

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.539 of 1993

DATE OF JUDGMENT: 7th July, 1993

BETWEEN:

Mr. S.A.Khalimullah

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Applicant

AND

1. The Divisional Commercial Manager,
South Central Railway,
Vijayawada.

2. The Assistant Catering Manager/Catering,
S.C.Railway & Enquiry Officer,
Vijayawada.

3. The General Manager,
South Central Railway,
Secunderabad.

4. Union of India represented by
its Chairman,
Railway Board,
New Delhi.

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Respondents

APPEARANCE:

COUNSEL FOR THE APPLICANT: Mr. V.Rama-Rao, Advocate

COUNSEL FOR THE RESPONDENTS: Mr. D.Gopal Rao, SC for Railways

CORAM:

Hon'ble Shri Justice V. Neelgiri Rao, Vice Chairman

Hon'ble Shri P.T.Thiruvengadam, Member (Admn.)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE SHRI
JUSTICE V.NEELADRI RAO, VICE CHAIRMAN

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This OA was filed praying for the following reliefs -

1. to declare the impugned proceedings No.B/DCS/174/85, dated 23.10.1992 issued by the 1st respondent as well as notice of the enquiry issued by the 2nd respondent dated 22.4.1993 as arbitrary, illegal and without jurisdiction and consequently quash the Memorandum of Charge dated 24.4.1986 issued by the 1st respondent against the applicant.

2. to direct the respondents to regularise the suspension period of the applicant from 8.5.85 to 7.4.88 with all consequential benefits.

3. to declare the action of the respondents in not promoting the applicant to the next post with effect from the date of promotion of his next junior as arbitrary and illegal and consequently direct the respondents to promote the applicant to the post of Grade-C Guard (Goods Guard) with retrospective effect from the date of promotion of his next junior with all consequential benefits.

2. Charge memo dated 24.4.1986 was issued to the applicant. The applicant filed OA 118/88 challenging the inquiry by alleging that the ^{enquiry} should not be proceeded with when the criminal case on the basis of the same allegations was pending. The FIR was registered as Crime No.3/85 of Gudur Outpost and the same was registered as Criminal Case No.135/86 on the file of the VII Metropolitan Magistrate for Railways, Vijayawada. The said OA was allowed by observing that the inquiry should not be proceeded with pending disposal of the criminal case. The applicant was

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discharged by the learned Magistrate by the order dated 21.10.91. The 1st respondent appointed the 2nd respondent as Inquiry Officer by the order dated 23.10.1992. Thereupon the 2nd respondent issued the inquiry notice dated 22.4.1993. The same is challenged in this OA.

3. It is contended for the applicant that the respondents have no power to proceed with the inquiry when the applicant was discharged in the criminal case which was filed on the same allegations which are the basis for the charge memo that was issued on 24.4.1986. The learned counsel for the respondents produced the relevant record. It does not disclose any material to show that the 1st respondent perused the Judgment in the C.C.No.135/86 before deciding to proceed ~~with~~ further with the inquiry. Whenever a criminal case is filed on the basis of the allegations which are the basis for the imputation^t for the charge memo issued for ~~communication~~ initiation of the disciplinary proceeding and if the delinquent employee is discharged/~~admitted~~ on merits, it is necessary for the disciplinary authority to peruse the judgment of the criminal case in order to determine whether the circumstances warrant continuation of the inquiry. If they do not warrant further inquiry, the inquiry proceedings ^{have} are to be ^{dropped} withdrawn. But if the disciplinary authority satisfies ^{after} perusing the judgment of the criminal ^{court,} ~~case~~ that there is justification for continuation of the inquiry, reasons for such justification have to be given and the inquiry has to be proceeded with in accordance with the law. Necessity for giving reasons for continuation arises as the said act of the disciplinary authority is subject to judicial review.

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Copy to:-

1. The Divisional Commercial Manager, South Central Railway, Vijayawada.
2. The Assistant Catering Manager/Catering, S.C. Railway & Enquiry Officer, Vijayawada.
3. The General Manager, South Central Railway, Secunderabad.
4. Chairman, Railway Board, Union of India, New Delhi.
5. One copy to Sri. V. Rama Rao, advocate, 3-5-926/19/A 1st floor, main road, Himayatnagar, Hyd.
6. One copy to Sri. D. Gopal Rao, SC for Railways, CAT, Hyd.
7. One copy to Deputy Registrar (Judl.), CAT, Hyd.
8. One copy to Library, CAT, Hyd.
9. Copy to Reporters as per standard list of CAT, Hyd.
10. One spare copy.

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4. As the 1st respondent, disciplinary authority, had not even perused the judgment in C.C.No.135/86, the order dated 23.10.92 appointing the inquiry Officer and the inquiry notice given by the 2nd respondent are liable to be set-aside. But this order does not debar the 1st respondent to peruse the judgment in CC 135/86 and decide as to whether there is justification for continuation of the inquiry. The 2nd and 3rd reliefs claimed in this OA are ~~essentially~~ only consequential reliefs depending upon the first relief. The question of regularisation of the period of suspension and ~~the~~ consideration of the applicant for promotion will arise on the basis of the decision that has to be taken by the 1st respondent, as to whether inquiry is to be continued or not.
5. In the result, the order dated 23.10.1992 appointing the Inquiry Officer and the Inquiry notice dated 22.4.1993 are set-aside. As already observed, this order does not preclude the 1st respondent from deciding about the necessity of inquiry after perusing the judgment in CC 135/86 and he has to give reasons, if he feels that it is the matter for continuation of the inquiry.
6. OA is ordered accordingly. No costs. Office has to communicate this order by 14.7.1993.

(Dictated in the open Court).

P. T. Thiruvengadam
(P.T.THIRUVENGADAM)
Member (Admn.)

V. Neeladri Rao
(V.NEELADRI RAO)
Vice Chairman

Dated: 7th July, 1993.

By Registrar 12/7/93

TYPED BY

CHECKED BY

COMPARED 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)

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

Dated : 7/7/1993

ORDER/JUDGMENT:

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

O.A.No.

In
539/93.

~~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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