

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDRABAD

ORIGINAL APPLICATION NO.1504 of 1996

DATE OF ORDER: 5th MARCH, 1999

BETWEEN:

V.VENKATA REDDY

.. APPLICANT

and

1. The Deputy Chief Mechanical Engineer,
Carriage Repair Shop,
South Central Railway,
Tirupathi, Chittoor Dist,
2. The Works Manager,
Carriage Repair Shop, S.C.Railway,
Tirupathi,
3. The Assistant Works Manager,
Carriage Repair Shop, S.C.Railway,
Tirupathi,
4. Shri P.V.B.Narayana Rao,
Shop Superintendent,
Enquiry Officer,
CBR Shop, Corrossion,
S.C.Railway,
Carriage Repair Shop,
Tirupathi.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr. P.SRIDHAR REDDY

COUNSEL FOR THE RESPONDENTS: Mr.J.R.GOPALA RAO, Addl.CGSC

CORAM:

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

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

JUDGMENT

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

Heard Mr.P.Sridhar Reddy, learned counsel for the
applicant and Mr.J.R.Gopala Rao, learned standing counsel
for the respondents.

Bz

A

2. The facts of this case are as follows:-

The applicant in this OA is a Skilled Grade-III, T.No.6051, CBR Shop, CRS, Tirupathi. He was injured while on duty and was granted hospital leave during the period from 21.8.92 to 13.11.92 totalling 85 days. It is stated that a disciplinary action was taken against the applicant for his unauthorised absence in four spells during the period from 6.2.93 to 23.7.93 for a period of 145 days.

3. The applicant was issued with a major penalty charge sheet by Memo No.TR/P.227/V.V. dated 24.7.93 (Annexure A-III at page 18 to the OA). The article of charges reads as below:-

"That the said Sri V.Venkat Reddy, T.No.6051 while functioning as SK.III in SS/CBR Shop, Carriage Repair Shop, Tirupati has committed serious misconduct in that he remained unauthorisedly absent as per the statement enclosed without prior sanction of leave by the competent authority or producing Railway Medical Certificate.

Thus he has failed to maintain absolute devotion to duty and violated the provisions under rule 3(1) (ii) of Railway Services (Conduct) Rules 1966."

R

D

The period of unauthorised absence is shown as below in the list of documents enclosed to the Annexure:-

| | |
|--------------------|----------|
| "6.2.93 to 28.2.93 | 23 days |
| 13.3.93 to 31.3.93 | 19 days |
| 12.4.93 to 30.4.93 | 19 days |
| 1.5.93 to 23.7.93 | 84 days |
| ----- | |
| | 145 days |
| -----" | |

4. After issuing the charge sheet, the applicant produced the sick certificate for the period from 13.2.93 to 31.3.93. Hence the absentee periods of the applicant are as below:-

| | |
|--------------------|----------|
| "6.2.93 to 28.2.93 | 23 days |
| 1.3.93 to 12.3.93 | 12 days |
| 12.4.93 to 30.4.93 | 19 days |
| 1.5.93 to 23.7.93 | 84 days |
| ----- | |
| | 138 days |
| -----" | |

5. It is stated that the applicant continued to remain absent. The charge sheet was sent to his residential address and another copy was exhibited on the notice board in the presence of two witnesses as seen from Annexure II to the reply. It is stated that there was no response whatsoever from the applicant. Hence an Inquiry

R

A

Officer was nominated to inquire into the charges framed against the applicant by the letter NO.TR/P.227/V.V.R., dated 20.10.94 (Annexure III to the reply). It is stated that the applicant attended in time ^{before} ~~to~~ the Inquiry Officer and requested with a suitable application for postponing the inquiry as he ^{was} ~~is~~ in search of a Defence Helper. The request of the applicant for postponing the inquiry had been accepted and hearing of the above case was fixed on 10.1.95 at 1400 hours as can be seen from the letter No.SS/CBR/1/DAR, dated 20.12.94 (Annexure V at page 15 to the reply). The above said letter dated 20.12.94 has been acknowledged by the applicant as can be seen from his signature on that letter.

6. The applicant with his Defence Helper attended the inquiry on 10.1.95 but the Defence Helper requested a copy of the attendance sheet of the applicant. As it was not available, the inquiry was postponed to 23.1.95 and on that date the inquiry was continued. On that date the Defence Helper had informed the Inquiry Officer that he would come up with necessary Medical Certificate in support of the sickness of the delinquent employee for the remaining part of the period of absence, in a couple of days. Hence the inquiry was postponed to 6.2.95. But neither the delinquent employee nor his Defence Helper had submitted the said document till the date of communication of the review decision. The fact that the applicant requested for a copy of the attendance register and the postponement of the inquiry to 23.1.95 to supply documents is evident from the proceedings of the inquiry held on 10.1.95 which is enclosed at page 23 to the OA. It is also

R

D

evident that the Inquiry proceedings were held on 23.1.95 wherein the Defence Helper had stated that he had received the skeleton statement of the attendance sheet but he wanted a letter issued by the CMO, Secunderabad on 15.2.93. It has been stated that the applicant was permitted to submit copies of the documents to prove his medical sickness from various hospitals within a couple of days for which the applicant and his Defence Helper had agreed and ~~wanted~~ ^{prayer for} time. This is as per the inquiry proceedings at Annexure A-4 at page 21 to the OA. Because of the above developments, the inquiry was postponed to 6.2.95 but it is stated that neither the Defence Helper nor the delinquent employee submitted the document till the date of communication of the reviewing authority's decision. The next sitting was fixed on 16.2.95 which was not attended by the applicant. The respondents submit that the advices of the subsequent sittings on 6.4.95, 17.4.95, 25.4.95, 25.7.95, 6.8.95 and 16.8.95 were also not responded by the applicant. For this, they annexed Annexures VI to XI to the reply. It is stated that the applicant instead of attending the inquiry proceedings, sent a communication on 10.8.95 (Annexure XII at page 22 to the reply) addressed to the Inquiry Officer nominating Mr.M.Khader Vali, a retired OS, Sr.SPO/O/BZA as his Defence Helper. Acceptance of the Defence Helper was also enclosed along with his letter. The Defence Helper had given his acceptance on the letter head of an Union called "National Forum of Railway Congressmen" accepting to act as his Defence Helper and requested for a First Class pass for his journey from Guntur to Tirupathi and back. The request was not

R

1

entertained by the Inquiry Officer for the change of the Defence Helper and another chance was given to the applicant to attend the inquiry on 16.10.95 through the letter dated 8.9.95 (Annexure XIV at page 26 to the reply). The applicant did not attend the inquiry on 16.10.95. Hence the Inquiry Officer, as a last chance, adjourned the inquiry to 25.11.95. But the applicant through the letter dated 12.11.95 addressed to Dy.CME (the revising authority), demanded for acceptance of change of the Inquiry Officer and the Defence Helper. However, the Dy.CME i.e, R-1 regretted his request but recorded that he can still attend another sitting as a last chance on 27.12.95. The applicant did not attend the inquiry even on 27.12.95. Hence the Inquiry Officer submitted the inquiry report holding the inquiry exparte and the inquiry report was sent to the applicant on 9.1.96 for making representation thereon, if any.

7. The applicant filed OA 96/96 on the file of this Bench. The Tribunal vide its order dated 25.1.96 (Page 28 to the reply) extended time for submitting his explanation and that time was extended upto 15.2.96 and the disciplinary authority was directed to consider the said explanation if it is going to be sent by Registered Post with Acknowledgement due by 15.2.96.

8. The applicant submitted his representation on 7.2.96 on the Inquiry Officer's report (Annexure XV to the reply). The disciplinary authority after carefully going through the representation and the inquiry proceedings, imposed a penalty of removal from service by the Memo No.TR.227/VV, dated 7.3.96 (Annexure A-12 at page 44 to the OA). The applicant preferred an appeal on 17.3.96 which is

R

A

enclosed as Annexure A-13 at page 46 to the OA, against the order of removal and also requested for personal hearing in the presence of the Defence Counsel. It is stated that the appellate authority vide letter dated 10.4.96 acceded to the request of the applicant for personal hearing and advised the applicant to be present along with his defence counsel on any working day between 1400 hours and 1600 hours upto 20.4.96 (Annexure XVI to the reply). That letter was also addressed to his Guntur address. A First Class pass was also given in the name of Mr.M.Khader Vali. It is stated that the applicant by his letter dated 17.4.96 requested for postponement of the personal hearing to any date between 15.5.96 to 18.5.96. The appellate authority vide letter dated 1.5.96 (Annexure XVIII & XIX at page 38 to the reply) had acceded to his request to the extent of the privilege of personal hearing between 15.5.96 and 20.5.96 duly sending a First Class pass to the Defence Counsel. It is stated that the applicant did not attend. Instead, he deputed his Defence Helper for personal hearing. The Defence Counsel had given letter in the Union letter head which is enclosed as Annexure XX at page 39. It is stated in that letter that as the applicant is bed ridden and not able to sign any papers, he requested for exemption from personal hearing of the applicant but he himself requested to present the case in the personal hearing as his Defence Counsel. Probably that was not acceded to as the personal hearing is only to the applicant assisted by the Defence Helper and not hearing the Defence Helper. Hence the appellate authority returned his Defence Helper.

R

A

9. The appellate authority, after going through the appeal dated 17.3.96 preferred by the applicant along with the relevant records upheld the penalty of removal from service by his order NO.TR/P.227/V.V.R, dated 24.5.96 (Annexure XXI at page 41 to the reply) upholding the decision of the disciplinary authority advising the applicant to file a revision petition if he so chooses, against the orders to R-1 under rule 25 of the R.S.(D&A) Rules, 1968. The applicant preferred a revision petition to R-1 by his review petition dated 30.6.96 (Annexure A-16 at page 60 to the OA). That was rejected by the order NO.TR/P.227/VVR, dated 7.8.96 (Annexure A-17 at page 63 to the OA).

10. Aggrieved by the imposition of the penalty of removal on him and the rejection of his appeal and review petition by R-2 and R-1, the applicant has filed this OA praying for declaration that the exparte inquiry conducted by R-4 pursuant to the memo of charges in the proceedings of R-3 dated 24.7.93 and order of the disciplinary authority imposing a punishment of removal from service by his proceedings dated 7.3.96 and the confirmation of that order by the appellate authority by his order dated 24.5.96 and that of the reviewing authority by his order dated 7.8.96 are illegal, arbitrary and violative of principles of natural justice and for consequential direction to set-aside those orders and for a further direction to the respondents to reinstate the applicant as Skilled Artisan with continuity of service with all consequential benefits.

u

1

11. From the above details, the first contention raised by the applicant to be answered is whether the applicant was informed of the proceedings and the principles of natural justice were followed fully in finalising the charge memo issued to him on 24.7.93.

12. The applicant submits that the inquiry was conducted exparte. The applicant was aware of the charge sheet and hence he engaged his Defence Helper initially one Mr. Syed Ahamed, AD/CRS/TPY. This definitely goes to show that the applicant had received the charge sheet and because of that only he had engaged the Defence Helper. Not only that, the applicant along with his Defence Helper Mr. Syed Ahamed did attend the inquiry proceedings held on 10.1.95 and 23.1.95. This is evident from the inquiry proceedings at Annexure A-4 at pages 21 to 24 to the OA. Hence the applicant cannot say that he is not aware of the inquiry proceedings. He is aware of the inquiry proceedings and also attended the initial two sittings as stated above. The Inquiry Officer had postponed the inquiry to a later date i.e, 23.1.95 as leave chart ^{was} ~~is~~ to be supplied to him. Though the leave chart was supplied to him even if it is skeleton chart, the applicant cannot say that he was not supplied with the documents indicated in the charge sheet. If the applicant wants ^{ed} to disprove that chart or wants ^{ed} to provide further evidence to show that he was not unauthorisedly absent, it ^{was} ~~is~~ upto him to produce necessary documents. Even though the applicant had accepted to produce medical certificate in support of his sickness and ^{forayed} ~~wanted~~ adjournment ^{for} a couple of days, the

R

1

delinquent employee and his Defence Helper did not attend on 6.2.95 when the inquiry was postponed. Hence it cannot be said that the applicant was not aware of the charges levelled against him and also conduct of the inquiry. He is fully aware of the charges and also necessary materials to be produced by him to substantiate that he is not guilty of the charges. Unfortunately the applicant did not take any action in that connection.

13. The Inquiry Officer further postponed the inquiry fixed on 6.2.95 to 16.2.95. As the applicant did not attend on that date, the date of sitting for the inquiry was further adjourned to 6.4.95, 17.4.95, 25.4.95, 25.7.95, 6.8.95 and 16.8.95. But the applicant did not attend the inquiry on those days. It is also seen that the applicant has been informed of the date fixing the inquiry on 10.1.95 as can be seen from his endorsement on the letter dated 20.12.94.

14. Having known fully well that the charge sheet was pending against him and the inquiry proceedings were initiated, it ^{was} is for the applicant to check the subsequent date of sittings from the supervisor incharge or from the Inquiry Officer or from other authorities. Merely saying that he was in the hospital and hence he did not receive the letter regarding fixing of the inquiry proceedings does not in any way help the applicant to absolve him of the charges. Onus of proving his innocence lies squarely with the applicant. There is no proof to say that the principles of natural justice were denied to him as he was not aware of the issue of the charge sheet and further proceedings. He is fully aware of the charge sheet and

[Handwritten flourish]

[Handwritten signature]

hence he cannot escape the responsibility of attending the inquiry proceedings in time as per the dates fixed. The applicant failed to do so on his own volition. The respondents fully acted adhering to the principles of natural justice.

15. The applicant by his letter dated 10.8.95 addressed to the Inquiry Officer nominated Mr.M. Khader Vali as his Defence Helper. That further goes to show that the applicant was aware of the inquiry proceedings and he on his own volition did not attend the inquiry proceedings. The applicant was informed of the report of the Inquiry Officer and he was asked to file his explanation, if any. The applicant did not make any representation and the time for submitting his explanation was extended by the order of the Tribunal in OA 96/96 and as per that direction the applicant did submit an explanation by his representation dated 7.2.96. The applicant also preferred an appeal. He wanted personal hearing. When he was informed of the personal hearing on certain dates, initially he could not attend and hence a second chance was also given to him. When the second chance was given, the applicant did not attend but only his Defence Helper Mr.Khader Vali attended the same. But the personal hearing was to be given to the applicant assisted by his Defence Helper and as there was no procedure to hear the Defence Helper without the presence of the delinquent employee, the appellate authority passed the final orders on his appeal. The applicant further submitted his review application which was also rejected by the reviewing authority.

R

N

16. From the above appreciation of this case, it is evident that

(i) The applicant received the charge sheet;

(ii) He attended the inquiry in the first two sittings but for unknown reasons he did not attend the subsequent sittings;

(iii) He received the Inquiry Officer's report and replied the same;

(iv) His appeal on removal from service imposed by the disciplinary authority was considered by the appellate authority giving him two chances for appearing in person to hear him;

(v) The applicant failed to attend on the dates when he was permitted to submit his explanation personally;

(vi) The review application was considered by the reviewing authority but rejected.

17. Hence we ^{can} ~~do~~ not ^{accept the contention} ~~consider~~ that the principles of natural justice were not adhered to in the case of the applicant before awarding him the punishment. The principles of natural justice ^{have been} ~~were~~ very strictly adhered to.

18. In the reported case in AIR 1988 SC 117 (Chandrama Tewari v. Union of India), it is observed that,

Q

A

185

"It is difficult to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question must be determined on the facts and circumstances of each case. While considering this question it has to be borne in mind that a delinquent officer is entitled to have copies of material and relevant documents only which may include the copy of statement of witnesses recorded during the investigation or preliminary enquiry or the copy of any other document which may have been relied in support of the charges."

19. The above observation of the Apex Court has been fully complied with. We do not have any hesitation to say that the applicant was ^{not} given enough opportunity to substantiate his case. Failure on his part is his own making.

20. The applicant had informed that he will produce necessary medical certificate when he attended the inquiry on 23.1.95. But he failed to do so. He submitted some documents after the date of communication of the result of the review application. If the applicant can submit the documents regarding his medical sickness after the decision of the reviewing authority, it is not understood what prevented him from submitting the documents on 6.2.95 when the inquiry was postponed to enable him to submit those documents. Even if he could not submit the certificates on that date, he should have attended the inquiry on that date ^{discussing} ~~giving~~ his reasons for his inability to produce those documents and requested for time. But unfortunately he did

R

D

not take action suitably. He did not also attend the sittings on 6.4.95, 17.4.95, 25.4.95, 25.7.95, 6.8.95 and 16.8.95. The applicant cannot say that he had not received the communications regarding the sitings on those dates. As he was informed of the conduct of the inquiry, it is his responsibility to keep in touch with the official concerned and attend the inquiry proceedings on the dates fixed. It is failure on the part of the applicant to come up with suitable records to prove his innocence. The respondent-authorities cannot be blamed in this connection.

21. In view of what is stated above on the basis of the facts and circumstances of the case, we find that there is no reason to come to the conclusion that the applicant was not given enough opportunity to substantiate his unauthorised absence and hence the principles of natural justice were not followed. Hence this contention as noted above is rejected.

22. The second contention of the applicant is that the respondents failed to change the Defence Helper when he requested for the same and hence the applicant was unable to prove his innocence.

23, The applicant first nominated one Mr.Syed Ahamed as his Defence Helper. That Defence Helper did attend the inquiry proceedings on 10.1.95 and 23.1.95. Thereafter the applicant failed to attend the inquiry proceedings. But on 10.8.95 he submitted a request for change of Defence Helper through the letter addressed to the Inquiry Officer. That

Handwritten mark

Handwritten mark

letter did not indicate the reasons for change of the Defence Helper. The applicant should clearly indicate as to why he wanted to change the Defence Helper. Acceptance of the Defence Helper Mr. Khader Vali was given in the letter head of the Union called "National Forum of Railway Congressmen". The above request was put up to the disciplinary authority and that disciplinary authority left it to the discretion of the Inquiry Officer to accept or refuse the renomination/change of Defence Helper based on the circumstantial position of the case. The disciplinary authority further noted that "the Inquiry Officer is in the position of a Judge and he is the correct person to decide if the requested change is really justified at the particular stage of the case as it is only aimed at stalling the proceedings." The notings of the disciplinary authority are enclosed at Annexure R-30 to the reply filed by the learned standing counsel for the respondents. From the above, it is evident that the disciplinary authority had left to the Inquiry Officer to decide the issue. The respondents had enclosed the letter of the Railway Board NO.E(D&A)68 RG 6-8 dated 25.5.68 wherein it is stated that the disciplinary/inquiry authority are the authorities concerned to accept or reject change of nomination of the Defence Helper. It is not very clear from that letter whether the disciplinary authority should inform the delinquent employee or the Inquiry Officer. But change of Defence Helper was refused by the Inquiry Officer. It is to be noted that such a refusal was given not on his own accord by the Inquiry Officer but after taking instructions from the disciplinary authority. The disciplinary

R

A

authority as per the notings had left the decision to the Inquiry Officer to be decided in the circumstances of the case. Even if it is presumed that refusal by the Inquiry Officer as communicated to him is incorrect, such a refusal in no way vitiates the inquiry proceedings. The applicant has got full right to appeal against that decision. Rightly the applicant had appealed to the reviewing authority namely R-1 in regard to his request for change of Defence Helper. But that was turned down by the reviewing authority who had noted that "the party has not stated any acceptable reason to change his defence counsel. He has also not produced any proof of bias against the E.O. Please advise E.O. to continue with the proceedings and advise the party suitably."

24. From the noting of R-1, it is evident that the request of the applicant was turned down for want of reason.

25. From the above details of this case, we do not see any reason that the applicant was not informed by the competent authority in regard to his request for change of Defence Helper. But the only point to be examined in this case is whether refusal is in order or not.

26. Whenever a change of Defence Helper is requested it is but fair that the applicant states ^{the} reasons for the change of Defence Helper. It is seen from the letter of the applicant requesting for change of Defence Helper that no reason had been shown. If no reason is shown and the authority agrees for change of Defence Helper, it will lead

D

to unnecessary prolonging of the inquiry proceedings. If the delinquent employee comes to the conclusion that the proceedings may go against him, he may once again ask for change of the Defence Helper thereby prolonging the inquiry proceedings without any finality. To avoid such eventuality, fairness demands that the delinquent employee should clearly state as to why he wants to change the Defence Helper and also why the initial Defence Helper was of no use to him. Now the applicant submits that he had not satisfied with the first Defence Helper, namely, Mr. Syed Ahamed. This he could have stated with proof to the disciplinary authority and to the reviewing authority when he approached them for change of Defence Helper. But he did not do so. Stating reason now is of no use as the inquiry proceedings had already been ^{concluded} conducted and the proceedings had come to a close after passing the orders by the reviewing authority. Hence refusal of change of the Defence Helper cannot be questioned at this stage and refusal was due to the failure of the applicant in not submitting reasons for change of the Defence Helper.

27. We have also seen the acceptance letter given by the second Defence Helper. Normally, the Defence Helper should give on a plain paper accepting his nomination as Defence Helper. But the second Defence Helper namely Mr. M. Khader Vali had given his acceptance on a letter head of a Union namely, "National Federation of Railway Congressmen". A view can be formed on the basis of the acceptance given on the letter head of the union that the Defence Helper may coerce the Inquiry Officer and other respondent authorities to come to his view as he is a

R

A

representative of the Union. Such a coercion is not called for. The Defence Helper is mainly meant to assist the delinquent employee in the inquiry proceedings with proper documents to prove the case of the delinquent employee and to prove the innocence of the delinquent employee. But the way in which the second Defence Helper Mr. Khader Vali had approached the authorities concerned does not appear to be in order. Hence rejection of the second Defence Helper on that count also cannot be said to be irregular.

28. Even then, when the applicant requested for personal hearing with the appellate authority, the same was given enclosing a First Class pass for Mr. Khader Vali. That itself shows that even at that stage, the respondent authorities wanted to assist the delinquent employee to prove his innocence. But the delinquent employee did not take note of that and attended the personal hearing. He sent the second Defence Helper namely Mr. Khader Vali to the appellate authority to hear only the second Defence Helper. Such attitude on the part of the delinquent employee is not acceptable. Personal hearing is given to the delinquent employee and not to his Defence Helper. The Defence Helper can go with the delinquent employee to assist the employee once again at the time of personal hearing. If the respondent authorities refused to hear the Defence Helper in the absence of the delinquent employee, such a refusal on the part of the respondent-authorities cannot be termed as illegal or arbitrary. Hence the second contention that the case of the applicant was defeated because of the refusal to change the Defence Helper is not acceptable and hence this contention is rejected.

2

2

29. The third contention of the applicant is that the change of the Inquiry Officer was not also accepted as the Inquiry Officer was biased against him.

30. This contention has no basis. In his letter asking for change of the Inquiry Officer, the applicant had not stated anywhere that the Inquiry Officer was biased against him for the reasons indicated. But mere asking for change of the Inquiry Officer without indicating proper reasons with valid proof is only to delay the inquiry proceedings. Hence this contention is to be rejected. It is also seen that the Inquiry Officer appears to have acted fairly. He went on postponing the date of hearing. He had also produced the leave chart when asked for in the first sitting of the inquiry i.e, on 10.1.95. Later also he gave opportunity to the delinquent employee to produce the medical certificate to prove that he was really sick and hence he was not able to attend the office. The action on the part of the Inquiry Officer makes us ~~us~~ believe that the contention now raised is frivolous and has to be rejected.

31. The next contention of the applicant is that the two witnesses who were not shown as witnesses in the charge sheet have been examined by the Inquiry Officer thereby to defeat the ^{an} contraction of the applicant.

32. The details of the Inquiry proceedings by which two witnesses whose names did not find in the charge sheet were perused. The question put to them is only in regard to the absence or presence of the applicant during the period from 28.3.95 to 27.12.95. That in no way ^a effect the case of the applicant who was charge sheeted for the earlier period. Those witnesses appear to have been called

R

1

to check the presence of the applicant and not for proving the charges levelled against the applicant in the charge sheet. Examining these two witnesses in no way vitiates the inquiry proceedings. If the applicant had attended the inquiry, he could have easily cross examined them also. As he did not attend the inquiry, he tries to absolve himself of the charges on the ground of calling the two witnesses who were not included in the charge sheet proceedings as witnesses. In our opinion, examination of the two witnesses in no way prejudiced the case of the applicant and ~~vitiates~~ ^{vitiates} the proceedings. Hence this contention is also rejected.

33. The last contention of the applicant is that the appellate authority had not followed Rule 22 of the R.S.(D&A) Rules, 1965. A perusal of the order of the appellate authority dated 24.5.96 indicates reasons as to why the appellate authority had confirmed the punishment imposed on the applicant by the disciplinary authority. The order clearly shows that the disciplinary authority had gone through the appeal dated 17.3.96 and also indicates reasons as to why he agrees with the disciplinary authority. It also states that the personal hearing was given to the applicant but the applicant did not turn up for personal hearing. The applicant instead of questioning the decision of the appellate authority, could have easily attended the personal hearing and submitted his contention before him. Having failed to do so, now he cannot question the orders of the appellate authority on the ground that he had not followed Rule 22 of the Railway Servants (Discipline & Appeal) Rules. We do not see any reason to come to the

or

2

conclusion that the appellate authority had not followed the D&A Rules. The appellate authority did follow the rules and passed orders in accordance with the rules.

34. The applicant has cited a number of cases. We have gone through all the cases but we do not find any citation by which the applicant can be given the relief asked for in this OA. In this connection the observation of the Central Administrative Tribunal, Principal Bench in the reported case ATR 1990(2) CAT 255 (S.K.Jain v. Union of India) is very relevant. It is extracted below:-

"The power of judicial review over a decision taken by an authority in a disciplinary proceeding is limited. The well settled legal position is that the court will not sit in appeal over the decision of the authorities holding a departmental enquiry against a public servant. The Court can, however, determine whether the enquiry was held by an authority competent in that behalf, and according to the procedure prescribed in that behalf and whether the rules of natural justice have been complied with. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the court to review the evidence and to arrive at an independent finding on the evidence. The court will undoubtedly interfere where the departmental authorities have held the proceedings

Handwritten marks: a squiggle on the left and a large 'D' with a horizontal line underneath on the right.

against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion or on similar grounds."

35. From the analysis of this case, we feel that there is no need to interfere with the punishment already awarded to the applicant. Hence the OA is liable only to be dismissed.


36. Before we part with this OA, it is to be observed that the applicant had joined the service against direct recruitment quota on 13.8.87. The applicant had suffered injury ^{to} the eye while on duty and ~~left~~ lot of service is still left before him. To remove him from service at this young age may put his family in a very precarious circumstances. As the applicant was removed from service only for his unauthorised absence, the General Manager may consider his case sympathetically, if he represents ^{him} for such a consideration. The applicant, if so advised, may submit a detailed representation for showing him sympathy. If such a representation is received, then the General Manager may consider his case. But non consideration of his

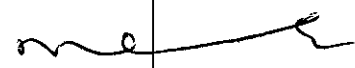
a

D

case by the General Manager may not be a reason to challenge that once again as it is only a discretion of the General Manager.


37. In the result, the OA is dismissed with the observation made in para 36 above. No order as to costs.


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


(R. RANGARAJAN)
MEMBER (ADMN.)

5.3.99

DATED : 5th MARCH, 1999


5388

vsn

17/3/99

1st and 11nd Court.

Copy to:

- 1. HDHND
- 2. HHRP M(A)
- 3. HSSJP M(J)
- 4. D.R. (A)
- 5. SPARE
- 6. D.A.(J)

Typed By
Compared by

Checked by
Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH:HYDERABAD.

THE HON'BLE MR. JUSTICE D.H.NASIR:
VICE - CHAIRMAN

THE HON'BLE H. RAJENDRA PRASAD :
MEMBER (A)

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

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

DATED: 5/3/99

ORDER/JUDGMENT

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

IN

O.A.NO : 1504/98

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

15 copies
L

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH
15 MAR 1999
HYDERABAD BENCH