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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 1464/96

Date of Order : 24.11.98

BETWEEN :

P.Veerabhadra Rao

.. A pplicant.

AND

1. Union of India per

General Manager, S.C.Rly.,
Rail Nilayam, Secunderabad.

2. Chief Track Engineer,
S.C.Rly., Headquarters Office
(Personnel Branch), Rail Nilayam,
Secunderabad.

3. Divisional Railway Manager,
S.C.Rly., Vijayawada,
Krishna Dist.

4. Senior Divisional Engineer,
(Co-ordination), S.C.Rly.,
Vijayawada.

.. Respondents.

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Counsel for the Applicant

.. Mr. G. Ramachandra Rao

Counsel for the Respondents

.. Mr. V. Bhimanna

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CORAM :

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

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

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O R D E R

(A s per Hon'ble Shri B.S.Jai Parameshwar, Member (Judl.))

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Mr.G.Ramachandra Rao, learned counsel for the applicant and Mr.V.Bhimanna, learned standing counsel for the respondents.

2. During February 1993 the applicant was working as Permanent Way Inspector at Tadepallygudem. On 2.2.93 there was ~~derailment~~ of up PGR 'N Goods and collision of derailed wagons with Down MVG 'N Goods between Tadepallygudem and Chrlapally Railway Stations.

3. A fact finding body was constituted to ascertain the reasons for the said accident. It appears that ~~during~~ ^{before} the said fact finding body the applicant made his statement. On that basis he was issued with a charge memo dated 14.7.93.

4. The charges levelled against him read as under :

Article-1: That the said Sri P.Veerabhadra Rao, while functioning as PWI/III/TDD during the period from 1.9.1992 to 31.12.92 had committed serious misconduct in that he made fish bolt hole by frame cutting while introducing the joint in the CWR track at Km.528/1 which has become weak resulting in fracture of rail and caused ~~derailment~~ of Up PGR 'N Goods collision of derailed wagons with Down MVG 'N Goods bet.TDD-CEL on 2.2.1993. Thus he has violated Rule 3(1) (ii) of Railway Service (Conduct) Rules 1966.

Statement of imputations of mis-conduct or mis-behaviour in support of the articles of charge framed against Shri P.Veerabhadra Rao, PWI/III/KVR.

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That the said Sri P.Veerabhadra Rao, while functioning as PWI/III/TDD during the period from 1.9.92 to 31.12.92 had committed serious misconduct in that he failed to maintain devotion to duty in that he ~~made~~ the fish bolt hole by frame cutting while introducing the joint in the CWR track at Km.528/1 which could not withstand the excessive longitudinal fractional pull owing to the reason that the rail already weaken due to inclusion and corrosion in the rail resulted in fracture of rail at the said spot and caused derailment of Up PGRN goods and collision of derailed wagon with Dn MVG'N goods bet. TDD-CEL on 2.2.1993. Thus he has violated Rule 3(1) (ii) of RS (Conduct) Rules 1966.

5. In the said charge memo the respondents authorities did not mention the names of the witnesses to be examined in support of the ~~articles of charges~~ levelled against the applicant.

6. However by a corrigendum dated 29.4.94 (Page-30) they included certain witnesses to be examined in support of the charges.

7. The applicant denied the charges. The enquiry officer conducted into the charges and submitted his report dated 21.9.94.

8. The report of the enquiry officer is at pages 38 to 40. The enquiry officer has recorded the findings as under :-

"From the above I hold article I & II of charge contained in the charge sheet No.B/T.5/92/2/2/1 Vol.2 of 14.7.93, and corrigendum to annexure IV of SF.5 vide No.B/T.5/93/2/2/1/Vol.2 of 29.4.94, issued by Sr.DEN/Co-Ord/BZA framed against Sri P. Veerabhadra Rao, is not guilty of the charges framed against him".

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9. A copy of the report of the enquiry officer was furnished to the applicant. The applicant did not submit any representation against the said report as he was exonerated by the enquiry officer as his guilt was not proved during the enquiry.

10. The disciplinary authority by his proceedings dated 10.11.94 has imposed the penalty of reducing the pay of the applicant by 3 stages i.e. Rs.1560/- to Rs.1440/- w.e.f. 1.3.95 for a period of 24 months with recurring effect in scale of Rs.1400-2300 (RSRP). The copy of the penalty advice is at Annexure-XVIII (page-40-42 of the OA).

11. On 1.1.95 the applicant submitted an appeal. The appellate authority by his order dated 22.2.95 rejected the same and confirmed the punishment. The order of the Appellate Authority is at Annexure-XX (page-44 to 46 to the OA).

12. Against the order of the appellate authority, the applicant submitted a revision application to the Chief Track Engineer, Secunderabad. The said revision petition met with the same fate. However, the revision authority by his order dated 15.11.95 modified the punishment in reducing the pay by 3 stages for a period of 24 months to that of 18 months ^(recurring). The order of the revisional authority is at Annexure XXIII (page-48 to 50 to the OA).

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13. This OA is filed challenging the order dated 10.11.94 passed by R-4 and modified by the respondents 2 and 3 in their proceedings No. B/P-88/VII/95/2, dated 22.2.95 and P-88/BZA/PVR/1986 dated 15.11.95 and ~~to~~ ^{praying} to set aside the same with consequential directions to the respondents to restore the pay of the applicant w.e.f. 1.3.95.

14. The respondents have filed their counter narrating the circumstances under which the corrigendum dated 29.4.94 was issued and also stating that since the applicant had admitted before the fact finding authority they felt no necessity to include the names of the witnesses to the charge memo and that enquiry was conducted adhering to the principles of natural justice. They submit there are no grounds to interfere with the impugned orders.

15. During the course of hearing the following points were raised :

(a) The charge sheet was issued without mentioning the names of witnesses by the disciplinary authority. However a corrigendum was issued indicating 5 names by the disciplinary authority. While issuing the corrigendum dated 29.4.94 (A-12), it was stated that the enquiry already conducted by the enquiry officer was treated as cancelled subject to the DRM's order. It is not clear under what rule already conducted enquiry was treated as cancelled. In our opinion the disciplinary authority can gather every material

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information from the enquiry officer. But he may have no power to cancel the proceedings already conducted. Hence the corrigendum appears to be erroneous. The issue of the corrigendum including the names of witnesses when there was no names in the Annexure to the charge sheet also appears to be irregular.

(b) We have extracted above the findings of the enquiry officer. On the face of the findings recorded by the enquiry officer, the disciplinary authority could not have imposed the penalty. The disciplinary authority has every power to accept or reject the report of the inquiry officer. He can also disagree with the inquiry officer. He has to record his reasons for his disagreement. Surprisingly this has not been done by the disciplinary authority. In his order dated 10.11.94 he himself stated that he agreed with the findings of the inquiry officer.

16. Even during the stage of examination of witnesses the applicant objected for their inclusion though corrigendum dated 29.4.94 was not proper. The enquiry authority has not taken note of this fact into consideration.

17. Since the issue of the corrigendum dated 29.4.94 was itself irregular and no witnesses were cited to support the charges along with the charge memo, we feel it proper to set aside the charge sheet and enquiry proceedings since there are many irregularities. However liberty is given to the

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respondents to proceed afresh if they are so advised in relation to the alleged misconduct of the applicant in accordance with the rules.

18. Hence the following directions are given :-

(a) The charge memo issued on 14.7.93, the subsequent proceedings and the impugned orders are set aside. ~~and the impugned orders dated 14.7.93.~~

(b) Liberty is given to the respondents to proceed afresh against the applicant if they are so advised strictly in accordance with the rules.

(c) They must take decision in this regard within three months from the date of receipt of a copy of this order.

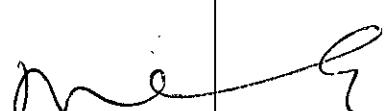
19. With the above directions, the OA is disposed of.

No costs.


(B.S. JAI PARAMESHWAR)

Member (Judl.)

24.11.98

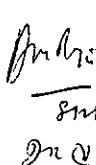

(R.RANGARAJAN)

Member (Admn.)

Dated : 24th November, 1998

(Dictated in Open Court)

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JAI
RANGARAJAN
24.11.98