

(46)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

Original Application No.374/96

Dt. of Order:27-3-96.

Between :-

C.A.Sathyannarayana

.. Applicant

And

1. Sr.Divisional Operating Manager,
S.C.Railway, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.
2. Additional Divisional Railway Manager/I/SC,
S.C.Railway, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.
3. Chief Operating Manager, S.C.Railway,
Rail Nilayam, Secunderabad.
4. General Manager, S.C.Railway,
Rail Nilayam, Secunderabad.

.. Respondents

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Counsel for the Applicant : Shri B.Narasimha Sarma

Counsel for the Respondents : Shri D.F.Paul, SC for Rlys

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CORAM:

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI : VICE-CHAIRMAN

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

(Per Hon'ble Justice Shri M.G.Chaudhari, Vice-Chairman)

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Heard Sri Jacob for Sri B.Narasimha Sarma, learned
counsel for the applicant and Sri D.F.Paul, learned standing
counsel for Respondents. We have heard the submissions of the
learned counsel for the applicant in some detail and have

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carefully perused the orders passed by the lower authorities. A disciplinary enquiry was held against the applicant in accordance with the provisions of Railway Servants (Discipline & Appeal) Rules, 1968. The applicant was charged as follows :-

"While working as A.S.M. Bellampally, he has committed serious mis-conduct in that he has failed to maintain devotion to duty for giving P I-C unauthorisedly and sending the Passenger No.322 in the occupied axle counter section on 17-2-94."

After considering the prosecution evidence led at the enquiry, the Enquiry Officer held that the charge levelled against the applicant is proved. The Disciplinary Authority agreed with the findings of the Enquiry Officer after taking into account the defence brief submitted by the applicant. He imposed the penalty of removal from service by order dt.26-8-94. That order was confirmed by the Appellate Authority by order dt.10-11-94 and also by the revisional authority i.e. the C.O.M., dt.4-4-95. However, although the revisional authority confirmed the penalty of removal from service, he took a sympathetic view and decided to direct re-appointment of the applicant as a fresh entrant into the category of TNC in the initial recruitment in grade Rs.950-1500 (RSRP) and on a pay of Rs.950/-, the minimum of the scale. The authority was inclined to take that step keeping in view the past service of the applicant and effect of the punishment imposed upon him, on his family and on a compassionate view of the case. He exercised the powers conferred on him

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under Rule-402 of the I.R.E.Code, Volume-I for that purpose.

2. The applicant seeks to challenge the only order of revisional authority dt.4-4-95 and has not in terms challenged the validity of the enquiry proceedings. The prayer which he has made is for a direction to the Respondents to treat him as A.S.M. with continuity of service with effect from the date of joining the railways in service together with all consequential service benefits but he qualified that prayer by stating that it should be so directed after declaring the proceedings of the revising authority dt.4-4-95 only to the extent of appointing him as a T.N.C. without the benefit of previous service. The relief so sought if granted will have the effect of nullifying the penalty imposed upon the applicant viz., removal from service. That cannot be sought by the applicant without challenging the validity of enquiry proceedings and the order of punishment. He has not done so. Mr.Paul, learned standing counsel for the Respondents is therefore right in contending that the O.A. with the relief clause as framed is not maintainable.

3. However, we have looked upon the O.A. from broader perspective and have examined the record in order to satisfy ourselves as to whether there is any legal ground on which the enquiry can be said to have been vitiated or the order of punishment even if it were to be the subject matter of challenge can be set aside. The first contention urged by the learned counsel for the applicant is that the applicant was

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not supplied the proceedings of the enquiry committee on the averted collusion between the Goods train and Passenger Train on 17-2-94. He submits that, that was the preliminary enquiry on the basis of which the Disciplinary Enquiry was commenced. In order to test this argument, we have gone through the Disciplinary Enquiry Proceedings to see whether the conclusions of the Enquiry Officer are based on any of the record of that preliminary enquiry. We do not find that he has based his conclusions on any record pertaining to that enquiry. The only circumstance he has mentioned in his order is that in the fact finding enquiry as an answer to question No.2, the applicant deposed that he instructed Liverman on duty to obtain line clear. This was a reference to the statement of the applicant himself and there is therefore no charm in contending that he needed the copy of that statement. That also loses its efficacy since the applicant had declined to get examined by pleading the protection under Rule-20 of Discipline & Appeal Rules and clause-3 of Article 20 of Constitution of India. Thus he had not availed the opportunity to explain his earlier statement if it was wrong. That apart, in his defence statement/brief submitted to the Disciplinary Authority, he has not made any grievance in that respect. Similarly neither in the appeal nor in the revision such a contention was raised. We are therefore not inclined to accept this contention of the learned counsel for the applicant. The second contention urged is that the enquiry officer had not followed Rule-9 (21) of the Discipline & Appeal Rules. That rule provides that where the railway servant has not examined

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himself, the Enquiry Officer may on the close of the case generally question him on the circumstances appearing against him in the evidence for the purpose of enabling him to explain any circumstance appearing in the evidence against him. Now the learned counsel has produced before us a copy of the proceedings before the Enquiry Officer which shows that the Enquiry Officer had questioned the applicant at the close of the enquiry. Even at that stage, the applicant was un co-operative. For instance, when he was ~~axx~~ asked whether he has received the memorandum etc., he replied that it was an irrelevant question stating that such question cannot be asked under Rule-9 (20). Likewise when he was asked as to whether he has accepted the depositions, he made similar reply. Since the Enquiry Officer thus had questioned the applicant, there has been compliance with Rule-9 (21) and therefore the contention raised cannot be accepted.

4. Apart from the above legal contentions, it is not possible for us to go behind the findings of fact concurrently up-held by all the authorities. The question therefore of considering and giving the benefit of continuity of past service to the applicant does not arise.

5. We think that the revisional authority has on his own taken compassionate view and given alternate appointment to the applicant. That cannot be said to be an illegal exercise of his power. After all it was open to the applicant to accept the new appointment or not to accept the same. We think that he has been

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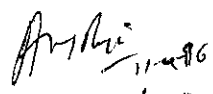
protected to the extent it was possible, despite the fact that he had been removed from service by way of punishment. In the result, as we find no merit in the OA, it is dismissed. No order as to costs.


(H. RAJENDRA PRASAD)
Member (A)


(M.G. CHAUDHARI)
Vice-Chairman

Dated: 27th March, 1996.
Dictated in Open Court.

avl/


Deputy Registrar (D) ce

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O.A.374/96

To

1. The Sr.Divisional Operating Manager,
S.C Rly, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.
2. The Additional Divisional Railway Manager/I/SC,
SC Rly, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.
3. The Chief Operating Manager,
SC Rly, Railnilayam, Secunderabad.
4. The General Manager, SC Rly,
Railnilayam, Secunderabad.
5. One copy to Mr.B.Narasimha Sarma, Advocate, CAT.Hyd.
6. One copy to Mr.D.Francis Paul, SC For Rlys, CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

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19/9/96

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI
VICE-CHAIRMAN

AND

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

Dated: 27-3-1996

~~ORDER~~/JUDGMENT

M.A/R.A./C.A.No.

in

O.A.No.

374/96

T.A.No.

(w.p.)

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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