

(54)

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.114 of 1996

Date of Order : 18-8-1998

Between :

W.V.Nageswara Rao,
S/o Venkat Rao, aged about 42 years,
Occ: Goods Supervisor,
R/o Palvancha, Kothagudem
Thermal Power Station,
Khammam District.

... Applicant

And

1. The Divisional Railway Manager,
Sanchalan Bhavan, Secunderabad.
2. The Additional Divisional Railway Manager,
South Central Railway, Sanchalan Bhavan,
Secunderabad.
3. Senior Divisional Commercial Manager,
South Central Railway,
Sanchalan Bhavan, Secunderabad. ... Respondents

Counsel for Applicant : Mr. J.Venugopal Rao

Counsel for Respondents : Mrs. Shakthi for Mr.J.R.
Gopal Rao, S.C. for Railways.

Coram :

Honourable Mr. R. Rangarajan, Member (Administrative)

Honourable Mr. B.S.Jai Parameshwar, Member (Judicial)

O R D E R.

(Per Hon.Mr. B.S.Jai Parameshwar, Member (J))

1. None appeared for the applicant. The applicant was also absent, when the O.A. was taken up for hearing. Heard Mrs. Shakthi for Mr.J.R. Gopal Rao, learned Standing Counsel for the respondents. We are deciding this O.A. in accordance with Rule 15(1) of the C.A.T. (Procedure) Rules, 1987.
2. This is an application under Section 19 of the Administrative Tribunals Act. The application was filed on 18.1.1996.
3. While the applicant was working as Goods Supervisor at Parli in South Central Railway, he was served with a Memo. of charges vide proceedings No. COM.SC.Misc.24.91 dated 12.7.1991

(Annexure-I at page 9 of the OA).

4. The misconduct alleged against the applicant is as follows :

" That said Shri W.V.Nageswara Rao, while working as Goods Supervisor at Parli during February and May, 1990, committed serious misconduct and failed to maintain absolute integrity and devotion to duty in that he has indulged in temporary misappropriation of Rs.38,183/- as detailed in the statement of imputations.

He thus violated rule 3 I (i)(ii)(iii) of RS (Conduct) Rules, 1966."

5. The applicant had not submitted any explanation to the charge.

6. An enquiry was held into the charge levelled against the applicant.

7. It appears that while the enquiry was in progress, the applicant had not fully co-operated with the Inquiry Officer. However, the Inquiry Officer concluded the enquiry with the following finding :

" Even though quite a number of reasonable opportunities have been given to the delinquent employee to attend to the enquiry fixed on different dates, he had neither co-operated nor attended on most of the dates fixed. Also he failed to attend the final enquiry fixed to enable him to examine the prosecution witness at Bellary on 4-2-94. In view of the above, it has been decided to decide ex-parte and also on the evidence given by the prosecution witnesses on 4-2-94 basing on the prima-facie documents available with the prosecution, the enquiry officer conclude that imputations of misconduct or misbehaviour sustained in support of the articles of charges framed against Sri W.V.Nageswara Rao, the articles of charges framed against Sri W.V.Nageswara Rao, GSR/PRLI now working as GSR/TKSG/BDCR vide annexure-II of the charge memorandum No. CON.SC.Misc.24.91 dt.12-7-91 stand 'PROVED'."

The copy of the report of the Inquiry Officer was furnished to the applicant.

8. The applicant submitted his explanation dated 21.7.1994 against the findings recorded by the Inquiry Officer.

9. The Disciplinary authority after considering the findings recorded by the Inquiry Officer and also the explanation of the applicant, by his proceedings No.CON.SC.Misc.24.91 dated 3.8.1994 (Annexure-VIII at page 24 of the OA), agreed with the findings recorded by the Inquiry Officer and reverted the applicant

[Signature]

from the grade of GSR i.e. Rs.1600-2660(RSRP) to the grade of Sr.GC i.e. Rs.1200-2040/-(RSRP) fixing his pay at Rs.1350/- per month for a period of 3 years with cumulative effect.

10. Against the said punishment, the applicant submitted his appeal dated 19.9.1994, ^{and} the copy of the Memorandum of Appeal is at Annexure-X at page 29 of the OA. The appeal was submitted to the DRM, Secunderabad Division, S.C.Railway,, Secunderabad. The appellate authority by his proceedings of even number dated 13.2.1995 confirmed the punishment imposed by the disciplinary authority and rejected the appeal. The order of the appellate authority is at page 32 of the O.A.

11. The applicant has filed this O.A. challenging the order dated 3.8.1994 passed by the disciplinary authority and the order dated 13.2.95 passed by the appellate authority and praying to quash the same and to restore ^{him to} his original grade as Goods Supervisor uninterruptedly and with all consequential beneficts in the scale of pay of Rs.1600-2660/-.

12. The applicant has challenged the order of the disciplinary authority as well as that of the appellate authority on the following grounds :

- (a) The enquiry was not conducted following the principles of natural justice.
- (b) The disciplinary authority without considering his explanation, imposed the penalty.
- (c) During the enquiry, the report of the Commercial Inspector, Parli Railway Station was not made available to him.
- (d) The enquiry without supplying a document to the delinquent employee was not a full-fledged enquiry.
- (e) The appellate authority is the Divisional Railway Manager, Commercial Branch, Sanchalan Bhavan, Secunderabad.
- (f) The appellate authority who has disposed of the appeal is not the competent authority.



13. The respondents have filed their counter stating that the applicant had indulged in temporary misappropriation of the funds of the Railway Administration amounting to Rs.38,183/-; that the applicant was working as Goods Supervisor at Parli Vaidyanath Railway Station; that he had not remitted the amounts received on behalf of the railways; that even though the Inquiry Officer gave sufficient opportunity to the applicant, the applicant failed to attend the enquiry and the Inquiry Officer had no other alternative to conclude the enquiry ex parte; that the copy of the report of the Inquiry Officer was made available to the applicant; that the disciplinary authority as well as the appellate authority have considered the explanation of the applicant and also the material collected by the Inquiry Officer; ^{and} that the averment of alleged ill-will against Sri K.Raghuramaiah, the then Senior Commercial Manager was ill-founded. The respondents have relied upon the decision of the Hon'ble Supreme Court of India in the case of State of Tamil Nadu v.S.Subramaniam ((1996) SCC(L&S) SC 627). They submit that there are no grounds to interfere with the impugned orders.

14. We feel it proper to bring to the notice of the respondents authorities the notification issued by the DPAR in OM No.134/1/81-AVD dated 13th July,1981. In para-1 of the said notification, it is stated as follows :

"(1) Self-contained, speaking and reasoned order to be passed and to issue over signature of prescribed disciplinary/appellate/reviewing authority.-

As is well known and settled by courts, disciplinary proceedings, against employees conducted under the provisions of CCS(CCA) Rules, 1965, or under any other corresponding rules, are quasi-judicial in nature and as such, it is necessary that orders in such proceedings are issued only by the competent authorities who have been specified as disciplinary/appellate/reviewing authorities under the relevant rules and the orders issued by such authorities should have the attributes of a judicial order. The Supreme Court, in the case of Mahavir Prasad v. State of UP(AIR 1970 SC1320) observed that recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency. The necessity to record reasons is greater if the order is subject to appeal."

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The above O.M. is clear as to ^{how} ~~by~~ the disciplinary authority is expected to pass an order in the disciplinary proceedings. We are constrained to observe that the disciplinary authority has not at all taken the pains to analyse and appreciate the evidence recorded by the Inquiry Officer and to record a finding.

15. We feel it would ^{have been} ~~be~~ more appropriate for the disciplinary authority to have recorded his reasons ^{for} ~~for~~ his agreement with the findings of the Inquiry Officer ^{for} ~~for~~ the applicant had not participated in the disciplinary proceedings and the report of the Inquiry Officer was ex parte.

16. The order passed by the appellate authority is in no way different.

17. Rule 22(2) of the Railway Servants(Discipline & Appeal) Rules, 1968 reads as follows :

"22. Consideration of appeal -

(1) x x x x

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider -

(a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice ;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe ; and pass orders - "

18. Absolutely, the order of the appellate authority is bereft of the above particulars. Further it is contended by the applicant that the authority who disposed of the appeal is not the proper/competent authority to decide the appeal. He has taken the contention that the proper authority to decide the appeal, is the D.R.M. Commercial Branch, Secunderabad (Para-g at page 7 of the OA). The respondents have not traversed the said aspect.

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19. In view of the fact that both the disciplinary and appellate authorities have not taken into consideration some basic factors in imposing the punishment on the applicant, we feel it proper to set aside the order of the appellate authority dated 13.2.1995 and remand the appeal to the appellate authority for fresh consideration of the appeal as per the rules, 1968.

20. Hence, we issue the following directions :

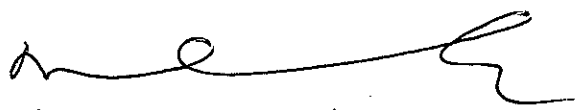
(a) The order dated 13.2.1995 passed by the appellate authority is hereby set aside. The proper appellate authority shall consider and decide the appeal dated 19.9.1994 of the applicant as expeditiously as possible.

(b) In case the applicant desires an opportunity of personal hearing, the proper appellate authority shall give the same to the applicant.

22. With the above directions, the O.A. is disposed of, leaving the parties to bear their own costs.

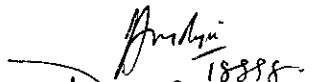

(B.S. Jai Parameshwar)
Member (Judl.)

18/8/98


(R. Rangarajan)
Member (Admn.)

Dated the 18th August, 1998.

DJ/


D. R. 18/8/98

DA.114/96

Copy to:-

1. The Divisional Railway Manager, Sanchalan Bhavan, Secunderabad.
2. The Additional Divisional Railway Manager, South Central Railway, Sanchalana Bhavan, Secunderabad.
3. The Senior Divisional Commercial Manager, South Central Railway, Sanchalan Bhavan, Secunderabad.
4. One copy to Mr. J. Venugopal Rao, Advocate, CAT., Hyd.
5. One copy to Mr. J.R. Gopal Rao, SC for Rlys, CAT., Hyd.
6. One copy to BSJP M(J), CAT., Hyd.
7. One copy to D.R.(A), CAT., Hyd.
8. One copy duplicate.

SRR

24/8/98

(2)

II COURT

TYPED BY

CHECKED BY

COMPARED 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:

18/8/98

ORDER/JUDGMENT

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

in

C.A.NO.

114/96

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
भारत / DESPATCH

21 AUG 1998

हैदराबाद न्यायपीठ
HYDERABAD BENCH