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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.1051/95

DATE OF ORDER : 7-1-1998.

Between :-

R.R.Sree Ramulu

... Applicant

And

1. The Divisional Commercial Superintendent,
SC Rlys, Guntakal, Anantapur Dist.
2. The Divisional Railway Manager,
SC Rlys, Guntakal, Anantapur Dist.
3. The Chief Commercial Superintendent,
SC Rlys, Sec'bad.
4. The General Manager,
SC Rlys, Sec'bad.

... Respondents

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Counsel for the Applicant : Shri C.Obulapathi Chowdary

Counsel for the Respondents : Shri D.F.Paul, SC for Rlys

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CORAM:

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

MEMBER (B)

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

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... 2.

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

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Heard Sri Chaitanya for Sri C.Obulapathi Chowdary, counsel for the applicant and Sri D.F.Paul, standing counsel for the respondents.

2. The applicant while working as Commercial Clerk was issued with a charge memorandum No.G/C.24/1159/83 dt.22-12-1983. The articles of charges reads as follows :-

That the said Sri R.R.Sreeramulu, while functioning as commercial clerk, Raichur failed to maintain absolute integrity in that he has committed serious irregularities and temporarily misappropriated Railway's cash in parcel office, Raichur to the extent of Rs.200/- as per the detailed investigation of parcel office, Raichur, made by TIA/SC during June 83.

An enquiry was conducted by one Sri Pullanna, ACS, Guntakal. Subsequently it was stated that Sri Pullanna was promoted as DCS and the next incumbent continued the enquiry and submitted his report holding the applicant guilty of the charges. On the basis of the Enquiry Report, the applicant was removed from service by impugned order No.G/C.24/1205/83 dt.25-11-87 (Annexure-XI pages-32 & 33 to the OA). That punishment was awarded to the applicant by Sri Pullanna, the DCS, Guntakal, who was earlier working as ACS in the same division and ^{who had} partially conducted the enquiry. The applicant filed an appeal addressed to Respondent No.2 dt.30-12-87 (Annexure-12 Page-34 to the OA). In that appeal the applicant had stated that Sri Pullanna, DCS, who awarded him the punishment of removal from service as an ACS earlier conducted

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enquiry and as he was by then promoted as DCS, the enquiry was conducted and completed by his successor who was posted as ACS. Sri Pullanna who took over charge as DCS had imposed the penalty of removal from service. Since Sri Pullanna had ^{Conducted} ~~completed~~ enquiry for ^{some time} and also acted as Disciplinary Officer, the punishment awarded by him by the impugned memorandum dt.25-11-87 has to be set aside as the disciplinary authority is biased towards the applicant.

3. The appeal was considered by Respondent No.2 and he was informed by impugned memorandum dt.29-3-88 modifying the penalty of removal from service to that of compulsory retirement. It is now stated that the applicant has also filed revision petition to Respondent No.2 which was dismissed confirming the appellate authority order. On that the applicant later submitted a mercy petition to the General Manager, SC Railway. Though this petition is stated as revision petition, it is to be treated as mercy petition as the revision petition had also been dismissed by the ^{Rejected A-3} ~~General Manager~~. ^{Although the mercy petition was disposed by G.M. it is stated that G.M.} ~~General Manager, though the same~~ was not informed to the applicant.

4. This O.A. is filed for setting aside the order of Respondent No.1 bearing No.G/C.24/1205/83 dt.25-11-87 whereby the applicant was removed from service and the order of Respondent No.2 bearing No.G/P.90/@&A/II/58/RES/215 dt.29-3-88 whereby the penalty was reduced to that of compulsory retirement and rejection of his revision petition addressed to Respondent No.3 by memo No.P85/GTL/998 dt.20-4-1989 and for a consequential direction to re-instate the applicant into service.

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5. The only contention of the applicant in this case is that Sri Pullanna acted as an enquiry officer for some time and later he look over as DCS and the enquiry was conducted by another ACS. Since Sri Pullanna while working as DCS imposed the penalty of removal from service, he is biased against the applicant and on that ground the impugned proceedings have to be set aside. It is also stated that the applicant had reported against Sri Pullanna to the Vigilance and he is biased against the applicant. // As per Sub rule 9(a)(i) of Rule-9 of the Railway Servants Discipline & Appeal Rules, 1968 is relevant to the issue. This rule gives the detailed procedure for imposing major penalties. As per this Rule a Disciplinary Authority can also act as an Enquiry Officer. Sub Rule 9(a)(ii) of Rule 9 is reproduced below :-

"Where the disciplinary authority decides to proceed with the inquiry it may itself inquire into such of the articles of charges as are not admitted or appointed under sub-rule(2) a Board of Inquiry or other authority for the purpose."

Hence if Sri Pullanna acted as Enquiry Officer and later he awarded punishment to the applicant, the applicant cannot challenge the punishment on the basis of bias as the Disciplinary Authority had acted as the Enquiry Officer. Hence the present contention has to fail.

6. The second complaint of the applicant is that the applicant had reported against Sri Pullanna to the Vigilance, Hence he has awarded the penalty of removal from service.

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7. Merely saying that his reporting to the vigilance has caused harm to the applicant cannot be taken on the face value. Merely making an ~~averment~~ and ~~asserting~~ that this has caused harm to the applicant cannot be taken as a proper material for coming to the conclusion that ~~Sri~~ Sri Pullanna is biased against the applicant. From the O.A. and after hearing the arguments, this contention also cannot be upheld.

8. The learned counsel for the applicant submits that the compulsory retirement is harsh on him as the mis-appropriation of funds is only to the extent of Rs.200/-, which had already been recovered. He also submits that he had put in about 23 years of service and he has a big family to maintain. Under the circumstances the applicant submits that the punishment needs review.

9. Court or Tribunal cannot review the punishment ~~given to~~ awarded to the applicant. It can only observe whether the punishment is adequate or excessive considering imputations/gravity of charges. In the present case we feel that the applicant may have a case for reconsideration of his penalty. The averment of the applicant in this connection needs consideration by the appropriate authority. The mercy petition of the applicant to the General Manager is reported to have been dismissed already and even if he submits a mercy petition to the General Manager, we do not see any useful result will come out from that petition. Hence the applicant, if so advised, may submit a detailed mercy petition for reduction of his penalty to the Railway Board. If such a representation is made, we have no doubt in our mind that the Railway Board will

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consider his mercy petition duly taking into account all the averments made by the applicant. The Railway Board shall dispose of the representation expeditiously.

10. In the result, the O.A. is dismissed subject to the observations made as above. No costs.


(B.S.JAI PARAMESHWAR)

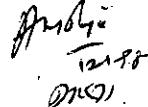
7.1.98
Member (J)


(R.RANGARAJAN)

Member (A)

Dated: 7th January, 1998.

Dictated in Open Court.


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Copy to:

1. The Divisional Commercial Superintendent,
South Central Railway, Guntakal,
Ananthapur District.
2. The Divisional Railway Manager, South Central Railway,
Guntakal, Ananthapur District.
3. The Chief Commercial Superintendent, South Central Railway,
Secunderabad.
4. The General Manager, South Central Railway,
Secunderabad.
5. One copy to Mr.C.Obulapathi Chowdary,Advocate,CAT,Hyderabad.
6. One copy to Mr.D.F.Paul, SC for RailwaysmCAT,Hyderabad.
7. One copy to D.R(A),CAT,Hyderabad.
8. One duplicate copy.

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TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR. B. RANGARAJAN : M(A)

AND

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

DATED: 7/1/88

ORDER/JUDGMENT

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

in

C.A.NO. 1051/85

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

YLR

केन्द्रीय प्रशासनिक अधिकार अधिकार
Central Administrative Tribunal

प्रेषण/DESPATCH

21 JAN 1998

हैदराबाद न्यायपीठ
HYDERABAD BENCH