

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.167 of 1995

DATE OF ORDER: 27th October, 1997

BETWEEN:

A.NARASINGA RAO

.. APPLICANT

AND

1. The Senior Divisional Operating Manager,
South Eastern Railway, Waltair,
Visakhapatnam,

2. The Divisional Railway Manager,
S.E.Railway, Waltair, Visakhapatnam,
General Manager, S.E.Railway,
Calcutta-43.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.P.B.VIJAYA KUMAR

COUNSEL FOR THE RESPONDENTS: Mr.C.V.MALLA REDDY, Addl.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGEMENT

ORAL ORDER (PER HON'BLE SHRI B.S.JAI PARAMESHWAR,
MEMBER (JUDL.))

Heard Mr.Koteswara Rao for Mr.P.B.Vijaya Kumar,
learned counsel for the applicant and Mr.C.V.Malla Reddy,
learned standing counsel for the respondents.

2. The applicant while working as Guard was served
with memorandum of charge bearing NO.WTZ/ANR/1992/Misc.

dated 20.10.92. The applicant denied the charge and a detailed inquiry was conducted into the said charge. ^T and the Inquiry Officer submitted his report holding that the charge levelled against the applicant was partially proved. Against the said findings, the applicant submitted his explanation on 2.3.93. After considering the findings of the Inquiry Officer and the explanation offered by the applicant, the Disciplinary Authority by his proceedings no.WTZ/AKR/1992/Misc. dated 17.3.93 (Annexure A-III at page 12 to the OA) imposed a penalty of reduction of pay to Rs.2150/- p.m. in the scale of pay of Rs.1350-2200 (RPS) for a period of four months with effect from the date of

3. Against the said penalty notice, the applicant submitted his appeal dated 30.3.97 (Annexure A-II at page 8 to the OA) to the Divisional Railway Manager, South Eastern Railway, Waltair. The Divisional Railway Manager vide proceedings No.WTZ/ANR/1992/Misc. dated 21.6.93 (Annexure A-I at page 7 to the OA) accepted the order of the Disciplinary Authority. In his order, he stated as follows:-

"As stated by EI/Vig/GRC "The decoy check was not conducted as per procedure". Also, no prosecution witnesses attended the enquiry. Therefore, the party deserves some benefit of doubt. But since the two one rupee notes were in the Rs.11/- received by him, he cannot also be completely exonerated. Considering all the factors, I modify the punishment from reduction of next lower stage in his present scale for a period of 4 months CE to 2 months CE."

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4. Thus the appellate Authority modified the punishment imposed by the Disciplinary Authority from four months to two months with cumulative effect. It is this order that is challenged by the applicant in this OA.

5. No reply has been filed on behalf of the respondents.

6. On perusal of the records, we noticed that during the course of the inquiry no witnesses were examined in the presence of the applicant. The Inquiry Report clearly stated that "neither the prosecution nor the defence was able to produce the Decoy in the DA inquiry though sufficient scope was given. Hence this inquiry was completed to take decision on the availability of records and depositions of CPO only."

7. In the memorandum of charge dated 20.10.92, there four witnesses were cited as the witnesses proposed to be examined to substantiate the charge. Without examining them, the inquiry cannot be completed. If the witnesses ~~were~~ are not present, the Inquiry Officer should have postponed the inquiry and directed the respondents to produce the witnesses for examining them. Having cited the witnesses to finalise the inquiry, concluding the same without examining all or any of them is no inquiry at all.

8. Hence it should be taken as inquiry was concluded without following the principles of natural justice. Since the principles of natural justice are not followed while inquiring into the charges, it has to be held that the

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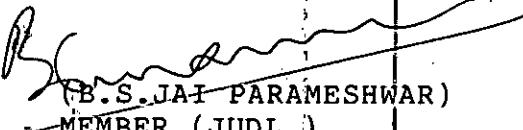
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inquiry report is not prepared following the extant orders. On that score itself, the punishment order dated 17.3.93 has to be held as having been issued without any evidence. The disciplinary authority's order dated 17.3.93 is liable to be set-aside. For the same reason, the order of the Appellate Authority is also liable to be set-aside.

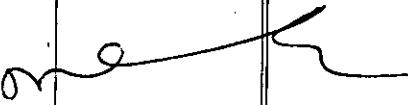
9. We also find from the disciplinary and appellate orders that no mention has been made in regard to the reasons for not calling and examining the prosecution witnesses. That itself shows that the disciplinary and the appellate authorities had finalised the charge sheet without following any extant rules and instructions. We do not expect a senior officer to behave in that manner when passing a quasi-judicial order.

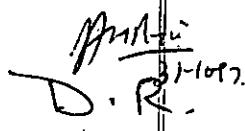
10. In view of what is stated above, both the disciplinary order dated 17.3.93 and the appellate order dated 21.6.93 ^{is} ~~are~~ set-aside. But this will not stand in the way of the respondents to initiate a fresh inquiry from the stage of initiating the disciplinary proceedings for ordering a fresh inquiry.

11. The OA is ordered accordingly. No order as to costs.


(B.S.JAI PARAMESHWAR)
MEMBER (JUDL.)

27.10.97


(R.RANGARAJAN)
MEMBER (ADMN.)


D.R.
1-10-97

vsn

DATED: 27th October, 1997
Dictated in the open court.

CA.167/95

Copy to:-

1. The Senior Divisional Operating Manager, South Eastern Railway, Waltair, Visakhapatnam.
2. The Divisional Railway Manager, South Eastern Railway, Waltair, Visakhapatnam.
3. The General Manager, South Eastern Railway, Calcutta.
4. One copy to Mr. P.B.Vijaya Kumar, Advocate, CAT., Hyd.
5. One copy to Mr. C.V.Malla Reddy, Addl.CGSC., CAT., Hyd.
6. One copy to BSJP M(J), CAT., Hyd.
7. One copy to D.R.(A), CAT., Hyd.
8. One duplicate copy.

srr

7/11/97
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TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE COURT HYDERABAD

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

AND

THE HON'BLE SHRI B.S.JAI PARAMESHWAR :
M (7)

Dated: 27-10-97

ORDER/JUDGMENT

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

D.A.NO. 167/95 in

Admitted and Interim Directions
Issued.

Allowed

Disposed of with Directions

Dismissed

Dismissed as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.

YLR

II Court

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal
प्रेषण/DESPATCH
- 3 NOV 1997
हैदराबाद न्यायपीठ HYDERABAD BENCH