

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

O.A.No. 1323/96

Dated: 27.11.1996

Between:

B.S.Prakasarao
TXR Carriage Foreman,
OEC, S.E.Railway,
Visakhapatnam.

... Applicant

and

1. General Manager,
South Eastern Railway,
Garden Reach,
Calcutta-43.

2. The Divisional Manager,
South Eastern Railway,
Waltair, Visakhapatnam.

3. The Sr. Divisional Personnel
Officer,
S.E. Railway, Visakhapatnam.

4. The Sr. Divisional Mechanical
Engineer,
S.E.Railway, Visakhapatnam.

5. The Divisional Mechanical
Engineer,
S.E. Railway, Visakhapatnam.

... Respondents.

Mr. A.S. Rama Sarma

.. Counsel for applicant

Mr. N.R.Devaraj, SCGSC

.. Counsel for respondents

CORAM

HON'BLE MR. JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN

HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMINISTRATIVE)

O R D E R

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

Mr. A.S. Rama Sarma for the applicant. Mr. N.R.Devaraj,
for respondents on notice. Applicant produces copy of
appellate order dated 19.8.96 passed by Sr.DME, Waltair
supported by affidavit. It is taken on record and treated
as also impugned. Admit. Notice waived. By consent finally
heard.

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2. While the applicant was holding the substantive post of Fitter at Carriage Wagon Department, S.E. Railway, Waltair, he was promoted on adhoc basis as TXR on 24.11.94. The scale of pay of Fitter is Rs. 1320-2040 (HSF-I). The scale of pay of TXR is Rs. 1680-1720.

3. On 22.12.95 a charge memo was issued to the applicant for imposing minor penalty under Rule 11 of the R.A.S. (D&A) Rules, 1968 on the allegation that while performing duty on 5.12.95 he had examined and passed the train UP DD169/1 but the same train had suffered detention at Bhansi for 9.30 hours due to brake power weak inasmuch as the train was having only 67% brake power and that the applicant was responsible for the shortage of the brake power and thus rendered himself liable for disciplinary action under D&A Rules, 1968 and Conduct Rules, 1996.

4. In reply to the charge memo the applicant submitted his explanation on 4.4.96 in which, inter alia, he contended that he had examined the train thoroughly under super checking of AME-III FC(G) with CF Yard in day light hours and that as per force of AME-II and CE(G) train could not be tested with even train powers and thus he deserved to be exempted from the charge as he works hard and loyally in his job. The Divisional General Manager (Mechanic) did not accept the explanation and passed the impugned order of penalty dated 12.6.96 whereunder the next increment raising applicant's pay from Rs. 1680 to 1720 in the grade of Rs. 1400-2300 has been withheld for a period of 12 months, non-cumulative effect, with effect from 1.8.96.

5. The applicant submitted an appeal to the Senior Divisional Mechanical Engineer styling it as a mercy appeal, requesting for reduction/cancellation of the penalty. The said appellate authority accepted the finding of the disciplinary authority and taking the view that the punishment imposed was also lenient rejected the appeal by order dated 19.8.96. The applicant challenges the penalty imposed upon him under the aforesaid orders.

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6. Mr. Devaraj, learned counsel for the respondents, made us available the relevant record pertaining to the enquiry of the applicant. We find that an opportunity to show cause was given to the applicant and thereafter the disciplinary authority was satisfied that the allegation made against the applicant was established and passed the order under Rule 11 which he could do. The record shows that before the charge-sheet^{memo} was issued there had been some preliminary enquiry made. In his show cause reply the applicant had not raised any legal contentions. It is not, therefore, possible to go behind the findings recorded by the disciplinary authority and the appellate authority.

7. The learned counsel for the applicant, Mr. A.S. Rama Sarma inter alia submitted that there was violation of principles of natural justice and the action of the respondents was a product of malafides. We, however, find that there is no specific allegation of malafides made against any particular officer and a generalised statement during the course of argument cannot be accepted as a substantial allegation of that nature needing scrutiny by us. Similarly, as far as the grievance relating to violation of principles of natural justice is concerned, since the applicant was given an opportunity to show cause and no specific pleas were urged by him, there cannot arise any question of principles of natural justice being violated. The learned counsel also sought to rely on a decision of the Jabalpur Bench of the Central Administrative Tribunal in 1989 (1) SLR 184, but we do not find it possible to apply the same to the facts of the instant case, although the principles discussed therein are well established. We thus find no merit in this application on the grounds urged by the applicant.

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8. We, however, notice on going through the record produced by the respondents that a grave legal error has been committed by the authorities below and we cannot shut our eyes to the same. On the date on which the alleged act of negligence was committed by the applicant and when the penalty was imposed, he was holding the post of TXR (CEC). The order of penalty withholding the monthly increment was thus operative in the scale of pay of that grade, namely, Rs. 1400-2300. The appellate authority, however, in his order has altered that punishment and has directed it to stand good as imposed in the scale of Rs. 1320-2040, that is the lower grade. In our view once the applicant was charged while he was TXR and the order was specifically for withholding increment in the pay scale of Rs. 1400-2300, that cannot be applied to any other scale of pay in which the applicant might have been placed before the appellate order was passed. For that purpose the order of the Disciplinary Authority will be deemed to have merged in the appellate order.


9. Record shows that the adhoc appointment of the applicant was terminated and he was reverted to his substantive post of HSF Gr.I in pay scale of Rs. 1320-2040 vide order of the DRM(P), Waltair dated 14.8.96. That was prior to the appellate order in the disciplinary proceedings was passed on 19.8.96. This legal defect that has arisen by reason of the fact that while passing the order of reversion the impact thereof as was likely to occur on the order of penalty has not been taken into account by the respondents.


10. Mr. Devaraj, the learned Standing Counsel for the respondents, although found it difficult to overcome the legal defect, strenuously tried to justify the penalty order. In our view since the orders stand vitiated by an illegality that cannot be cured by justification of the penalty on merits, assuming it were to be found justified. We thus hold that the impugned orders are not legally sustainable and are liable to be quashed.

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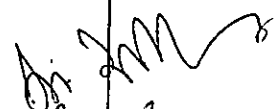
11. In the result, the following order is passed:

- (1) The order of penalty dated 12.6.96 as well as the appellate order dated 19.8.96 are hereby quashed and set aside.
- (2) The respondents, however, will not be precluded from taking fresh action, if so advised, strictly in accordance with the law.
- (3) The O.A. is accordingly disposed of. No order as to costs.


H. Rajendra Prasad
Member (Admn.)


M.G. Chaudhari (J)
Vice Chairman

27th November, 1996


Deputy Registrar

VM

O.A.1323/96

To

1. The General Manager, S.E.Rly,
Garden Reach, Calcutta-43.
2. The Divisional Manager,
SE Rly, Waltair, Visakhapatnam.
3. The Sr.Divisional Personnel Officer,
SE Rly Visakhapatnam.
4. The Sr.Divisional Mechanical Engineer,
SE Rly, Visakhapatnam.
5. The Divisional Mechanical Engineer,
SE Rly, Visakhapatnam.
6. One copy to Mr. A.S.Rama Sarma, Advocate, CAT.Hyd.
7. One copy to Mr.N.R.Deyraj Sr.CGSC. CAT.Hyd.
8. One copy to Library, CAT.Hyd.
9. One spare copy.

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31/12/96

I COURT

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APPROVED BY

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
MEMBER (ADMN)

Dated: 27-11-1996

ORDER / JUDGMENT

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

in

O.A.No. 1323/96

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.

pvm.

