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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 1146 OF 1996

Dated, the 31.12.1998

BETWEEN :

P.V. Ramana

... Applicant

A N D

1. The Chief Workshop Engineer,
In South Central Railway,
Secunderabad.
2. The Dy. Chief Mech. Engineer,
Wagen Workshop,
South Central Railway,
Guntupalli, Krishna District.
3. The Works Manager,
Wagen Workshop,
South Central Railway,
Guntupalli, Krishna District. ... Respondents.

COUNSELS :

For the Applicant : Mr. P. Krishna Reddy

For the Counsels : Mr. N.R. Devaraj

CORAM :

THE HON'BLE MR. R. RANGARAJAN, MEMBER (ADMIN)

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



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(PER: HON'BLE MR. B. S. JAI PARAMESHWAR, MEMBER (JUDL))

1. Heard Mr. P. Krishna Reddy, Learned Counsel for the applicant and Mr. N.R. Deva Raj, Learned Standing Counsel for the respondents.

2. This is an application filed under Section 19 of the Central Administrative Tribunals Act, 1985. The application was filed on 12.8.96.

3. The applicant herein has challenged the order No.DAR/275/1993 dt. 28.8.93 passed by the respondent No.3 imposing penalty of removal of the applicant from service, the order No.GR/P/227/WG/FW/25123/89/56 dt. 18.3.94 passed by the Respondent No.2 rejecting the appeal filed by the applicant against the said punishment and the order No.P.90/GTPL/PVR/1809 dt. 16.9.94 passed by the Respondent No.1 rejecting the revision petition filed by the applicant against the order passed by the Respondent No.2

4. The applicant was working as Fitter in Wagon Workshop Guntupalli.

5. On 6.10.89, the applicant was placed under suspension on the complaint filed by one Mr. Sai Baba, Section Supervisor and Mr. Veerabhadra Rao, Time Keeper. However, his suspension was revoked w.e.f. 10.11.89.

6. A major penalty charge memo vide proceedings No.GR/P.227/25123/WG/89/56 dt. 23.10.89. The charges levelled against the applicant reads as under :

"That the said Sri PV Ramana, T.N. 25123, while functioning as Fitter in Wagon (FW) Shop, WWS/Guntupalli, has committed serious misconduct and failed to maintain devotion to duty in that he came to the Time Booth No.4 in Wagon Shop on 6.10.89 at about 12.30 Hrs. and took out Two GA Cards pertaining to the employees bearing T.N. 29086 and 34598 unauthorisedly and went to his section and tore into pieces.

Also he entered into the Wagon Shop Office (FW) at about 13.00 hrs. on 6.10.89 and started pestering the clerical staff and Dy.SS of Wagon Shop (FW) and shouting loudly and obstructed the normal functioning of work.

Thus he has behaved in a manner unbefitting of a Railway servant violating the provisions contained in Rule 3(1)(ii) and 3(1)(iii) of Railway Services (Conduct) Rules 1966."

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7. The applicant submitted his explanation to the charge memo on 7.12.89.

8. The Section Supervisor, Four Wheeler Work Shop, Guntupalli conducted an inquiry into the charges. The Inquiry Officer submitted his report. He recorded his finding that the charges levelled against the applicant are proved. A copy of the report of the Inquiry Officer is at Annexure-IX (pages 26 to 31). A copy of the inquiry report was furnished to the applicant. However, the applicant has not submitted any representation against the findings of the inquiry officer.

9. The respondent No.3 after considering the report of the Inquiry Officer and the inquiry records vide his proceedings dt. 25.8.83 accepted the findings of the inquiry officer and imposed the penalty of removal from service on the applicant. A copy of the order dt. 25.8.83 is at Annexure-I(pages 20 to 21) of the O.A.

10. The applicant submitted an appeal to the Respondent No.2 on 13.10.93. A copy of the appeal memo is at Annexure-II (pages 17 to 19) of the O.A. The respondent No.2 by his proceedings dt. 18.3.94 confirmed the punishment imposed by the respondent No.3 and rejected the appeal. A copy of the order passed by the respondent No.2 is at Annexure -III (pages 15 to 16) of the O.A.

11. The applicant submitted a ~~revision~~ petition to the Respondent No.1 against the orders of the respondent No.2. The respondent No.1 considered the ~~revision~~ petition and by his order dated 13.5.94 rejected the same. Thus the penalty of removal from service of the applicant imposed by the respondent No.3 became final.

12. Hence, the applicant in this O.A. challenged the orders passed in the Memo. dt. 18.3.94 on the following grounds

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(a) That the Inquiry Officer has not conducted the inquiry in accordance with the Rule 9 of the Railway Servants (Discipline and Appeal) Rules 1968 (in short Rules 68).

(b) The Inquiry Officer has not examined the applicant in the first instance and then examined the witnesses named in the Annexure to the charge memo. This is quite against the procedure contemplated under the Rules 1968.

(c) The Inquiry Officer has not properly analysed the evidence of the witnesses examined during the inquiry. It is submitted that the Inquiry Officer has enclosed to his report a summary of the evidence collected by him and that the same is at page 32 to the O.A. It is contended that it was not proper on the part of the respondents to prepare such a summary of evidence rather he should have discussed the depositions of the witnesses and he should have given his reasons to accept or reject the evidence of any of the persons deposed before him. The summary of the evidence prepared by the Inquiry Officer does not indicate whether he has accepted any of the witnesses or rejected their deposition. Thus the procedure adopted by the Inquiry Officer is contrary to the Rules. Thus thus learned counsel for the applicant contends that the report of the Inquiry Officer is based on no evidence.

13. His another contention is that the Appellate Authority has not considered the appeal of the applicant dt. 3.10.93 in accordance with the Rule 22 of the Rules, 1968. It is his contention that the appellate authority has not at all taken into consideration any of the points raised by him in the Memorandum of Appeal dt. 13.10.93. The Learned Counsel for the applicant submitted that the appellate authority was expected to consider at least some of the grounds raised by him and should have recorded his reasons whether he accepted or rejected the same.

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Such reasoning is conspicuously absent in the order of the appellate authority. It is submitted that the appellate authority has not applied his mind to the facts and circumstances and passed a mechanical order. In support of this contention he brought to our notice the last 3 paras of the order passed by the appellate authority.

14. As per the rules 68 only a revision lies against the order passed by the appellate authority under Rule 25 of the Rules 68, but the appellate authority indicated in his order that an appeal is provided against his order. Thus the learned counsel for the applicant submitted that the appellate authority has not at all applied his mind.

15. Even the learned counsel for the Applicant criticised the order passed by the revision authority stating that the revision authority has taken into consideration his past conduct to confirm the punishment. The revision authority has not at all discussed any refn the evidence collected by the Inquiry Officer and appreciated or analysed by the respondents No.2 and 3. It is submitted that the revision authority at least should have indicated in his order whether he has agreed with the findings reached by the respondents No.2 and 3. Annexure-I is the order passed by the revisional authority. On going through the same, one gets an impression that the revision authority has not at all discussed anything as to the facts which formed the subject matter of the charge and attempted to confirm the punishment imposed on the applicant of removal from service only on the ground that the applicant was a habitual absentee.

16. The respondents have filed a counter justifying the impugned orders submitted that the applicant was given adequate opportunity to substantiate his defence and there are no reasons to interfere with the impugned orders.

17. As already observed, the first ground of attack of the learned counsel for the applicant is that the Inquiry Officer has not followed the Rule 9 of the Rules 1968. The said rule prescribes the procedure to be followed in imposing the major penalty. It is submitted that the Inquiry Officer examined the applicant first and then examined the witnesses cited in the Annexure to the charge memo.



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In fact, in the report of the Inquiry Officer has stated as follows :

"In the process of inquiry, the first to be called was Mr. P.V. Ramana (applicant). In the succeeding para he narrates the defence of the applicant".

18. Sub Rules 17, 19 and 20 of Rule 9 of the Rules 1968 are relevant. It is for the disciplinary authority to commence the evidence by examining the persons who are likely to substantiate the charge levelled against the delinquent employee. After the disciplinary authority closes the evidence on his behalf then under Sub Rule 19 of the Rule 9 of the Rules 1968, the Inquiry Officer is enjoined to ask the Railway employee to state his defence either orally or in writing.

19. Thereafter, the delinquent employee is required to produce evidence on his behalf under Sub-Rule 20 of the Rules 1968. This is the normal procedure to be followed in conducting the inquiry.

20. The reasons for examining the applicant in the first instance are not in the report. He should not have been examined at the begining of the inquiry. Therefore, in our humble opinion the Inquiry Officer has not at all followed the ~~procedure~~ prescribed under Rule 9 of the Rules 1968.

21. The other contention is that the Inquiry Officer has not analysed the evidence placed before him. As already observed the Inquiry Officer has submitted the inquiry report enclosing the summary of the evidence of the witnesses examined before him.

Seven witnesses were examined. He has tabulated certain events and enclosed it to the report. Such a procedure is not contemplated under the Rules. The Inquiry Officer is expected to submit his report only after analysing the evidence placed before him. He should have stated whether the testimonies of the witnesses are acceptable to him or whether the witnesses are reliable or whether the witnesses are unreliable. It is only on proper analysis/appreciation of the evidence

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placed before him he must form an opinion whether the charges leveled against the delinquent employee are substantiated or not. That has not been done in this case.

22. The next attack of the applicant is against the order of the appellate authority, dt. 18.3.94. A copy of the order of the appellate authority is at Annexure-3 page 11 to 16 of the O.A. The appellate authority is expected to consider the appeal as indicated in Rule 22 of the Rules 1968. The Hon'ble Supreme Court in the case of Ramchander Vs. Union of India reported in AIR 1983 SC 1173 paras 4 and 5 has clearly analised the scope of the Rule 22 of the Rules 1968. The appellate authority is expected to record his reasons and also consider the grounds raised by the delinquent employee in the memorandum of appeal. The appellate authority may accept or reject the grounds by recording the reasons. Such is not the case here. The appellate authority has more or less followed the order passed by the disciplinary authority. The appellate authority has not considered the appeal of the applicant in accordance with the (2) Rule 22 of the Rules 1968. The appellate authority is expected to consider the grounds raised by the applicant in the memorandum of appeal and record his reasons whether accepting the same or rejecting the same. Such is not the case. As already observed the order of the appellate authority is just like a replica of the order passed by the disciplinary authority except slight variation in the sentences. He has not expressed anything as to whether the inquiry was conducted against the applicant after adhering to the principles of natural justice, whether the appreciation of evidence by the disciplinary authority was correct; or whether the punishment imposed on the applicant is adequate or not. These are the basic ingredients which are expected to be considered by the appellate authority.



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23. The order of the revisional authority is in no way different. The revisional authority has not at all gone into the charge levelled against the applicant. The revisional authority appears to have been influenced to confirm the punishment on the alleged absenteeism of the applicant on previous occasions. That is not the point for consideration for the revisional authority. The revisional authority should have considered whether the order of the appellate authority is in accordance with law or not and whether there was any scope for interference. He has not discussed anything regarding the nature of the order passed by the appellate authority.

24. We are constrained to observe that the appellate authority as well as the revisional authority have exhibited their apathy to the Rules and passed the order without proper application of mind.

25. To sum up, we have formed an opinion that the impugned orders are not sustainable on the following grounds :

- (i) The inquiry has not been conducted in accordance with Rule 9 of the Rules 1968.
- (ii) The Inquiry Officer has not properly analysed/appreciated the evidence collected by him during the inquiry. His report is devoid of reasoning.
- (iii) The Disciplinary Authority passed the penalty order overtaking points (i) & (ii) above.
- (iv) The order passed by the Appellate Authority does not conform to Rule 22(2) of the Rules 1968.
- (v) The order of the revisional authority is bereft of reasons to sustain the punishment of removal.

26. We feel it proper to reproduce herein the observations made by the Hon'ble High Court of Kerala in the case of A. Ibrahim Kunju Vs. State of Kerala (reported in AIR 1970 Kerala P.65) :



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"Even correct conclusions and orders are upset in Courts, because there has been violation of natural justice or non-compliance with important procedural requirements. This is because of our national creed, in law and in life, that we should reach right ends through right means. All Administrative officers charged with the duty to pass orders and a fortiori those in the higher echelons of authority, affecting the civil rights of citizens, should be educated in administrative laws, particularly in the basic requirements of natural justice. Administrative agencies, intent on doing justice and acting expeditiously and enthusiastically, get tripped unwittingly on account of their ignorance of the nuances or even the minimum needs of natural justice and of the obligations under Article 14 and 19 of the Constitution. If the average administrative officer had been better informed about his procedural obligations, many an order of his would not have been an casualty on judicial scrutiny and many an unwanted babe in writ jurisdiction would not have been born. After all, ephemeral victories ultimately do nobody any good".

This is extracted for future guidance of the respondents.

27. The incident has happened on 6.10.89. The charge memo was issued on 23.10.89. Nine years and odd have elapsed since then. aside
We are setting the impugned orders because of procedural irregularities. The applicant has also suffered mental agony and trauma. However, we leave it to the respondent authorities to consider his explanation dt. 7.12.89 and take a decision whether to initiate disciplinary proceedings afresh. If they so decide, we make it clear that they should conclude the charge memo within 6 months from the date of taking such a decision.



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28. In view of the matter we are constrained to set aside the impugned orders.

29. Hence, we pass the following order :

(a) The impugned order dt. 28.8.93 passed by the respondent No.3, the order dt. 18.3.94 passed by the respondent No.2 and the order dt. 16.9.93 passed by the respondent No.1 are hereby set aside.

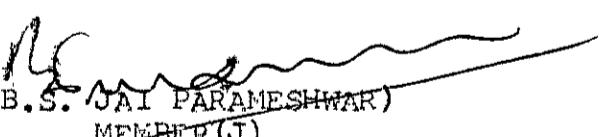
(b) The period of absence of the applicant from 28.8.93 till the date of his reinstatement shall be regulated as per rules.

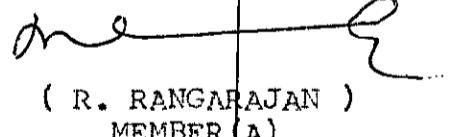
(c) Liberty is given to the respondents to take a decision to continue the disciplinary proceedings from the stage of consideration of the explanation of the applicant dt. 7.12.89. and (c)

(d) The decision as required in paras (b) shall be taken within one month from the date of receipt of a copy of this order.

(e) Any fresh enquiry if ordered shall be concluded within 6 months from taking such a decision.

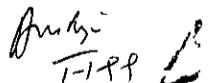
30. With the above directions the O.A. is allowed leaving the parties to bear their own costs.


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


(R. RANGARAJAN)
MEMBER (A)

Dated, the 31-12-1998

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II COURT

COPY TO :-

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2) D.R (A)

3) Special

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

THE HON'BLE SHRI B.S.JAI PARAMESWAR :
M(J)

DATED: 31/12/98

ORDER/JUDGMENT

MAY/R.A. /C.P.No.

in
OA. NO. 1146/96

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

6 JAN 1999

हैदराबाद न्यायपीट
HYDERABAD BENCH