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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 1509 OF 1995

DATE OF ORDER : 22-6-1998

BETWEEN :

Dr P. Sambasiva Rao ... Applicant

AND

1. Government of India Per.
Railway Board (Ministry of Railways)
Rep. by its Secretary,
Rail Bhavan,
New Delhi.
2. General Manager,
South Central Railway,
Secunderabad 500 003. ... Respondents

Counsel for the Applicant : Shri G. Ramachandra Rao

Counsel for the Respondents : Shri V. Rajeswara Rao

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))

Heard Shri Shastri for Shri G. Ramachandra
Rao for the Applicant and Shri V. Rajeshwara Rao, Addl.
Standing Counsel for the Respondents.

While the Applicant was working as Additional
Divisional Medical Officer, South Central Railway,
Vijayawada, he was served with a memo. of charges
^{by} ~~against~~ proceedings No. P/SC/227/H/92 dated 30-10-1989.
The Applicant sent his explanation to the charges on
5.12.1989. An enquiry was conducted into the charges.

The enquiry Officer by his report dated nil held that the charges levelled against him were not proved. The report of the Enquiry Officer is at pages 21 to 36 of the O.A.

The Disciplinary Authority i.e., the Railway Board disagreeing with the findings recorded by the Enquiry Officer and considering the records of the enquiry by his proceedings No. E(O)I-93-PU2/30 dated 4.5.1993 (Annexure V) imposed a penalty of reduction of pay of the Applicant by 2 stages from Rs. 4000/- to Rs. 3800/- in the scale of pay of Rs. 2200/- - Rs. 4000/- for a period of two years with cumulative effect. The order dated 4.5.1993 is at pages 37 - 40 of the O.A.

The Disciplinary Authority again by its order No. E(O)I-93/PU 2/30 dated 7.11.1994 (Annexure VI) modified the said order dated 4.5.93 and imposed the penalty of reduction of pay of the Applicant by two stages in the scale of Rs. 3000/- - Rs. 4500/- from Rs. 4250 to Rs. 4000 for a period of 19 months with cumulative effect. It was further stated that the penalty order would be effective from 7.11.1994.

The Disciplinary Authority in its order dated 7.11.1994 has stated that the Applicant was promoted as D.M.O. retrospectively and allowed proforma fixation in the scale of Rs. 3,000/- - Rs. 4,500/- w.e.f. 19.10.87 and, therefore, the ~~above~~^{earlier} said penalty could not be operated and hence, the modification of the penalty order was necessitated, which was issued by order dated 7.11.94.

Even earlier to the issue of the modified penalty order dated 7.11.1994, the Applicant had filed an

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appeal dated 1.7.1993 protesting against the first punishment order dated 4.5.1993. It is stated that the said appeal is yet to be disposed of.

This O.A. is filed praying for setting aside the impugned proceedings No. E(O)I-93/PU 2/30 dated 7.11.94 suspend the operation of the order No. E(O)I-93/PU 2/30 dated 7.11.94 on the file of R-1, herein imposing reduction of pay on the Applicant with all consequential and attendant benefits.

In effect, this O.A is filed challenging the modified punishment order issued to the Applicant. The appeal of the Applicant is yet to be decided. A view can be taken that the appellate authority may be asked to dispose of his appeal dated 1.7.1993. But that will not be in order as his appeal dated 1.7.93 pertains to the initial punishment order issued on 4.5.93. The Applicant cannot get relief on the basis of setting aside the punishment of the modified order dated 7.11.94, as the appeal will not contain full reasons for setting aside the modified punishment order dated 7.11.94. Though it may be stated that the Applicant will submit only the reasons for setting aside the punishment, whether it is a punishment by the first order or second order, the reasons cannot be changed, we feel that an appeal should be directed against a final order and not against an order which is non-existent. In this case, the appeal filed against the order dated 4.5.93 in our opinion is not applicable for setting aside or giving any other relief in accordance with the punishment order dated 7.11.94. Hence, it is necessary that the Applicant should file a fresh appeal protesting against the imposition of the modified punishment order dated 7.11.94.

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The Applicant may be allowed to file a fresh appeal withdrawing his earlier appeal dated 1.7.1993 and that appeal can be disposed of by the appellate authority according to law and that will meet the ends of justice. But we feel that the above submission is ~~simplistic~~ a simple one and to be taken at the face value under the circumstances of this case. The Enquiry Officer has quoted that both the charges had not been proved. The first punishment order dated 4.5.93 was issued by the Respondent authorities without giving notice to the Applicant as to why the Respondent authorities did not agree with the findings of the Enquiry Officer. It may also be argued that the Respondent authorities are not rule bound to issue a notice, while disagreeing with the findings of the Enquiry Officer. But we are of the opinion that it is for the Disciplinary Authority to decide as to the reason for not issuing a notice before passing the impugned punishment order disagreeing with the report of the Enquiry Officer. It is not possible for us and it is also not necessary for the Tribunal to decide whether a notice is to be issued or not. It is for the Disciplinary Authority to decide that issue on the basis of the facts and other material available with them. It is now stated that the modified punishment may require a notice to be issued before passing the punishment order by the Disciplinary Authority. Hence, under the circumstances now prevailing we are of the opinion that the modified punishment order should also be set aside and liberty has to be given to the Respondents to proceed from the ^{consideration of the} stage of the findings of the Enquiry Officer's Report.

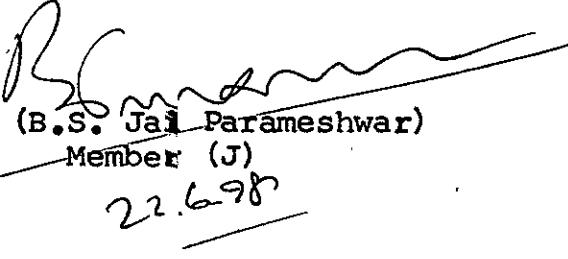
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In view of what is stated above, the following direction is given :

The modified punishment order No. E(O)I-93/PU 2/30 dated 7.11.94 is set aside. Liberty is given to the Respondent authorities to initiate the proceedings ~~henceforth~~ from the consideration of the report of the Enquiry Officer and take a final decision in regard to the punishment to be awarded to the Applicant. The recoveries, if any, made already from the salary of the Applicant should be ~~returned~~ ^{refunded} back to him and recoveries, if necessary, ^{shall be} made on the basis of the fresh order to be issued to him, in accordance with law.

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


(B.S. Jain Parameshwar)
Member (J)

22.6.98


(R. Rangarajan)
Member (A)

DICTATED IN OPEN COURT

DATED : 22.6.98

...js/-

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Copy to:

1. The Secretary, Govt. of India, Rail Bhavan, New Delhi.
2. General Manager, South Central Railway, Secunderabad.
3. One copy to Mr.G.Ramachandra Rao, Advocate, CA, Hyderabad.
4. One copy to Mr.V.Rajeswara Rao, Addl.CGSC, CAT, Hyderabad.
5. One copy to D.R(A), CAT, Hyderabad.
6. One duplicate copy.

YLKR

8/7/98

(b)

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: 22/6/98

ORDER/JUDGMENT

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

in

D.A.NO. 1509/95.

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

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