

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No. 286/96

Date of Order : 1.9.98

BETWEEN :

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.. Applicant.

AND

1. The Chief Rolling Stock Engineer,
(Revising Authority), S.C.Rly.,
Secunderabad.
 2. The Additional Divisional Railway
Manager, (Appellate Authority),
S.C.Rly., Hyderabad Division,
Secunderabad.
 3. The Sr.Divisional Mechanical Engineer (L),
S.C.Rly., Hyderabad Division,
Secunderabad.
- .. Respondents.

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Counsel for the Applicant

.. Mr.P.Krishna Reddy

Counsel for the Respondents

.. Mr.C.V.Malla Reddy

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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

{ As per Hon'ble Shri R.Rangarajan, Member (Admn.) }

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Mr.P.Krishna Reddy, learned counsel for the
applicant and Mr.U.R.S.Gurupadam for Mr. C.V.Malla Reddy,
learned standing counsel for the respondents.

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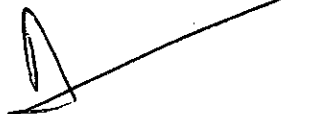
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2. The applicant in this OA was removed from service by the impugned order No.YP/DAR/C&W/32, dated 16.6.83 (Annexure R-2 to the reply). Even though it is stated in the impugned order dated 16.6.83 that a copy of the enquiry officer's report is enclosed, it is not enclosed to the annexure to the reply. The applicant was absent right from 1983 onwards and it is stated that his wife had submitted a mercy petition on 5.10.94 (A-5) to consider the case of the applicant favourably to reinstate him ^{to} service. In that mercy petition there is no mention in regard to his appeal, if any, for setting aside the earlier removal order.

3. The applicant in this OA prays for setting aside the order of the disciplinary authority dated 26.12.83 by holding the same as illegal and arbitrary and for a consequential direction to the respondents to reinstate the applicant back into service with backwages, seniority, promotion, etc.

4. A reply has been filed in this OA. The respondents submit that the applicant while working as Carriage Fitter under CWS/Moulali was removed from service w.e.f. 22.6.83. It is further stated that the charge sheet was issued for the unauthorised absence for the period earlier to 1983. He was unauthorisedly absent from 30.12.80 to 1.1.81 and from 14.1.81 onwards probably on account of his wife's sickness who was suffering from paralytic attack. As he did not follow the medical rules while explaining his leave on medical grounds

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the charge sheet was issued. The applicant submitted his explanation on 12.5.83 in response to the charge sheet dated 8.7.82 and 4.4.83. In his explanation, the applicant reported to have ~~been~~ stated that he was absent from duties from 14.2.81 to 22.2.81 on account of ^{- his -} suffering with Jaundice for which he had taken treatment at his native village and also on account of his wife's sickness. The above explanation is contrary to the submission made before to the enquiry officer by the applicant at the time of enquiry. It is further stated that the applicant was under private medical treatment from 22.6.83 and the certificate submitted by him dated 4.10.94 is not covering the unauthorised absence period for which DAR action was initiated. In view of the above the respondents submit that the applicant has no case.

5. No doubt, the removal order should contain the charges for which the applicant was removed. But non-mention of the charge sheet particulars may not stand in the way of the respondents to remove him from service, if the applicant had not attend the enquiry proceedings. It is stated that the applicant was unauthorisedly absent for the period from 30.12.80 to 1.1.81 and from 14.1.81 onwards. For that the charge sheet was issued and on the basis of enquiry the applicant was removed from service.




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6. The wife of the applicant submitted a mercy petition dated 5.10.94. The appellate authority could have rejected the mercy petition and not treated it as an appeal. Normally an appeal is filed by the affected employee. But for the reasons best known to the appellate authority that mercy petition of his wife was disposed of treating the same as appeal. However, the applicant had filed a revision petition. He could have clearly stated in the mercy petition or in the review petition that order of the disciplinary authority removing him from service is not adhering to the rules. He could have also stated that he had not filed any appeal and the appellate authority could not have disposed the mercy petition of his wife treating the same as appeal and hence all orders had to be set aside and he should be reinstated ^{-to} in service. But the applicant did not take such action. Without taking proper remedial measures to get his request fulfilled, the applicant has filed this OA stating that all the orders passed are irregular and defective. Such a contention cannot be accepted when the applicant himself is at fault in not following the extant rules. However we feel that the applicant may now submit a mercy petition to the General Manager explaining his case fully and ask for favourable treatment to him by the General Manager. It is for the General Manager to decide the further course of action on the basis of the representation to be submitted by him. Hence no direction is necessary to be given at this stage.


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7. In view of what is stated above, we find no merit in this OA as the applicant had not followed any rule properly. Hence the OA is dismissed. However, the applicant is at liberty to file a mercy petition, if he is so advised, to the General Manager. We have no doubt in our mind that if such a mercy petition is addressed to the General Manager then the same will be considered by the General Manager in accordance with the law notwithstanding the fact that this OA is dismissed.

8. No costs.

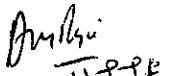

(B.S. JAI PARAMESHWAR)
Member (Judl.)

1.9.98


(R. RANGARAJAN)
Member (Adm.)

Dated : 1st September 1998

(Dictated in Open Court)


J. J. J.
J. J. J.

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Copy to:

1. The Chief Rolling Stock Engineer, (Revising Authority), South Central Railway, Secunderabad.
2. The Additional Divisional Railway Manager, (Appellate Authority) South Central Railway, Hyderabad Division, Secunderabad.
3. The Sr. Divisional Mechanical Engineer (L), South Central Railway, Hyderabad Division, Secunderabad.
4. One copy to Mr. P. Krishna Reddy, Advocate, CAT, Hyderabad.
5. One copy to Mr. C. V. Malla Reddy, Addl. QGSC, CAT, Hyderabad.
6. One copy to D.R(A), CAT, Hyderabad.
7. One duplicate copy.

YLKR

29/9/98

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: 1/9/98

ORDER/JUDGMENT

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

in

C.A.NO. 286/26

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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केन्द्रीय प्रशासनिक अपिर्करण
Central Administrative Tribunal
प्रवण / DESPATCH

21 SEP 1998

हैदराबाद म्याचरीट
HYDERABAD BENCH