

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

O.A. No. 806/95

Date of decision : 28-4-1998.

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Between:

M. Jagadish ..

Applicant

And

1. Union of India represented by its
General Manager, S.E. Railway,
Gardenreach, Calcutta. 43.
2. Divisional Operations Manager (G),
S.E. Railway, Visakhapatnam. 4.
3. Sr. Divisional Operations Manager,
S.E. Railway, Visakhapatnam. 4. .. Respondents.

Counsel for the applicant: Sri. P. B. VIJAYA KUMAR.

Counsel for the Respondents: Sri. V. Bhimanna.

CORAM:

Hon'ble Sri R. Rangarajan, Member (A)

Hon'ble Sri B. S. Jai Parameshwar, Member (J).

JUDGEMENT

(per Hon'ble Sri B. S. Jai Parameshwar, Member (J))

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Heard Sri Patro for Sri P. B. Vijaya Kumar, the
learned counsel for the applicant and Sri V. Bhimanna for
the respondents.

The applicant was appointed as Token Porter
in Group "D" vide DPO/WAT's Office Order No. WPT/5/Cl. IV/EA/89
dated 17-8-1989. He was promoted and posted in Group
'C' as Telephone Clerk under CYM/VSPS and he joined duty
on 26.8.1992. It is submitted that the applicant came
from RGD and reported for duty at Visakhapatnam. He
remained absent unauthorisedly from 28-8-1992.

On 29.11.1993 a major penalty charge-sheet was issued to the applicant for his unauthorised absence from service. However, the Disciplinary Authority could not serve the charge-sheet on the applicant. Thus the enquiry initiated against the applicant with respect to the said charge-sheet was concluded Ex-parte.

The Disciplinary Authority attempted to serve a copy of the report of the Enquiry Officer on the applicant. It was in ~~xxx~~ vain. Hence the disciplinary Authority by its Pros., dated 7-10-1994 considering the report of the Enquiry Officer, imposed the penalty of removal of the applicant from service with immediate effect.

Against the said punishment, the applicant submitted an appeal to the Senior Divisional Operation Manager, Waltair.. The Appellate Authority by its Pros., dated 27-3-1995 considering the appeal on merits even though it was barred by time, agreed with the punishment imposed by the Disciplinary Authority and rejected the appeal.

The applicant has filed this O.A., praying this Tribunal to call for the records relating to the Proceedings No.WTI/2/55/93 dated 27-3-1995 from the 2nd respondent and for quashing the same and for a direction to reinstate him into service with back wages, continuity of service and with all consequential benefits.

The main contention of the applicant is that he was not served with the charge-sheet and that through his relatives. He submits that without serving a charge-sheet on him and without conducting a proper enquiry, he could not be removed from service. He submits that the removal order has to be set aside and he should be reinstated.

The applicant joined at Visakhapatnam on 26-8-1992. He had remained absent & unauthorisedly from 28-8-1992. The applicant before proceeding on leave should have given his leave address for sending communications to him, if necessary. The applicant did not show any proof of evidence of his having given his address to CYM/VSP on his joining duty on 26-8-1992. Hence the Charge Sheet which was sent to the CYM/VSP could not be served on the applicant. For, this the Railway Administration could not be held responsible as the applicant has failed to furnish his proper address before proceeding on leave. We also see from page 12 of the reply that the letter addressee by the Appellate Authority to the applicant in connection with D&A case against the applicant, the address of the applicant was mentioned "Sri M.Jagadish, Door No.58-3-20, Ramanaidu Colony, Marripalem, Visakhapatnam-18" whereas in the cause-title of the application, the address is given as "Door No. 58-3-14, Ramnaidu Colony, Visakhapatnam District". Hence, it is evident that the applicant has not given his permanent address correctly to the respondent authorities, or he is shifting his residence frequently. Even if the charge-sheet has been dispatched to his permanent address, as recorded in his service record, it would have served no purpose, as the applicant was shifting his residence frequently. The learned counsel for the respondents brought to our notice the address to which the charge-sheet was served which is at Page 13 of the reply. The address given at page 13 of the reply is completely different from that of the address given in the cause-title of the O.A. Hence, we are of the view, that the Charge-sheet could not have been served on the applicant even though it was sent to the applicant to the address given in the service record.

From the above, it is evident that the ... respondents tried to serve the charge-sheet on the applicant but they ~~was~~ could not service it on him as the applicant's address was not full and complete. The applicant had not informed the authorities the change in his address. Hence it could not be served on him. Hence the charge-sheet was not served, and other formalities were followed by concluding Ex-parte enquiry and punishment was awarded. Hence, we do not feel any irregularity has been committed in concluding the enquiry and imposing the penalty of removal of the applicant from service.

The learned counsel for the applicant submitted that the quantum of punishment is disproportionate to the charges levelled against the applicant. The applicant was charge-sheeted for the unauthorised absence. He submits that the punishment of removal is not commensurate with the gravity of the charges and the pleads that the punishment of removal from service has to be reduced to a lesser punishment.

The courts or Tribunals have no powers to reduce the penalty of punishment except to direct the respondents to -re-consider the imposition of penalty on the basis of the facts available on record.

In view of ~~the~~ what is stated above, the following directions are given:

- 1) The applicant may submit, if so advised a detailed mercy petition/representation for reduction of penalty of removal from service to that of a minor penalty, within one month from the date of receipt of a copy of this order;

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ii) If such a representation is received by the General Manager, S.E.Railway, Respondent No.1, then the same may be considered in accordance with law and pass suitable order within a period of three months from the date of receipt of representation from the applicant.

With the above directions, the O.A., is disposed of. No costs.

CERTIFIED TO BE TRUE COPY

Sd/-
COURT OFFICER/DY.REGISTRAR
Central Administrative Tribunal
Hyderabad Bench.

// TRUE COPY //

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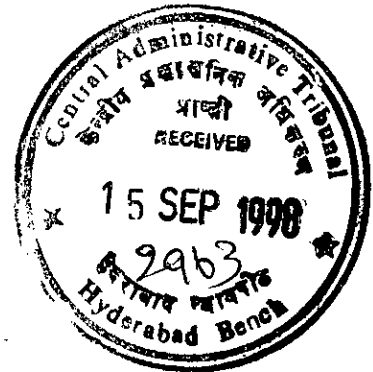
For Extension of time for
complying with the Hon'ble Bench
DISTRICT VISAKHAPATNAM

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

M.A.No. of 1998

in

O.A.No. 806 of 1995



PETITION FOR EXTENDING THE
TIME LIMIT

Recd copy

MM. M. M. S. R. S. R.

15-5-88

Rev. Sec. to Bench
on 15/9/88

P.B. Vijaya Kumar
Advocate
Counsel for the applicant