

(29)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH  
AT HYDERABAD.

O.A.NO. 154 of 1994.

Between

Dated: 14.2.1995.

Kothapalli Veera Krishna Prasad

...

Applicant

Vs.

1. Senior Divl. Personnel Officer, S.C.Railway, Vijayawada.
2. Divisional Railway Manager, S.C.Railway, Vijayawada.
3. Senior Divisional Electrical Engineer, Traction Rolling Stock S.C.Railway, Vijayawada.
4. Divisional Electrical Engineer, Traction Rolling Stock, S.C. Railway, Vijayawada.
5. Asst. Electrical Engineer, Traction Rolling Stock, S.C.Railway Vijayawada.

...

Respondents

Counsel for the Applicant : Sri. J.M.Naidu

Counsel for the Respondents : Sri. M.V.Ramana, Addl. CGSC.

CORAM:

Hon'ble Mr. A.V.Haridasan, Judicial Member

Hon'ble Mr. A.B.Gorthi, Administrative Member

Contd:....2/-

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DA 154/94.

Dt. of Order : 14-2-95.

(Order passed by Hon'ble Shri A.B.Gorthi, Member (A) ).

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The applicant who is 36 years old <sup>and</sup> had rendered about nine years service in the Railways was charged for the offence of absence without leave for a period of 19 days and after a brief Departmental Disciplinary Enquiry was inflicted with the major penalty of removal from service vide impugned order dt.1-9-92. His appeal against the same has not yet been disposed of by the appellate authority.

2. The applicant, admittedly, <sup>was</sup> absent without leave from 20-6-88 to 10-7-1988. He was served with a charge memo dt.

On the ~~conclusion~~ <sup>basis</sup> of conclusion of the enquiry he was awarded the penalty of removal from service vide order dt.22-12-1988. Aggrieved by the same he has filed O.A.29/91. The said O.A. was allowed and the removal order was set aside, but the Disciplinary Authority was given opportunity to proceed further in the matter after furnishing a copy of the Enquiry Officer's report to the applicant. That having been done, the competent authority has ~~awarded the~~ once again imposed the punishment of removal from service.

3. Heard learned counsel for both the parties. Shri J.M.Naidu, learned counsel for the applicant assailed the validity of the penalty first on the ground that the charge memo was <sup>not</sup> signed by the "Disciplinary Authority". It is con-

tended that only the Divisional Electrical Engineer was the competent authority, and as such the charge memo ~~was~~ signed by Asst. Electrical Engineer cannot be held to be valid. This aspect of the matter has been adequately refuted by the Respondents in their reply affidavit. It is stated ~~by~~ that the Asst. Electrical Engineer is competent to issue a charge sheet as he is an authority empowered ~~to~~ in Clause <sup>15</sup> ~~(i)~~ (iv) of Rule-6 and accordingly under Rule-8 <sup>2</sup> ~~(ii)~~ he would be the competent Disciplinary authority to ~~institute~~ institute proceedings. We ~~are~~ therefore find no merit in this contention of the applicant's counsel.

4. A perusal of the proceedings of the enquiry (which merely ran into two pages) would indicate that the applicant admitted the charge and had further declined to take assistance of defence helper. The heading of the enquiry report would indicate that the proceedings were conducted on a charge under Standard Form 11, which is applicable to charge memos in respect of minor penalties. The Respondents in their reply affidavit have stated that it was a typographical error. But the contention of the applicant's counsel is that this mistake mis-<sup>to believe</sup> led the applicant that he would be left off with a minor penalty.

5. An important issue raised by the applicant's counsel is the fact that the Disciplinary Authority in coming to the conclusion as to the quantum of punishment was influenced by the alleged absence of the applicant during July, August, September, October, 1988. The said absence clearly pertains to

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to the period subsequent to the period of absence (20-6-88 to 10-7-88), for which the applicant was charged. The enquiry proceedings do not cover the alleged absence for the periods subsequent to the period mentioned in the charge memo. In these circumstances learned counsel for the applicant strongly contended that the Disciplinary Authority took into consideration matters which were entirely extraneous to the charge memo and for which the applicant had no opportunity at all to explain or rebut. In coming to the conclusion about the quantum of punishment, it is stated, that had the Disciplinary Authority dis-abused his mind of the said extraneous circumstances, he would not have imposed upon the applicant the major penalty of removal from service. We find that the contention of the applicant's counsel has not been refuted in the counter and in any case stands irrefutable. In Remington Rand of India Ltd., Vs. Tahir Ali Saifi & another (1976 SCC (L&S) 379) it was categorically held that penalty of dismissal cannot be based on a ground that was not stated in the charge-sheet.

6. Finally, on the quantum of punishment, the applicant's counsel pleaded that the penalty imposed is highly dis-proportionate to the gravity of the charge. The charge is merely for absence without leave and did not involve moral turpitude. The doctrine of ~~xxx~~ proportionality in the matter of imposing of penalty came up for consideration before a Division Bench of the High Court of Andhra Pradesh in M.Ram Mohan Rao Vs. A.P.State Road/Transport Corporation & another reported in (1992 (2) \*ALT 402). Having noticed the observations made by the Supreme Court in Ex.Naik Sardar Singh Vs.

Union of India & others (AIR 1992 SC 417), the Division Bench

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observed that penalty imposed must be commensurate with the gravity of punishment. Any penalty which seems to be disproportionate to the gravity of the offence committed would be violative of Article 14 of the Constitution. That was a case where one of the charges levelled against petitioner was for unauthorised absence. The Division Bench therefore came to the conclusion that the penalty was grossly disproportionate.

7. Learned counsel for the applicant took us through the judgement of the Supreme Court in Ex.Naik Sardar Singh Vs. Union of India (AIR 1992 SC 417). The Supreme Court made reference to the following passage in Bhagat Ram Vs. State of Himachal Pradesh (AIR 1983 SC 454) :

"It is equally important that the penalty imposed must be commensurate with the gravity of offence and any penalty disproportionate to the gravity of mis-conduct would be violative of Article 14 of the Constitution."


8. Applying the aforesaid principle, the Supreme Court set aside the punishment of dismissal awarded to the petitioner by a Court Martial and remanded the matter back to the Court Martial for awarding a lesser punishment having due regard to the nature and circumstances of the case.


9. Having heard learned counsel for both the parties, we find no difficulty in coming to the conclusion that the penalty of removal imposed upon the applicant is grossly disproportionate to the gravity of the offence. The penalty therefore is liable to be set aside for the reasons stated above and we do so. The applicant shall be reinstated forthwith and in any case within 15 days from the date of communication of this order. It is a settled law that

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the quantum of punishment is a matter to be determined by the Disciplinary/Appellate Authority and it is not for the Tribunal, exercising powers similar to those under Article 226 of the Constitution to determine the type of the penalty or the quantum of punishment in any particular case. Consequently we remand the case to the Disciplinary Authority who may take into consideration the observations in the judgement and award any of the minor penalty<sup>as A</sup> specified in Rule-6 of the Railway Servants (Discipline & Appeal) Rules, 1968.

10. The Original Application is ordered accordingly. No order as to costs.

  
(A.B. GORTHI)  
Member (A)

  
(A.V. HARIDASAN)  
Member (J)

Dated: 14th February, 1995.  
Dictated in Open Court.

  
Dy. Registrar (Judl.)

avl/

Copy to:-

1. Senior Divisional Personnel Officer, S.C. Railway, Vijayawada.
2. Divisional Railway Manager, S.C. Railway, Vijayawada.
3. Senior Divisional Electrical Engineer, Traction Rolling Stock, S.C. Railway, Vijayawada.
4. Divisional Electrical Engineer, Traction Rolling Stock, S.C. Railway, Vijayawada.
5. Asst. Electrical Engineer, Traction Rolling Stock, S.C. Railway, Vijayawada.
6. One copy to Sri. J.M. Naidu, advocate, H.No.18.11, Kamalanagar, Near Dilsukhnagar, Hyd.
7. One copy to Sri. N.V. Ramana, Addl. CGSC, CAT, Hyd.
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DA-154/64

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH

THE HON'BLE MR.A.V.HARIDASAN : MEMBER(J)

AND

THE HON'BLE MR.A.B.GORTHY : MEMBER(A)

DATED : 14/2/95

ORDER/JUDGEMENT.

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

in

O.A.No.

154/64

Admitted and Interim directions  
issued

~~Allowed~~

~~Disposed of with Directions~~

~~Dismissed~~

~~Dismissed as withdrawn~~

~~Dismissed for Default.~~

~~Rejected/Ordered~~

~~No order as to costs.~~

YLKR

Not spare copy

