies available to him under the relevant service rules.

6. From the details averred in the OA, it is apparent that the applicant was initially awarded the lesser penalty of reversion which was later on enhanced to that of compulsory retirement. Despite intervention by the General Manager who remitted the case back, the authorities concerned kept on imposing the same punishment of compulsory retirement again and again. The fact however remains that when the matter was referred to the General Manager, he did not actively interfere with the proceedings and referred them back to the competent authority. The contention of the applicant seems to be that it would only result in further delay, if he has to once again prefer an appeal and seek a review in his case. We are not convinced with this contention. We find from the record that, at an earlier stage, the General Manager effectively intervened in the proceedings to the advantage of the applicant and hence, there is no justification for the applicant now to rush to the Tribunal without exhausting the remedies available to him under the relevant service rules.

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7. In the case of B. Parameswara Rao Vs The Divisional Engineer, Telecommunications, Eluru & others 1990 (5) SLR 247. It has been observed, inter-alia, as

" A Tribunal shall not ordinarily admit an application " Which means that ordinarily it will not be open to the Tribunal to admit an Application under Section 19 of the Act where the statutory provision for appeal etc, had not been availed of. It will be deemed to have been availed of if after the filing of such an appeal, period of six months have expired and no orders have been passed by the Appellate Authority. The emphasis on the word "ordinarily" means that if there be an extraordinary situation or unusual event or circumstances, the Tribunal may exempt the above procedure being complied with and likely to be rare and unusual. Hence, the expression "ordinarily" has been used. There can be no denial of the fact that the Tribunal has power to entertain an Application even though the period of six months after the filing of the appeal has not expired but such power is to be exercised rarely and in exceptional cases."

8. In the above facts and in view of the Full Bench decision in Parameswara Rao's case we are of the considered view that the applicant herein should first exhaust the remedies provided to him under the Railway servants (D&A) Rules. For this purpose the applicant is given a period of one month from the date of the receipt of this order to submit an appeal to the competent authority who shall, notwithstanding the delay involved in filing the said appeal, entertain the same and pass a reasoned order. Thereafter the applicant may even seek a review of the penalty in accordance with the rules. We

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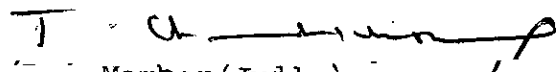
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✓ clear that it will be open to the applicant to approach the Tribunal after exhausting their remedies available to him under the relevant rules, if he still feels aggrieved by the final decision in the matter.

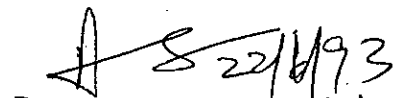
9. The application is disposed of at the admission stage with the above directions. A copy of the OA may be appended to this order.


Member (Judl.)


Member (Admn.)

Dated: 8th June, 1993

(Dictated in Open Court)


Deputy Registrar (J)

To

1. The General Manager, S.C.Rly. Secunderabad.
sd with a copy of the O.A.
2. The Divisional Railway Manager (Transportation),
M.G., South Central Railway, Hyderabad Division
at Secunderabad. with a copy of the O.A.
3. The Senior Divisional Mechanical Engineer (MG)
Hyderabad Division, S.C.Railway, Secunderabad. with a copy of the O.A.
4. One copy to Mr. S. Lakshma Reddy, Advocate, CAT. Hyd.
5. One copy to Mr. N. V. Ramana, SC for Rlys. CAT. Hyd.
6. One copy to Library, CAT. Hyd.
7. One spare copy.

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6th June 1993
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7/6/93

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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. A. B. GORTY : MEMBER (AD)

AND

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

AND

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

Dated : 8-6-1993

~~ORDER~~ JUDGMENT:

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

in

O.A. No.

454/93

T.A. No.

(w.p.)

Admitted and Interim directions
issued

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

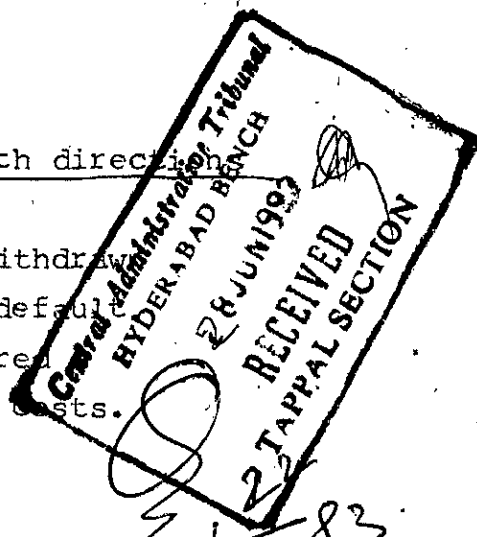
Dismissed for default

Rejected/ Ordered

No order as to costs.

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Palayur OA



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