

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 684 OF 1997

Dated, the 10th March, '99.

BETWEEN :

S. Gangayya Applicant

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1. The Union of India,
Ministry of Railways,
Railway Board,
Rep. by its Secretary,
Rail Bhavan,
New Delhi 110 001
2. The General Manager,
South Eastern Railways,
Graden Reach,
Calcutta-43.
3. The Divisional Railway Manager,
South Eastern Railway,
Visakhapatnam 530 016.

COUNSELS :

For the Applicant : Mr. KV Subrahmanyam Narusu

For the Respondents : Mr. V. Bhimanna.

CORAM :

THE HON'BLE MR. R. RANGARAJAN, MEMBER (ADMIN)

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

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O.A.684/97

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O R D E R

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

1. Heard Mr. K.V.Subrahmany Narusu, Learned Counsel for the applicant and Mr. V. Bhimanna, Learned Standing Counsel for the respondents.
2. This is an application under Section 19 of the Administrative Tribunals Act, 1985.
3. The application was filed on 15.5.1997.
4. The applicant herein is a retired Officer of the Railway Administration. While working as Sr.DPO, S.C.R., Waltair, the applicant retired from service on and from 30.6.1996 on attaining the age of superannuation. The respondent No.2 by his proceedings No.DCPO (G)/CON/SG/96/MJR/759 dt. 22.4.97 issued a Memorandum of Charges against the applicant. The misconduct alleged against the applicant are as follows :

"ARTICLE - I

Sri S. Gangayya, Retd. Sr.DPO/SE Railway/WAT while functioning as DPO and Sr.DPO/SE Railway, Chakradharpur in the year 1988 unauthorisedly initiated action for absorption of regular full time employees of Institutes, Canteens and Co-operative Societies in Group 'D' categories in Chakradharpur Division of SE Railway by issuing notification No.P/DPO-II/Genl dt. 19.1.1988 inviting applications from them without prior sanction/approval of the Competent Authority to conduct such screening which is in violation of the instructions contained in Board's letter No.E(NG/III/77/RRI/5 dated 26.8.1977 while a large number of casual labourers who were eligible for such screening and absorption have not been taken into consideration.



O.A.684/97

-:3:-

ARTICLE-II

A Screening Committee was constituted consisting of DEE(TRD)/SE Railway/CKP and the DPO-II/S.E.Railway/CKP who screened all the 107 candidates appearing for screening on 10.5.1988, 13.5.1988 and 4.7.1988. Sri Gangayya submitted a note recommending 30 candidates(out of 107) suitable for absorption in the Group 'D' categories and on 2.8.1988 got their names approved by the DRM/CKP. He issued his circular letter No.P/DPO-II/Genl dated 8.8.1988 which is the final panel indicating the names of 30 candidates for empanelment for regular absorption in Group 'D' categories in CKP Division. While publishing this panel dated 8.8.1988 he failed to assign the correct seniority position in accordance with the length of service rendered by the candidates.

Thus, by the above act of omission and commission, Sri S Gangayya, Retd. Sr.DPO/SE Railway/WAT failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Railway Servant and thereby contravened Rule 3(1)(i)(ii) and (iii) of the Railway Services (Conduct) Rules 1966, rendering himself liable for disciplinary action under D&A rules 1968 as amended from time to time."

5. The applicant has challenged the said charge memo alleging that there is inordinate delay in initiating the disciplinary proceedings; that after his retirement any Disciplinary Proceedings could have been initiated only with the proper approval and sanction of the President; that the misconduct alleged against him related to the year 1988; that issue of charge memo is against the Rule 2038 of the IRSA Rules, 1968; that the Railway Board in its letter No.P/6/40/193/K dt. 10.4.96 has clearly stipulated that if the disciplinary proceedings are not initiated before the retirement of the Railway Employee, it can be done so only with the sanction of the President and shall not be in respect of any event which took place more than 4 years before such institution; that the Railway Board has further clarified in its letter No.P/D/Policy/95 dt. 22.9.95 clearly

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stating that under Rule 9 of the Railway Services (Pension Rules 1963 that the date of occurrence of the event should have been found out so that the date on which the four years time limit is known and action should have been taken; that the respondent No.2 has issued the charge memo after a lapse of nearly 9 years without even calling for his explanation; that the charge memo is not in accordance with the Law as enunciated in the case of B.D. Mathur Vs. State of Punjab and Others (reported in 1992 (4) S.L.R. (Page 510) that the 2nd Respondent acted against the circular instructions issued by the Railway Board; that his action is arbitrary; that the Hon'ble Supreme Court has time and again observed that initiation of disciplinary action after long period offends the reasonable opportunity and that the applicant may not be in a position to defend himself as he is bound to forget past events after a lapse of a long period; that even the fundamental right guaranteed to him under Article 21 of the Constitution of India has been violated; and that the charge memo is not sustainable in Law.

6. Thus the applicant has prayed for declaring the impugned charge memos as capricious, arbitrary, against the principles of natural justice, without authority of Law and also jurisdiction.

7. The respondents have filed their counter. The respondents submit that the application is premature; that after obtaining the first advice of the CVC, New Delhi they thought it fit to initiate disciplinary proceedings for certain misconduct alleged to have been committed by the applicant during the year 1988 while he was working as ^{2nd} DPE, SCR, Chakradharpur; that the competent authority considered it proper and necessary to place the applicant under suspension before



O.A. 684/97

-: 5 :-

his retirement; that the date of superannuation of the applicant was 30th June, 1996; that as per letter dt. 14.9.89 the competent authority considered it necessary to place the applicant under suspension from 28.6.96; that, accordingly, vide order No. DRM/CON/4 dt. 28.6.96 the applicant was placed under suspension; with the approval of the competent authority contemplating disciplinary action; that the said suspension order was served to the applicant; that the applicant after going through the suspension order refused to take it in the presence of N. Prabhakar Rao, APO (II)/WAT and A. Rama Rao, Sr. Steno to ADRM/WAT, who had been to the residence of the applicant to serve the order of suspension on the night of 28.6.96; that the report issued by the said officers are enclosed as Annexure-R-II to the reply; that the order of suspension dt. 28.6.96 was confirmed by the competent authority by his order dt. 16.7.96; that the said confirmation was done in accordance with the Rule 9 of the RS (D&A) Rules; that the applicant had then approached this Tribunal in O.A. 844/96; that this Tribunal on 17.7.96 and 6.12.96, disposed off the application; that subsequently vide letter dt. 26.2.96, the General Manager, SCR stated that the above suspension order was deemed to have been effective w.e.f. 29.6.96, since the suspension order dt. 28.6.96 was prepared after closure of the normal working office working hours; that the applicant was granted that provisional pension/CVP and DCRG permissible to the applicant have not been granted; that the Railway Board examined the entire case, obtained CVC's concurrence and communicated the same to the Railway Administration; that

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the four years' time limit for initiation of disciplinary proceedings as clarified by the Railway Board is not applicable in this case, as the applicant was placed under suspension w.e.f. 29.6.96 by the order dated 28.6.96; that the order of suspension was issued while the applicant was in service; that therefore, the issue of the impugned charge memo relates back to the date of suspension; that therefore, the charge memo is valid and is according to Law; that the applicant has made certain averments which may constitute his defence during the inquiry; that the Calcutta Bench of this Tribunal in the case of VP Sidhan Vs. UOI & Ors has held that it cannot interfere with the orders passed at the interlocutory stage and such interference at the interlocutory stage of inquiry proceedings would delay the completion of the inquiry; and that in view of that the application is not maintainable; that there are no merits in this O.A. and that the O.A. is liable to be dismissed.

8. The facts are not in dispute. The applicant retired from service w.e.f. 30.6.96. He was issued with the impugned charge memo dt. 22.4.97. The misconduct imputed against the applicant relate to the incident occurred in the year 1988.

9. In case the applicant was at any time suspended while in service contemplating disciplinary proceedings relating to this misconduct, then the issue of charge memo can relate back to the date of suspension. This is because on retirement of an employee the relationship of master and servant comes to an end. Otherwise, when once the employee retires from service and the Railway Administration desires to proceed against the retired employee they have to follow the procedure of obtaining sanction and approval from the President. Also in such an event the incident should have been occurred within 4 years from the date of his retirement.

10. The respondents main contention is that the charge memo dated 22.4.97 is valid and the respondent authorities had



O.A.684/97

-:7:-

after obtaining the first advice of the CVC decided to place the applicant under suspension contemplating disciplinary action. Thus they rely upon the order dated 28.9.96 to contend that the applicant was placed under suspension and therefore, the charge sheet is perfectly valid and legal.

11. The point for consideration is whether the order of suspension was effectively served on the applicant to contend that the charge sheet issued on 22.4.97 is valid and according to law.

12. Rule 26 of the Railway Servants (Disc. & Appeal) Rules 1968 clearly state "the manner of" of service of the order/notice against the Railway Employee, which reads as follows :

"26. Service of orders, notices, etc -

Every order and other process made or issued under these rules, shall be served in person on the Railway servant concerned or communicated to him by registered post."

From the above rule it is clear that every order or notice must be served in person and if personal service cannot be effected then the order/notice must be communicated to the Railway Employee through Registered Post.

13. We must now consider from the averments made in the reply whether there is proper and effective service of order of suspension dt. 28.6.96, as contended by the respondents.

14. In the first instance we must make it clear that the order dt. 28.6.96 was passed at the fag end of the working hours of that day. Further, the said order of suspension was not served on the applicant on 28.6.96, while he was in office.

15. The respondent authorities further submit that they tried to serve the order of suspension in the residence of the applicant on 28.6.96. It is their version that the applicant was present in his residence when he was confronted with the order of suspension, he went through the same and

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O.A.684/97

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refused to accept. They submit that the applicant refused to accept the order of suspension in the presence of N. Prabhakar Rao, APO(II)WAT and A. Rama Rao, Sr.Steno to ADRM/WAT.

16. No independent person has affixed the signature to the endorsement made by the Railway Administration. Even, during the reply these 2 officers have not chosen to swear to an affidavit. It is only on the basis of the version/ these 2 officers, we have to come to the conclusion that the order of suspension was in fact/served on the applicant on the night of 28.6.96.

17. Had the Railway Administration left it at that, we would have decided whether there was proper and effective service of the order of suspension on the applicant. They did not leave it there. They addressed a letter dt. 29th June, 1996 directing the applicant to attend office in connection with some very urgent official work. If, according to the Railway Administration, they had placed the applicant under suspension effective from 28.6.96, there was absolutely no necessity for the DRM, Waltair to address the said letter directing the applicant to appear before him on 28.6.96. Admittedly, the applicant had not complied with the said letter.

18. Further, the DRM, Waltair by his letter dt. 30.6.96 directed the applicant to attend office immediately as some instructions are to be issued. Even this letter was also not responded/by the applicant.

19. It is only by letter dt. 16.7.96 while confirming the order of suspension on the applicant they interpreted the the order of suspension as having come into effect from 29.6.96. They took the said stand on the premise that the order dt. 28.6.96 was prepared at the fag end of the day.

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20. After the respondents failed to effectively serve the order of suspension on the night of 28.6.96, the least they could have done was that they should have sent the order of suspension through Registered Post Ack. Due as per Rule 26 of RS(DA) Rules, 1968. They have not done so.

21. That apart they themselves were in a dilemma to come to the conclusion that by their act of attempting to serve the order of suspension on the night of 28.6.96 was in conformity with the Rules or not and whether their act amounted to an act of deemed serve of the order of suspension. The respondents went on to address letters to the applicant on 29.6.96 and 30.6.96 calling upon him to appear in the office to receive certain instructions. They submit that they had attempted to serve the order of suspension on the night of 28.6.96 and that by their said act the applicant was deemed to have been placed under suspension. We are at loss to understand the reasons as to why the respondents addressed letters to the applicant to come to the office to receive certain instructions. A suspended employee is not expected to attend office for getting urgent official work done or issue of some instructions as stated in the letters dated 29.6.96 and 30.6.96 unless the order of suspension is revoked or modified. The very fact that no document is placed before us to show that the work of the applicant was entrusted to someone else leave us to believe that the respondents' organisation was not sure of having served the suspension order on the delinquent employee. It may be said that a junior officer as per convention will discharge the functions of the employee. It may be accepted in the normal circumstance. In the present case such submission of the respondents cannot be accepted in the face value unless tangible proof is shown to accept the submission if made that a junior officer was to discharge the responsibility. Instead two letters were written to the



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applicant to attend the office for performing some urgent official work or to issue some instructions. The above goes to prove that there is not much evidence to come to the conclusion that the order of suspension was issued before his retirement and thereby the disciplinary proceedings were initiated earlier to his date of retirement. The respondents themselves were not certain or sure that their act of attempting to serve the order of suspension on the night of 28.6.96 was in conformity with the rules. They took 18 days to confirm the order of suspension. Moreover, they have not stated that their act came/within the purview of Rule 26 of the RS(DA) Rules, 1968. The respondents have not complied with Rule 26 of the Rules 1968.

22. In this background, we are left with no other alternative but to hold that the respondents failed to prove or substantiate that the applicant was actually placed under suspension earlier to his retirement. In that view of the matter, the charge sheet dt. 22.4.97 issued by the respondent authorities is not in conformity with the extant rules.

23. In that view of the matter, we issue the following directions :

- (a) The O.A. is allowed and the charge sheet dated 22.4.97 is hereby quashed.
- (b) It is made clear that this order does not stand in the way of the respondents to proceed against the applicant as per rules to be followed in the case of retired employees.
- (c) The respondent authorities may take such a course of action as they may consider necessary as per rules, in case they decide to proceed against the applicant departmentally for the alleged misconduct committed by him in the year 1988.

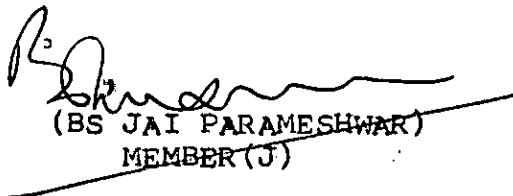
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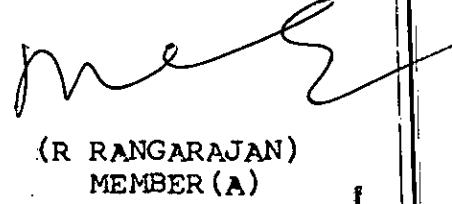
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O.A.684/97

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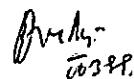
(d) Time for compliance of (c) above is 6 months from the date of receipt of a copy of this order.

24. The O.A. is accepted. No order as to costs.


(BS JAI PARAMESHWAR)
MEMBER (J)


(R RANGARAJAN)
MEMBER (A)

Dated, the 10th March, '99.


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1ST AND 2ND COURT

TYPED BY
COMPARED BY

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APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

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

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

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

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

DATED: 16-3-99

ORDER/JUDGEMENT

MA./RA./CP. No.

IN

O.A. NO. 684/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

Deepak

