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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:: HYDERABAD BENCH
AT HYDERABAD

O.A.No. 695 of 1996

Between

V. Lakshmipathi Rao

...

Applicant

and

The Assistant Mechanical
Engineer, /TRS, South Central
Railway, Vijayawada and
four others

...

Respondents

REJOINDER FILED BY THE APPLICANT

I, V. Lakshmipathi Rao, s/o Madhava Rao, aged about 40 years, Ex. Khalasi, South Central Railway, Vijayawada do hereby solemnly affirm and state on oath as follows:

1. I am the applicant herein and as such well acquainted with the facts of the case.
2. I have gone through the counter filed by the Senior Divisional Personnel Officer, South Central Railway, Vijayawada who neither the Disciplinary or the Appellate and Reviewing authority and she has no locus standi to file the counter .
3. The averments made in the counter are contrary to the facts on records. I have been given a charge sheet alleging unauthorised absence for certain period during the year 1991. In the Article of charge No. 1 ~~it~~ it is mentioned that I have ^{un}authorisedly absented without proper ^ssanction of leave or observing Railway Medical Attendants Rules. There is no mention regarding the violation of the Conduct Rules of any charge of lack of devotion to duty or misconduct.

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10 days as per para No. 12 of Rule 9 of the DAR Rules. The enquiry was conducted and the Enquiry Officer's report was submitted without my Defence Statement.

4. It is stated by the respondents in para 2 of the counter that prior to the date of removal I have been punished on three occasions. This is not the subject matter of the charge sheet. The counter only disclosed that the punishment was given with prejudice and not otherwise. At page No. 3 of the counter, it is stated that the charge sheet SF 5 was issued for remaining absent from duties unauthorisedly which amounts to failure to maintain devotion to duty as envisaged in Rule 3 (1) (ii) of the Railway Servants Conduct Rules. This is not what is mentioned in the charge sheet. The respondent cannot state what is not mentioned in the charge sheet. It clearly shows that the officer who filed the counter has not even gone through the charge sheet and without observing the charge cannot state something according to whims and fancies. She cannot raise the issue of Rule 3(1)(ii) of ~~S&R~~ Railway Servants Conduct Rules when nothing was mentioned in the charge sheet regarding his misconduct or lack of devotion to duty. She cannot imagine the things and write something which is extraneous to the charge at issue. This clearly discloses the prejudicial stand taken by respondents.

5. It is stated that I was engaged as Casual Labour in the Railway Electrification Organisation on 2-12-80 and promoted to the grade of Rs. 260-400 etc. I was removed by the Assistant Mechanical Engineer who is a Group 'B' Officer without jurisdiction. According to Schedule of

are produced the employee is deemed to have been put back to duty within 24 hours pending production of a duty certificate by the Railway doctor. The periods covered by the private medical certificates have to be regularised as leave by the controlling authority when no investigation has been made to decide whether the period covered by private medical certificates is genuine or not. In the absence of any contradictory statements the periods have to be treated as leave due to the employee. Apart from producing private medical certificates, I have applied for leave to the concerned authorities but the leave was not sanctioned due to reasons best known to the administration. Refusal of the leave cannot be treated as unauthorised absence. The ~~xx~~ main charge is that I absented for duty without proper sanction of leave or observing Railway Medical Attendance Rules. ~~This charge is proved as per the findings of the Enquiry Officer.~~ 9 and 10 that the absence was not wilful but due to my wife's sickness, self sickness and due to the death of my brother. The Enquiry Officer has not taken this aspect into consideration and his findings that the charge of unauthorised absence is proved is absolutely baseless and unfounded. His finding is contrary to the facts on record. I was not given an opportunity to cross examine the witnesses produced by the Department. The Enquiry Officer never told me that I have a right to cross examine the witness and without being told so he recorded that I have nothing to ~~cross~~ ^{cross} examine. At the close of the enquiry the Enquiry Officer has to ask me whether I could submit a defence brief when I did not examine myself at the enquiry. The Enquiry Officer has closed the enquiry even without asking for or waiting for the defence brief at least for

powers Part H Establishment matters item No. 6 is the Junior Scale Officer Group 'A' is the appointing authority. The AME who awarded the penalty of removal is not the competent authority being lower than the appointing authority. Accordingly AME being officer lower than the Junior scale officer cannot impose the penalty of removal from service. A Group 'B' Officer is empowered to initiate Disciplinary proceedings in respect of a Group 'D' employee and award any of the minor penalties as per Schedule II to the Railway Servants Discipline and Appeal Rules. The contention of the respondents that the Assistant Personnel Officer, Electrical, Vijayawada who is competent to make such appointment to Group 'D' service and that the appointments made APO, the Officer competent to impose the penalty of removal from service should not be less than in rank than that of a APO is contrary to the rules contained in the Schedule of Powers. Hence the order of removal of passed by the AME is basically without jurisdiction and violative of Article 311 (1) of the Constitution. The Schedule of Powers clearly indicate that for imposing penalties of compulsory retirement, removal from service, dismissal from service appointing authority or an authority of equivalent rank or any higher authority is competent to impose any one of the said punishments.

6. It is stated in the counter that the APO issued the appointment order. By mere issue of the appointment order he does not become the appointing authority in view of the fact that only a Junior Scale Officer Group 'A' is competent to ~~issue~~ make appointment to Group 'D' service. Mere signing the letter does not amount to the power conferred on him to appoint to Group 'D' Services. As the order of removal is without jurisdiction, it is

In view of the facts mentioned above, I pray that this Hon'ble Tribunal may be pleased to allow the O.A. as prayed for setting aside the impugned orders in the interest of justice.

Solemnly affirmed
and signed before
me on this the 8th
day of November, 1997
at Hyderabad.

V. Lakshmi RAO.
DEPONENT

Before me,
Advocate, Hyderabad.

29/3/98

7/1/99

II COURT

copy to: -

- 1) D.R(A)
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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 PARAMESWAR :
M(J)

DATED: 30-12-98

ORDER/JUDGMENT

MA/R.A./C.P.No.

in

OA.NO. 695/96

~~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 न्यायपीठ HYDERABAD BENCH