

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 276 OF 1997

Dated, the 31st March, '99.

BETWEEN :

VS Dwarakanath

... Applicant.

A N D

1. Union of India,
Reptd. by its General Manager,
South Central Railway, Rail Nilayam,
Secunderabad.
2. Additional General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
3. Chief Signal & Telecommunications
Engineer, South Central Railway,
Rail Nilayam, Secunderabad.
4. Chief Workshops Manager,
(Signal and Telecommunications),
South Central Railway, Mettuguda,
Secunderabad 500 0017.
(Now Downgraded as Chief Signal and
Telecommunication Engineer)
5. Production Engineer,
Signal and Telecommunications Work-
shop, South Central Railway,
Mettuguda,
Secunderabad 500 017.

... Respondents.

COUNSELS :

For the Applicants : Mr. G. Ramachandra Rao.

For the Respondents : 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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O R D E R

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

1. Heard Mr. G. Ramachandra Rao, Learned Counsel for the applicant and Mr. N.R. Devaraj, Learned Standing Counsel for the respondents.

2. This is an application under Section 19 of the Administrative Tribunals Act, 1985. The application was filed on 26.2.97.

2. During the year 1984, while the applicant was working as Senior Chargeman (now redesignated as JE Gr.I) S&T Workshop, Mettuguda, he was issued with a minor penalty charge memo dt. 5.10.90 alleging that he being a Leader of the Tour Party of Railwaymen in IInd Class Reserved Coach NoGSCW 2899 of Train No.88 of 16.3.84 had allowed an unauthorised passenger by name Ashok who was excess charged under EFT 131150 of 22.3.84 by Vigilance Staff (Annexure-AI)

3. The applicant submitted his explanation dt. nil. The respondent No.5 being the disciplinary authority considered the explanation of the applicant and being not convinced and recording that the misconduct was substantiated, imposed a penalty of withholding one set of Privilege Pass for the current year 1992 from the account of the applicant by his proceedings No.72482/DAR/VS dt. 8.7.92 (Annexure-III).

4. The applicant submitted an appeal dt. 17.8.97 against the said order of penalty to the respondent No.4. The respondent No.4 by his order of even number dt. 11.1.94 accepted the appeal and set aside the punishment imposed by the Respondent No.5 (Annexure-IV).

5. After perusing the enquiry records, the Respondent No.3 in exercise of his power under Rule 25 of the RS(DA) Rules 1968 issued a show cause notice to the applicant of his proposal to revise the order dt. 11.1.94 passed by



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the appellate authority. The show-cause notice is dated 25.3.94 (Annexure-V).

6. The applicant submitted his explanation dt. 13.4.94 to the show-cause notice. A copy of his explanation is at Annexure-VI.

7. The respondent No.3 was not satisfied with the his explanation.

8. The respondent No.3 by his proceedings No.P.82/^{the} WS/S&T/MPT/VSD/1770 dt. 23.9.94 imposed/penalty of reduction in the pay of the applicant from Rs.2200/- to Rs.2100/-

(2 stages) in the Time Scale of pay of Rs.1600-2660/- (RSRP) for a period of 3 years (Non-recurring) (Annexure-VII).

9. Against the punishment order imposed by the respondent No.3 the applicant submitted an appeal dated 4.11.94 to the respondent No.2. The respondent No.2 considering the appeal and by his proceedings of even number dt. 29.12.94 rejected the appeal and confirmed the punishment. The respondent No.2 in the course of his order advised the applicant, if so advised, to submit a revision petition against his order dt. 29.12.94 to the Railway Board.

10. The applicant submitted a revision petition to the ^{DY.CSTE/Shops} Railway Board. However, the/ returned the revision petition dt. 8.2.95 to the applicant through his letter dt. 19.4.96 (Annexure X) informing the applicant that the same is not entertainable as per the extant rules.

11. The applicant has filed this O.A. for the following reliefs :

"to call for the records relating to the Proceedings No.P-82/WS/S&T/MPT/VSD/1770 dt. 23.9.1994 on the file of the 2rd respondent herein and set aside the order

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dated 23.9.1994 passed therein as confirmed by the 2nd respondent in his proceedings No.P-82/WS/S&T/MFT/VSD/1770 dated 23.12.1994 with a consequential direction to the respondent to restore the pay of the applicant with all attendant benefits including arrears of pay and also promotion to the next higher post".

12. The applicant has challenged the impugned orders on the following grounds :

a) The impugned orders dt. 23.9.94 and 29.12.94 are illegal, arbitrary and devoid of reasons.

b) The respondent No.3, being the revisional authority had no power to revise the order dt. 17.8.92 passed by the respondent No.4 as the appellate authority has not at all imposed any kind punishment but had set aside the punishment imposed by the respondent No.5.

c) The respondent No.3 could not have exercised the power of revision as the respondent No.4 had passed the order dt. 17.8.92 and the respondent No.3 proposed to revise the the same by issue of show-cause notice dated 25.3.94.

d) The respondent No.3 has not independently considered the case.

e) A detailed enquiry ^{ought to have been} / held before imposing punishment.

f) The order dt. 29.12.94 is contrary to Rule 22 of the RS(DA) Rules 1968.

13. The respondents have filed a counter narrating the circumstances under which the respondent No.3 exercised the his power under Section 25 and imposed/punishment by his order dt. 23.9.94. Further, the applicant in his reply

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dt. 13.4.84 had admitted the offence by stating as follows :

"the gravity of my alleged offence is no less serious than the alleged offence done by Sri Gabriel and if proved would face the prospects of removal from service".

The respondent No.3 had gone through the reply dated 13.4.84 in detail and came to the final decision holding guilty of the charge and imposed the penalty as indicated above. They submit that the appellate authority viz. the 2nd respondent considered the order passed by the respondent No.3 in exercise of the revisional powers and considered the appeal according to the Rules. After considering the enquiry records and also the explanation offered by the applicant to the charge memo and to the show cause notice felt that there was no need to interfere with the order passed by the Respondent No.3. Thus the Respondent No.2 rejected the appeal and confirmed the punishment. It is stated that the respondent No.2 has considered the appeal in accordance with the rules. However, the respondent No.2 advised the applicant if so advised to submit a revision petition to the Railway Boards. As regards the power of revision as envisaged under Rule 25 of the Rules, 1968 they submit that every authority indicated therein has to exercise power of revision ; that the word "or" is inserted among the authorities indicated therein; that, therefore, power of revision can only be exercised by one authority only and not authorities successively. In support of their submission they relied upon the decision of the ^{Hon'ble} High Court of Delhi in CWP No.756/1976.

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It is on the basis of the the Delhi High Court they issued the necessary instructions curtailing revision by/successive authorities. They further submit that they had challenged the decision of the Delhi High Court in Civil Appeal No.767 of 1979 and that the Hon'ble Supreme Court concurred with the decision of the Delhi High Court. In this background, the Railway Board returned the revision petition dt. 8.2.95 to the applicant vide their letter dt. 6.2.96. They further submit that the Board's letters issued in 1981, 1982 and 1994 are only clarificatory in nature of the Rule 25 of the Rules 1968. The said letters did not bring in any new aspect of the proviso to the existing rule and that there are no grounds to interfere with the impugned orders.

14. Further they submit that merely because they had indicated that no disciplinary proceedings were pending against the applicant when he was sent on deputation that does not take away the right of the authorities to proceed against him for the misconduct committed earlier to his deputation. They submit that the disciplinary authority can initiate the proceedings against the applicant any time during the tenure of his service. Mere indication that no D.A.R. case was pending against him at the time of deputation ^{of the applicant} / it did not mean that the authority was not empowered to proceed against him. Ince the applicant was on deputation there was some delay in issuing the charge memo. They submit that the charge sheet dt. 5.10.90 was issued to the applicant after the applicant was repatriated to the parent department. Further, they submit that in the explanation to the charge memo and explanation to the show cause notice nowhere the applicant demanded an enquiry and in fact impliedly admitted his guilt. Thus they submit that the revisional authority i.e. the Railways was justified in imposing the penalty.

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15. The main grievance of the applicant is that the respondent No.3 interfered with the order dt. 7.8.92 passed by the respondent No.4 as an appellate authority as already stated. Issue of the charge memo dt. 5.10.90 the disciplinary authority concluded the same by withholding his annual privilege pass for the current year 1992. The charge memo was issued under Rule 11 of the Rules 1968. The explanation given by the applicant to the charge memo is at Annexure-II (page 15 to the OA). In his explanation the applicant stated that he had allowed an unauthorised passenger to travel in the train along with the Tour Party of the Railway Officials. He challenged the authorities to issue the charge memo after a lapse of nearly 6 ½ years. Further, he contended that issue of the charge memo after he was sent for deputation with a certificate that there was no DAR pending against him, ~~debarred~~ the very purpose of issuing the charge sheet as the certificate issued at the time of his deputation to/foreign service clearly established that he had not committed any misconduct.

16. In this explanation also he ~~never~~ never demanded for a fulfilled enquiry. Had he demanded a fulfilled enquiry into the misconduct, alleged against him in the charge memo dt. 5.10.90, ^{then} it was for the disciplinary authority to record a finding whether the full-fledged enquiry was called for or not. In the absence of any such demand in the explanation, the disciplinary authority rightly proceeded with and concluded the charge memo by imposing a penalty of withholding one set of privilege pass.

17. The appellate authority for the reasons recorded in its order dt. 7.8.92 set aside the punishment and exonerated the applicant. This order of the appellate was considered by the respondent No.3 while exercising ^{sub-moto} his power under Rule 25 of Rules 1968. ^{the}

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18. It is the contention of the applicant that the respondent No.3 could not have exercised his power of revision when the appellate authority had set aside the punishment imposed by the disciplinary authority. It is his case that the respondent No.3 could not have ventured to exercise his power of revision by the order dt. 11.1.94 when there was no punishment on record. Further he submits that after a lapse of nearly 2 months the respondent No.3 issued a show-cause notice. The order of the appellate authority is dated 11.1.94 and the show-cause notice is dated 25.3.94. That means he has exercised the power of review after about 2½ months.

19. This according to the applicant is not justified.

20. On perusal of the Rule 25 of the Rules 1968 (except the appellate Authority) it is disclosed that the authorities enumerated in the rule may at any time either on his or its motions or otherwise call for the records of any enquiry and revise any order made under these rules or under the rules repealed by rule 29 and may, after consultation with the Commission where such consultation is necessary

(a) confirm, modify or set aside the order;

From the above it is clear that the revisional authority can exercise the power at any time. Further he can revise any order made under these rules. The power of revision under Rule 25 has wider import. Therefore, it cannot be said that the respondent No.3 could not have exercised his power when the appellate authority i.e. Respondent No.4 by his order dt. 11.1.94 has set aside the punishment imposed by the disciplinary authority. Hence, we are not persuaded to accept the contention of the applicant that there was no justification for the respondent No.3 to exercise the power of review. The said contention is rejected.

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21. The respondent No.3 by his order dt. 23.9.94 imposed the penalty of reduction in the pay of the applicant from Rs.2200 to Rs.2100 (2 stages) in the time scale of pay of Rs.1600-2660/- (RSRP) for a period of 3 years (NR). The applicant submitted an appeal dt. 11.1.94 to the respondent No.2. The respondent No.2 by his proceedings dt. 29.12.94 rejected the appeal and confirmed the punishment. The order of the appellate authority is dated 29.12.94. (Annexure-X).

22. The applicant has challenged the order of the appellate authority as illegal and arbitrary. It is his contention that the respondent No.2 has not considered the appeal in accordance with Rule 22 (2) of the Rules 1968. The appellate authority considered the grounds raised by the applicant in his memorandum of appeal dt. 4.11.94. He has also formed an opinion that the demand for enquiry was not accompanied by any justifiable grounds. Further, the applicant constantly failed from the stage of receiving the charge memorandum till submission of this appeal to furnish adequate grounds to prove himself not guilty of the charge or for the authorities to come to a reasonable conclusion that the applicant was innocent of any charge. Though the applicant did not dispute allowing an unauthorised passenger to travel in the compartment containing the Tour Party of the Railway Officials, but attempted to question the propriety of the authorities to issue the charge memo.

23. We do not find any irregularity in the order of the appellate authority. The appellate authority has considered the appeal in accordance with the rule 22(2) of Rules 1968. Therefore the contention of the applicant has no merit.

24. The appellate authority had directed the applicant to submit a revision petition to the Railway Board and he submitted the same to the Railway Board. However, the

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Railway Board returned the revision petition relying upon its circular instructions which came to be issued on the basis of the decision of the Hon'ble Delhi High Court in WP No.757/76.

25. The authorities mentioned in Rule 25 cannot successively exercise the power of review. Here, in this case, the respondent No.3 had exercised the power of review suo motu. The respondent No.3 on review set aside the order dt. 7.8.92 of the appellate authority and imposed the penalty as stated above. On such exercise, the respondent No.3 became the disciplinary authority.

26. The applicant has a right of appeal against the order passed by the respondent No.3. Accordingly, the applicant submitted an appeal to the respondent No.2. The respondent No.2 considered the appeal and by his order dt. 29.12.94 rejected the same.

27. In our opinion the applicant has a right of revision against the order passed by the respondent No.2 i.e. to the Railway Board. The Railway Board was not justified in returning the revision submitted by the applicant. The instructions issued by the Railway Board on the basis of the decision of the Hon'ble High Court of Delhi in CWP No.757/76 may not be applicable to the facts and circumstances of this case, as the applicant has a right of revision against the order passed by the respondent No.2 on 29.12.94 in the appeal.

28. Mere instructions issued by the Railway Board cannot take away the right of revision conferred upon the applicant under the Rules 1968. Therefore, in our humble opinion the applicant has a right to submit a revision petition against the order dt. 29.12.94 to the Railway Board. The Railway

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Board must have considered the revision petition on merits. Consideration of revision petition by the Railway Board cannot be interpreted as entertaining the revision petition by the authorities successively. The revision petition was necessitated by the exercise of power of revision by the respondent No.3 suo moto and also by the fact that it enhanced the punishment. Hence, the Railway Board was not considering the revision petition suo moto. The circular instructions can only be attracted to the case where the authorities described in the rule 25 of the Rules 1968, exercised their power of revision by suo moto twice.


29. The Dy.CSTE, Shops shall place the revision application dt. 8.2.95 before the Railway Board for consideration on merits and in accordance with the Rules, 1968.


30. Hence, the following directions are given :

- (a) The Dy.CSTE, Shops, shall submit the revision petition dt. 8.2.95 of the applicant to the Railway Board for its consideration on merits.
- (b) In case, the applicant is going to be aggrieved by the decision of the Railway Board on his revision petition, he may take such legal course of action, as per rules.
- (c) Time for compliance/is 3 months from the date of receipt of a copy of this order.
- (d) The Railway Board may consider the revision petition of the applicant as expeditiously as possible.

31. With the above directions the O.A. is disposed off.
No order as to costs.

32. The Enquiry Files bearing No.E (D&A) 79 R G6-40 (Pt.A) and No.E (D&A) 79G6-40 produced by the respondents are perused and returned.


(BS JAI PARMESHWAR)
MEMBER (J)


(R RANGARAJAN)
MEMBER (A)

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31.3.99

Dated, the 31st March, '99

Copy to:

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3. HBSJP M(J)
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13/4/99
IST AND IIND COURT

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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR:
VICE - CHAIRMAN

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

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

THE HON'BLE MR. B. S. JAI PARAMESWAR
MEMBER (J)

DATED: 31.3.99

ORDER/ JUDGEMENT

MA./RA./CP.No.

IN

O.A. NO. 276/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

10 (Gen) Com's

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
बैच / DESPATCH

-9 APR 1999

हैदराबाद ब्याचपीठ
HYDERABAD BENCH