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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 767/95

DATE OF ORDER : 27.8.1995

Between :-

G.Abraham

... Applicant

And

1. Asst.Mechanical Engineer,
S.C.Railway, Vijayawada.
2. Sr.Divisional Mechanical Engineering,
S.C.Railway, Vijayawada.
3. Divisional Railway Manager,
S.C.Railway, Vijayawada.

... Respondents

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Counsel for the Applicant : Shri G.V.Subba Rao

Counsel for the Respondents : Shri N.R.Devaraj, SC for Rlys

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CORAM:

THE HON'BLE SHRI H.RAJENDRA PRASAD : MEMBER (A) *9/*

(Order per Hon'ble Shri H.Rajendra Prasad, Member (A)).

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(Order per Hon'ble Shri H.Rajendra Prasad, Member (A)).

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The applicant was implicated in a case of theft of Railway property and a criminal case was initiated against him under section 3(a) of RP(UP)Act, 1966. He was arrested on 12-11-92 and was released on bail the next day. He was placed under suspension from 16-11-92. The suspension was revoked on 6-9-93 but the applicant was placed under suspension once again on 7-10-93. Departmental proceedings for the imposition of major penalty were initiated on 8-2-93.

2. The grievances / ^{of} the applicant in this OA are as under :-

- (i) Departmental proceedings were initiated against him even during the pendency of the criminal case which according to him is contrary to the instructions of the Railway Board;
- (ii) The departmental proceedings were initiated under the signature of DME, who, according to him, was not competent to do so since he (the applicant) belongs to General Branch of the Railways and as such was under the Disciplinary control of DRM/DPO and not of the Sr.DME;
- (iii) Subsistence allowance fixed at 50% of the pay drawn by him continued unaltered from the date of his first suspension and that no further review of the subsistence allowance was taken up any time or examined properly. The applicant's contention is that he is entitled to 75% of the pay last drawn by him prior to his being placed under suspension.

3. The applicant prays for the following :-

- (i) Quashing of the Disciplinary Proceedings initiated against him and another order issued in connection thereto;

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(ii) To enhance subsistence allowance to 75% of last pay drawn; and

(iii) To treat the period of suspension as duty.

4. The respondents in their counter affidavit submit that the suspension was revoked on 6-9-93 to enable them to serve the order of penalty in an earlier case and once this was done, he was again placed under suspension from 7-10-93.

5. The respondents state that the Sr.DME is the competent officer in the disciplinary proceedings and to impose major penalties on the applicant. They also state that there is nothing wrong in initiating departmental action simultaneously or during the pendency of the criminal proceedings.

6. As regards the subsistence allowance, they maintain that the competent authority is vested with the power to review, and thereafter to either maintain or enhance or reduce the subsistence allowance after 90 days of the initial suspension. In the present case the applicant is alleged to have refused to receive the memo of charges and was refusing to co-operate with the disciplinary proceedings. Since the delay in the completion of the disciplinary proceedings was owing entirely to the dilatory tactics adopted by the applicant, it was decided not to increase his subsistence allowance.

7. After having said this, the respondents say that the suspension of the applicant is prolonging due to reasons attributable to the employee. This particular submission is not understood

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in as much as the original suspension seems to be connected with the launching of a criminal case against the applicant and not on account of departmental proceedings. This is borne out by the order dt.16-11-92, placing the applicant under suspension which clearly indicates that an enquiry in a criminal offence is under way and that was the reason for suspending the applicant.

8. The stand of the respondents in this case is not at all clear. The applicant is facing a criminal charge and the case on this score is reported to be pending disposal. He was placed under suspension in connection with this criminal case. The departmental disciplinary proceedings were initiated only later. There seem to have been some dilatory tactics by the applicant with regard to the disciplinary proceedings, although it is not clear as to whether asking for certain clarifications which could have been easily replied, can be equated to adopting dilatory tactics. Be that as it may, the subsistence allowance in this case is reported to have been not enhanced on the ground that he is responsible for the delay in disciplinary proceedings. The question that arises is how can a suspension imposed in connection with a criminal case attract the allegation and a decision linked or (not to revise subsistence allowance) based on it equated to non-co-operation in departmental proceedings? Any decision that is taken on the basis of this apparently inconsistent stand would not seem to be valid. This aspect has to be considered carefully.

9. Respondent No.3 is therefore directed to examine the facts in the light of the above observations and take a suitable decision depending on the merits of the applicant's contention,

within 30 days from the date of receipt of a copy of this order and communicate the same to the applicant. Any decision that is taken shall have to be based on a proper scrutiny of facts as well as the rules regarding review of subsistence allowance.

10. Thus the Original Application is disposed of. No order as to costs.


(H. RAJENDRA PRASAD)
Member (A)

Dated: 27 Aug 97


Deputy Registrar
27/8/97
CC.

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O.A.767/95.

To

1. The Assistant Mechanical Engineer,
SC Rly, Vijayawada.
2. The Sr. Divisional Mechanical Engineering,
SC Rly, Vijayawada.
3. The Divisional Railway Manager,
SC Rly, Vijayawada.
4. One copy to Mr.G.V.Subba Rao, Advocate, CAT.Hyd.
5. One copy to Mr.N.R.Devraj, SC for Rlys CAT.Hyd.
6. One copy to HHRP.M.(A) CAT.Hyd.
7. One copy to D.R.(A) CAT.Hyd.
8. One spare copy.

pvm.

off
test/ax



I Court.

TYPED BY:

CHECKED BY:

COMPARED BY:

APPROVED BY:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE.
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD, M.A.

DATED:- 27/8/97

ORDER/JUDGMENT.

M.A.,/RA.,/C.A.No.

in

O.A.No. 767/95

T.A.No. (W.P.)

Admitted and Interim directions issued

Allowed

Disposed of with Directions

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected

No order as to costs.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण/DESPATCH

21 SEP 1997

हैदराबाद प्रायोगिक
HYDERABAD BENCH