

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.796/96

DATE OF ORDER : 26-08-1998.

Between :-

J.V.A.V.Prasad

... Applicant

And

1. Union of India rep. by
General Manager, SC Riys,
Rail Nilayam, Sec'bad.
2. Dy.Chief Mechanical Engineer,
Wagon workshop, SC Riys,
Guntupally, Krishna District.
3. Works Manager,
Wagon Workshop,
SC Riys, Guntupalli,
Krishna District.
4. Asst.Works Manager,
Wagon Workshop, SC Riys,
Guntupally, Krishna District.

... Respondents

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Counsel for the Applicant Shri G.Ramachandra Rao

Counsel for the Respondents : Shri V.Rajeshwar Rao, CCSC

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CORAM:

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

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (J)

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

Jr

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(Order per Hon'ble Shri R.Rangarajan, Member (A)).

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Heard Sri G.Ramachandra Rao, counsel for the applicant and Sri V.Rajeshwar Rao, learned standing counsel for the respondents.

2. The applicant in this OA was issued with a charge memo bearing No.GR/P-228/SA/32346/94/163 dt.28-12-1994 under Rule-11 of Railway Servants (Discipline & Appeal) Rules, 1968. It is a minor penalty charge sheet. The charge reads as follows :-

"Despite the fact that no holiday was declared on 27-12-94 to this Workshop under Negotiable Instrumenty Act by Central Govt. You have instigated other co-workers to put a halt to work demanding for a holiday on 27-12-1994. Also, you have proceeded to an extent of threatening Sri A.Siva Prasad, Mistry and also Sri B.V.Subrahmanyam, Dy.SS to kill them through your hirelings.

As a result of the above, the work was stopped for a long time and valuable man-hours lost."

The applicant submitted explanation to the charge sheet by his letter dt.2/6-1-95 (Annexure-II to the OA)denying the charge. He has stated in the explanation that he did not take any action in preventing the people from attending the workshop and that fact can be ascertained from Sri B.V.Subrahmanyam, Dy.Shop Suptd.,. The explanation was perused by the Disciplinary Authority viz., respondent No.4 herein and he stated that the explanation is not acceptable and minted as follows :-

"I do not accept the explanation given by the party. I have information through my sources about involvement of the party in the said in-

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cidence. Therefore I hold him responsible and impose the penalty of reduction to lower stage by 5 stages i.e. Rs.1070/- for a period of three years (NR)."

The said memorandum bears the No.GR/P.228/SA/32346/94/163 dt.27-1-1995 (Page-17 Annexure-III to the OA). The applicant was awarded the penalty of reduction from Rs.1175/- to Rs.1070/- in the scale of Rs.950-1500 (RSRP) for a period of three years (NR) with immediate effect. The said punishment will not have the effect of postponing the future increments. The applicant submitted an appeal dt.10-2-1995 addressed to Respondent No.3. That appeal was disposed of by Respondent No.3 by memorandum No.GR/P.228/SA/32346/94/163 dt.27-3-1995 (Annexure-V page-23 to the OA). Here also the appellate authority just reproduced the minutes recorded by the Disciplinary Authority and disposed of the appeal rejecting his appeal.

3. The applicant thereafter filed a review petition dt.5-4-95 (Annexure-V to the OA) to Respondent No.2. That was also disposed of by memorandum No.GR/P-228/SA/32346/94/163 dt.8-9-95. That review was also disposed of stating that the applicant had not requested for any enquiry in his appeal dt.10-2-95 and there is no provision under rule-11 of Railway Servants (Discipline & Appeal) Rules to order a fact finding enquiry as represented by the delinquent employee.

4. This OA is filed to set aside the proceedings No. GR/P-228/SA/32346/94/163 from the file of the respondents 2 to 4 herein and quash the penalty order dt.27-1-95 passed by respondent No.4 confirmed by the appellate order dt.27-3-95 and further

confirmed by the revision authority and for a consequential direction to the respondents to restore the pay of the applicant.

5. The main imputation for which the applicant was issued the charge sheet was due to the allegation that the applicant instigated co-workers to stop work unauthorisedly demanding for holiday under wrong motion on 27-12-1994 on the demise of late former President of India Sri Jai Singh. He also proceeded to the extent of threatening Sri A.Siva Prasad, Maistry and Sri B.V.Subramanyam, Dy.Shop Superintendent to kill them through his hirelings.

6. From the above imputation it appears that there were witnesses available with the respondents organisation to prove the charges. The two witnesses who could have been examined in this connection are Sri A.Siva Prasad and Sri B.V.Subramanyam but the impugned order of punishment was passed by the Disciplinary Authority on the premise that he had information through his sources about involvement of the applicant in the said incident. The order is very cryptic. It does not elaborate how he got this information. It is an important personal information of the respondents which decided the case of the delinquent employee. The applicant in his explanation dt.2/6-1-95 had stated that the facts can be ascertained from Sri B.V.Subrahmanyam, Dy.Shop Superintendent. When he had stated so even if he had not asked for enquiry, instead of importing his personal knowledge to award the punishment, the Disciplinary Authority could have easily called for the explanation of Sri B.V.Subrahmanyam and proceeded on that basis. ~~xxxxxxx~~ Applicant has not asked for any enquiry and hence passing of the order without

any enquiry is in order submits the counsel . No doubt minor penalty charges need not be enquired into if it is so decided by the Disciplinary Authority. When a Disciplinary Authority issues a penalty order on the basis of his personal knowledge, the principles of natural justice demands that such knowledge should be reduced into writing by the recorded statement of the witnesses if any. In this case even the statement of imputation clearly states that the applicant threatened Sri Shiva Prasad and Sri B.V.Subrahmanyam. If so, their statements could have been recorded and on that basis the charge sheet is disposed of. This is essential even if the applicant had not asked for enquiry as no punishment can be imposed without proper evidence available on record. Mere personal knowledge is not sufficient to punish the delinquent employee. That would mean that principles of natural justice are not followed fully. Even the orders of the Disciplinary Authority is very sketchy, It does not indicate how he got information or atleast he could have indicated what information he got and through which sources.

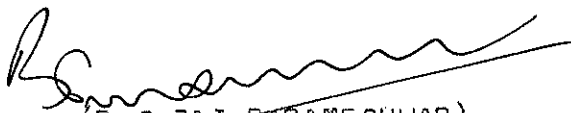
7. The order of the Appellate Authority is still more cryptic. He ^{has} just re-produced the minutes recorded by the Disciplinary Authority and disposed of the appeal. This does not adhere to the rules. He has passed the order without adhering to the law laid down. The order on the revision petition is also on the same footing.

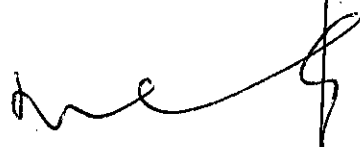
8. Hence considering the above points it has to be concluded that the whole charge sheet was finalised on hearsay with no proper evidence. It can be said that the charge sheet was disposed of with no evidence and can be termed as case of disposal with no evidence.

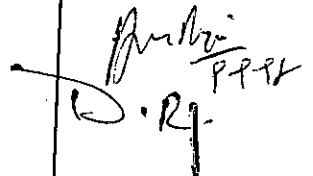
9. The learned counsel for the respondents requests liberty to proceed afresh in this case. We do not see any reason to give any such order in this case as the charge sheet was issued in the year 1994 and already four years have elapsed and no witness will come forward at this belated stage. If opportunity is given once again, we feel that the respondents will resort to pass the same order without any evidence. Hence we refuse to grant liberty to the respondents.

10. In view of what is stated above, we are convinced that all the orders passed by the Disciplinary, Appellate and revisionary authorities are to be set aside. Accordingly these orders are set aside.

11. No order as to costs.


(B.S. JAI-PARAMESHWAR)
Member (J)
26.8.98


(R. RANGARAJAN)
Member (A)


D.R.

Dated: 26th August, 1998.
Dictated in Open Court.

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DA.796/96

Copy to:-

1. The General Manager, S.C.Rlys, Rail Nilayam, Secunderabad.
2. Dy. Chief Mechanical Engineer, Wagon Workshop, SC Rlys, Guntupally, Krishna District.
3. The Works Manager, Wagon Workshop, SC Rlys, Guntupalli, Krishna Dist
4. The Asst. Works Manager, Wagon Workshop, SC Rlys, Guntupally, Krishna District.
5. One copy to Mr. G.Ramachandra Rao, Advocate, CAT., Hyd.
6. One copy to Mr. V.Rajeswara Rao, Addl.CGSC., CAT., Hyd.
7. One copy to D.R.(A), CAT., Hyd.
8. One duplicate copy.

srr

27/9/98

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:

26/8/98

ORDER/JUDGMENT

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

in

C.A.NO.

796/98

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

