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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 959/95

DATE OF ORDER : 25-3-1998.

Between :-

Y.L.Kantha Rao

... Applicant

And

1. Union of India
rep. by the General Manager,
SC Rlys, Sec'bad.
2. Chief Operating Manager,
(formerly Chief Operating
Superintendent),
SC Rlys, Sec'bad.
3. The Divisional Railway Manager,
Broad Gauge, SC Rlys, Sec'bad.

... Respondents

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Counsel for the Applicant : Shri N.Ram Mohan Rao

Counsel for the Respondents : Shri V.Rajeshwar Rao, CGSC

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CORAM:

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (A)

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (J)

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

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(Order per Hon'ble Shri R.Rangarajan, Member (A)).

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Heard Sri Shiva for Sri N.Ram Mohan Rao, counsel for the applicant and Sri V.Rajeshwar Rao, standing counsel for the respondents.

2. The applicant herein was removed from service after conducting a departmental enquiry. However, the said punishment of removal from service was modified by the revising authority i.e. the Addl.General Manager as compulsory retirement. It is to be noted that the Disciplinary Authority at the time of imposing the penalty of removal from service had treated the suspension period from 23-1-1984 to 14-3-1992 as suspension only. The revising authority while modifying the order of punishment failed to consider the said period whether to treat the same as on duty or to agree with the ~~subsequent~~ ^{subsequent} views expressed by the Disciplinary Authority.

3. Hence the applicant approached this Tribunal in OA 139/94 ~~specifically~~ specifically praying for treating the period of absence from 23-1-1984 to 14-3-92 as on duty. This Tribunal by its order dt.18-2-94 directed the Addl.General Manager to pass an appropriate order with regard to the said period in accordance with the law.

4. In compliance with the directions of this Tribunal, the Addl.General Manager by his order No.P.90/D&A/SC/YLKR/156 dt.17-8-94 (page-17 to the OA) has treated the said period as suspension only and the same will not count as qualifying service

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for the purpose of pensionary benefits.

5. Being aggrieved by that order, the applicant has filed this O.A. for the following reliefs :-

(a) Call for the records relating to and connected with the proceedings No.P.90/D&A/SC/YLKR/156 dt.17-8-1994 of the 1st Respondent herein and quash or set aside the same holding it as illegal, arbitrary and unjust.

(b) consequently direct the respondents herein to regularise the period from 18-5-1981 to 14-3-1992 as period spent on duty for the purpose of terminal benefits and compute the same and pay it within a period of two months.

6. It is to be noted that the applicant was under suspension for the period from 23-1-84 to 14-3-92. In fact in the earlier OA this Tribunal directed the Addl.General Manager to consider to treat the said as to how/like period. But however, in the O.A. the applicant prays for regularisation of period from 18-5-1981 to 14-3-1992. In the earlier OA the applicant has not prayed for regularisation from 18-5-1981 to 23-1-84. Therefore in our opinion the applicant cannot claim regularisation from 18-5-1981 to 23-1-1984.

7. A counter has been filed by the Respondents.

8. The learned counsel for the applicant during the course of the arguments mainly contended that the Addl.General Manager before passing impugned order has not given an opportunity to the applicant that the principles of natural justice was violated and that the applicant was not given an opportunity to explain his grievance. In support of the said contention, the learned

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counsel for the applicant relied upon the decision of the Hon'ble Supreme Court in the case of Gopala Krishna Vs. State of Madhya Pradesh (AIR 1968 SC 240). No doubt the said decision clearly supports the case of the applicant but it must be noted that the Addl. General Manager passed the above order as per the directions made by this Tribunal in OA 139/94. In the said OA he had taken ~~contentions~~, ^{furnished by} relying upon the said decision the learned counsel for the applicant submits that the impugned order be set aside and the matter be remitted back to the Addl. General Manager. We are not ~~persuaded to~~ ^{as} that. Even if a show cause notice ^{is} issued ~~as~~ ^{requested} by the applicant, the show cause notice will contain only those contentions as raised in the earlier OA and those ^{has} contentions ^{are} already been seen by the Addl. General Manager. Having seen those contentions and passed the order, we feel that it will be futile to ask the Addl. General Manager to ^{re-}consider the same contentions and pass order on the basis of the fresh show cause notice to be issued. Having made up his mind on the basis of the earlier contentions contained in the said OA and having passed that order after seeing that contentions, the Addl. General Manager could ~~have been~~ influenced by the decision taken by him earlier. Hence we are of the opinion that even presuming that the case of the applicant is similar to the case of the applicant in the above cited case, no useful purpose will be served by remitting the case to the Addl. General Manager. Further it was pointed out by the standing counsel for the respondents in the case cited above that the applicant was exonerated of the charges and because of that the Court decided to issue a fresh show cause notice and to decide the

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nature of absence in accordance with the law but in the present case the applicant was punished and a ~~decision~~^{decision} was taken not to regularise the period of absence and to treat the period of suspension as suspension only. It is not necessary for us to go into ~~the responder~~ the contentions in view of the direction which is going to be given in this case.

9. In the circumstances referred to above, the following direction is given :-

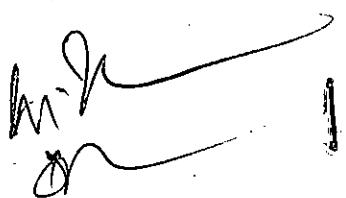
Applicant may, if so advised, submit a detailed representation taking all the contentions as available to him against the impugned order to the General Manager, S.C.Railway, within a period of 21 days from the date of receipt of a copy of this order. If such ^{an} appeal is received by the General Manager, S.C.Railway, he shall fully look into the contentions raised by the applicant and pass a speaking order in accordance with the law within a period of two months from the date of receipt of a copy of the appeal.

10. With the above direction, the O.A. is disposed-of. No order as to costs.


(B.S. JAI PARAMESHWAR)
Member (J)
25.3.98


(R.RANGARAJAN)
Member (A)

Dated: 25th March, 1998.
Dictated in Open Court.


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Copy to:

1. The General Manager, South Central Railway, Secunderabad.
2. Chief Operating Manager, (Formerly Chief Operating Superintendent), South Central Railway, Secunderabad.
3. The Divisional Railway Manager, Broad Gauge, South Central Railway, Secunderabad.
4. One copy to Mr. N. Ram Mohan Rao, Advocate, CAT, Hyderabad.
5. One copy to Mr. V. Rajeswara Rao, Addl. CGSC, CAT, Hyderabad.
6. One copy to D.R(A), CAT, Hyderabad.
7. One duplicate copy.

YLKR

17/3/98
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II COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M (J)

DATED: 25/3/98

ORDER/JUDGMENT

M.A/R.A/C.P.NO.

in

D.A.NO. 959/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

DESPATCH

5/6 APR 1998

हैदराबाद न्यायालय
HYDERABAD BENCH