

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 86/95

DATE OF ORDER : 10-12-1996.

Between :-

M.Nagaraja Rao

... Applicant

And

1. Sr.Divisional Mechanical Engineer, SC Rlys, Hubli.
2. Divisional Railway Manager, SC Rlys, Hubli.
3. General Manager, SC Rlys, Rail Nilayam, Sec'bad.
4. Loco Foreman, Loco Shed, SC Rlys, Castle Rock.
5. Asst.Mechanical Engineer (Loco), SC Rlys, Hubli Division, Hubli.

... Respondents

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

Counsel for the Respondents : Shri K.Siva Reddy, SC for Rlys

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CORAM:

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI : VICE-CHAIRMAN

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

(Order per Hon'ble Shri Justice MG Chaudhari, VC).

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Shri G.V.Subba Rao for the applicant. The applicant challenges the order of his removal from the service passed by the Disciplinary Authority viz., Sr.Divl.Mechanical Engineer/ UBL against the applicant under Rule 9(12) of Railway Servants

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(Discipline & Appeal) Rules, 1968 for committing misconduct under Rule 3(1)(iii) of the Railway Servants (Conduct) Rules, 1966 in as much as he had remained unauthorisedly absent from duty from 20-1-88 onwards till date i.e. 12-4-1988 without obtaining prior sanction of the leave from the competent authority or producing sick certificate issued by the Railway Medical Authorities and had thus failed to maintain devotion to duty.

2. The applicant did not file the statutory appeal under Rule-18 of the Discipline & Appeal Rules but has straightaway approached the Tribunal. The order of punishment was passed on 8-12-94. It was clearly stated in the order that the applicant could file an appeal within 45 days to the appellate authority. The OA therefore is not maintainable having regard to provisions of section 20 of the A.T.Act, 1985. Unfortunately the same was entertained and admitted and therefore we have heard the learned counsel for the applicant on merits. It may be mentioned that in the counter, the respondents have raised the objection that the applicant cannot file the O.A. without having filed an appeal.

3. It is well settled that the Tribunal cannot re-appreciate the evidence or go into the question of quantum of punishment, that could be done by the appellate authority but the applicant not having availed that remedy the question does not survive further. Unless therefore a very strong and unimpeachable ground of error of jurisdiction or illegality is shown, it would not be open to directly quash the penalty order.

4. The career of the applicant has not been very ~~happy~~^{working}. He was appointed as a Jr.Clerk in ~~Personal~~ Branch at Kazipet on compassionate ground on 9-7-80 as his father died in harness. He was transferred to Hubli on 14-4-81 on mutual transfer. He was removed from service for unauthorised absence on 12-4-82 and was re-engaged as a fresh entrant from 6-3-83. Then he was again removed on 1-11-83 onwards for unauthorised absence ^{and} who was again reinstated as fresh entrant on 20-1-88. According to the charge memo as the applicant again remained unauthorisedly absent from 21-1-88 onwards till 12-4-88 he had committed the alleged mis-conduct and the Disciplinary Enquiry was commenced.

5. The enquiry indeed was conducted and completed on 13-9-88. However the applicant approached this Tribunal at that stage but the OA was dismissed as premature. Thereafter the appellate authority also confirmed the penalty of removal with effect from 15-11-88. Again the applicant approached this Tribunal which, by order in OA 294/90 directed to proceed with enquiry from the stage of furnishing a copy of the enquiry report to the applicant. Thereafter the copy of the Enquiry Report was furnished to the applicant and the enquiry was proceeded with by an Enquiry Officer appointed by order dt.26-7-94.

6. The applicant submitted a reply to the charge memo and instead of offering proper explanation he raised the contentions that the charge memo was meaningless and baseless and merely stated that he had in fact worked on 20-1-88 and 21-1-88 and therefore the mention of these 2 dates on the charge memo shows that it was a false and fabricated memo.



7. At the enquiry the applicant was examined by the Enquiry Officer. In his evidence the applicant although denied the allegations contained in charge memo, did not raise any other grounds as ^{were} stated in his explanation. The ~~one more~~ witness was examined on behalf of the department and after considering the evidence the impugned order was passed. The order of removal contains reasons although briefly stated in which the disciplinary authority had ~~go~~ come to the conclusion that the applicant was not a fit person to be retained in service.

8. The respondents contend in their counter that the Enquiry was conducted after observing all the necessary formalities and the charge was proved by evidence.

9. The applicant has filed a rejoinder in which he alleged in general terms that the prescribed procedure governing the conduct of enquiry ^{was} not followed right from the issue of the charge sheet, that the charge sheet itself is vague and it is not in accordance with the Rules. The Discipline & Appeal Rules have not been followed and that there was violation of principles of natural justice. He also raised the contention that the charge memo was not issued by the competent authority nor the order of removal ^{was} passed by the competent authority in as much as he having appointed by the General Manager, the General Manager alone could take disciplinary action against him.

10. The grounds stated in the rejoinder ^{were} also urged in the O.A.

11. Shri GV Subba Rao, the learned counsel for the applicant firstly urged that the charge memo itself was vague and therefore the enquiry based on it vitiated. While labouring on this submission he argued that the evidence shows that the applicant attended the office on 20-1-88 and that as stated in the OA it cannot be said that he ^{was} absent on 21-1-88 and since the charge refers to these 2 dates as part of the unauthorised absence when it was not so ^{hence} and it is bad in law. In this connection what is pertinent to note ^{is} that the charge is not confined to absence of only these 2 dates. The imputation was that he was absent from 20-1-88 onwards and till date. Hence even if the absence for 2 days can be explained it can only ^{mean} prove that the charge was not proved but that does not mean that the absence for the remaining period cannot be enquired into, and in his explanation to the charge memo the applicant stated that he had worked on 20th and 21st of January, 1988 but he did not elaborate ^{to that extent} on these aspects. In his evidence he stated that his attention was not drawn to the evidence of the other witnesses that he was not physically present on 21-1-88. He merely stated that he was present but did not supplement that statement with any another explanation. We shall come to that aspect in due course. Hence we have no hesitation in rejecting this contention of the learned counsel. It is argued by the learned counsel that the applicant was ^{on} joined duty on 20-1-88. Witness Sri V. Kanan deposed that although the applicant had signed attendance register on 21-1-88 he was not found in the office thereafter in the day. He also stated that the applicant has not informed him as to why he ^{not} was in the office. No explanation in that respect was offered

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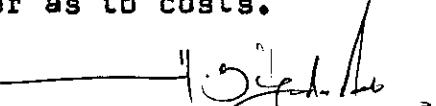
either in the explanation to charge memo nor in the application. It is now stated that on 21-8-88 the applicant felt giddy and he was sent to the Hospital with the Railway Protection Force staff and in view of that circumstances it cannot be stated that his absence was un-explained. It is difficult to take into account these additional facts straightaway at this stage as the applicant had not invited a finding from the Disciplinary Authority. We cannot therefore allow this ground to be put forward. The evidence such as Muster Register etc., as these are questions of fact and cannot be raised for the first time in an O.A. filed under section 19 of the A.T.Act, 1985. A story has also now sought to be introduced that on 22-1-88 the applicant was not allowed to join duty by the Loco Foreman and he was directed to Asst.Mechanical Engineer, who left the station without entertaining the applicant and on the next day the Asst.Mechanical Engineer drove him out from his residence when he went to request him. This story relates to factual events and cannot be entertained for the first time in the OA and it is neither disclosed during the enquiry or in the evidence of the applicant nor in his show cause reply or the mercy appeal filed on 17-10-94 prior to the imposition of penalty. This entire story appears to be an after thought.

12. A semblance of legal ground is sought to be shown in contending that the Disciplinary Authority who imposed the penalty was not competent to do so as he was not the appointing authority of the applicant and therefore it is stated that the entire proceedings stand vitiated being without jurisdiction. Firstly this objection ought to have been taken at the enquiry itself or atleast by filing an appeal to the appellate authority. Similarly it is con-

tended that the appointment of the Enquiry Officer itself was without jurisdiction. That also was a point which had to be raised during enquiry or before the appellate authority it being an interlocutory circumstances. We have however examined the position. The charge memo was issued by the Sr.Divisional Mechanical Engineer. Although the appointment orders have not been produced along with the OA and some order dt.20-11-87 has been shown at the hearing which shows that the competent authority having approved the re-appointment of the applicant, the Divisional Railway Manager was directed by the Chief Personal Officer to take the necessary steps for re-appointing the applicant. That can only mean that the DRM was the appointing authority and it is not the case that the Sr.DME is sub-ordinate to the DRM. It is fallacious to say that the original appointment since was compassionate appointment it could only be done by the General Manager and the General Manager was the appointing authority. Firstly the original order has no relevance left after the re-appointment of the applicant. Secondly, the General Manager would only approve the appointment on compassionate ground but the appointment would be made by the divisional competent officer. That being the case here we find no merit in both the above grounds.

13. There is no substance in the contention that there has been violation of principles of natural justice. This Tribunal had been more than indulgent to the applicant and whatever grievance could be made was taken care of and there is no room to hold that there has been denial of fair opportunity to the applicant. The applicant participated at the enquiry and his evidence was also recorded

It cannot therefore be held that the Disciplinary Authority had acted without evidence or his appreciation of the material is so perverse that we should make an exception to the law and interfere in the matter. It is to be born in mind ~~in the~~ ^{that in a} Disciplinary case ~~in~~ ^{that} it is the test of preponderance of possibility ^{has} to be applied ~~and not strict~~ ^{law}. The impugned order falls within these parameters and we find no ground to interfere with the same. Shri GV Subba Rao sought to rely on the decision of the Supreme Court in Anil Kumar Vs. Presiding Officer & Others (1985 (3) SLR page 26). The decision lays down that the report of the Enquiry Officer must be reasoned one and where no evidence is disclosed it does not amount to reasoned one and termination basing on such report is illegal. The difficulty in applying the substance of this decision is that the applicant has not produced the Enquiry Report nor he has ~~shown~~ ^{stated} as to which evidence has not been considered or discussed. It is not therefore possible to hold that the penalty order ~~based~~ on the report is contrary to the aforesaid decision. Moreover the evidence of the applicant as well as the witness on which the penalty order is passed has been considered by us and we find no reason to hold that the reasons given by the Disciplinary Authority in his order can amount to saying that the evidence was not considered by him or the Enquiry Officer. It is eventually the order of the Disciplinary Authority that is material and not alone the Enquiry Report. Hence this argument is rejected. In the result the DA is dismissed. No order as to costs.


(H.RAJENDRA PRASAD)
Member (A)


(M.G.CHAUDHARI)
Vice-Chairman

12.56

O.A.86/95

To

1. The Sr.Divisional Mechanical Engineer,
SC Rlys, Hubli.
2. The Divisional Railway Manager,
SC Rlys, Hubli.
3. The General Manager, SC Rlys,
Railnilayam, Secunderabad.
4. The Loco Foreman, Loco Shed,
SC Rlys, Castle Rock.
5. The Assistant Mechanical Engineer, (Loco)
SC Rlys, Hubli Division, Hubli.
6. One copy to Mr. G.V.Subba Rao, Advocate, CAT.Hyd.
7. One copy to Mr.K.Siva Reddy, SC for Rlys, CAT.Hyd.
8. One copy to Library, CAT.Hyd.
9. One spare copy.

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24/1997

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TYPED BY

CHECHED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE M.G.CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD
MEMBER(ADMN)

Dated: 10-12-1996

~~ORDER~~ JUDGMENT

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

in

C.A. No. 86/95-

T.A. No.

(W.P.)

Amitted and interim Directions
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Ordered/Rejected.

No order as to costs.

pvm.

