

52

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA.799/97

dt.16-12-1998

Between

P. Muralikrishna

: Applicant

and

1. Asstt. Mech. Engr.
SC Rly, Rajahmundry

2. Divnl. Mech. Engr.(Loco)
SC Rly, Vijayawada

3. Addl. Divnl. Rly. Manager
SC Rly, Vijayawada

4. Chief Optg. Manager
SC Rly, Rail Nilayam
Secunderabad

: Respondents

Counsel for the applicant

: G.V. Subba Rao
Advocate

Counsel for the respondents


: V. Rajeswara Rao
SC for Railways

Coram

Hon. Mr. R. Rangarajan, Member(Admn.)

Hon. Mr. B.S. Jai Parameshwar, Member(Judl.)





OA.799/97

dated : 16-12-98

Order

Oral order (per Hon. Mr. R. Rangarajan, Member(Admn.)

Heard Sri G.V. Subba Rao for the applicant
and Sri V. Rajeswara Rao for the respondents.

1. The applicant was issued with a charge sheet for
unauthorised absence by memorandum No.P.R.1319/RJY
dated 5-7-91 (Annex-VI). The Article of charges reads
as below :

"ARTICLE-I

That the said Sri P. Murali Krishna while function-
ing as Fireman-I during the period from 28-8-90 to
4-7-91 (311 days) absented himself unauthorisedly.

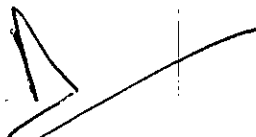
ARTICLE-II

That during the aforesaid period and while function-
ing in the aforesaid office the said Shri P. Murali Krishna
absented himself unauthorisedly from 28-8-90 to 04-7-91
(311 days) without proper sanction of leave or observing
Rly. Medical attendance Rules."

2. The applicant submitted his explanation. An enquiry
was conducted and on the basis of that enquiry after
giving him a copy of the Enquiry Report the Disciplinary
authority passed order by impugned memorandum dated
7-2-1994 (Annexure-I). The Disciplinary authority imposed
the penalty of reduction of his pay to the lowest stage
of Rs.950 in the same time scale of Rs.950-1500 for five
years with recurring effect with effect from 15-2-1994.
The applicant filed an appeal against that order addressed
to Respondent-3 by his appeal dated 23-5-1994 (Annex.IV) .

..2.

Th



That was disposed of by the Appellate authority confirming the orders of the Discipline authority. The applicant later filed a Revision petition addressed to Respondent-4 by his representation dated 8-6-1996 (Annex.V). That Revision petition was also disposed of by that authority by impugned order dated 26-6-1996 confirming the orders passed by the Disciplinary authority as well as Appellate authority.

3. This OA is filed to set aside the orders of the Disciplinary authority, Appellate authority, and Revision authority dated 7-2-1994, 4-11-1994, and 26-8-96 respectively by holding them as arbitrary, illegal, unconstitutional violative of Articles 311(2), 14, and 16 of the Constitution and for a consequential direction to the respondents to pay arrears of salary, allowances and also to give promotion due to him.

4. A reply has been filed in this OA.

5. The reply only states that rules in this connection for awarding punishment has been fully followed and there is no ~~merit~~ merit in the OA. Further it is stated that ^{as} the applicant had accepted the charge, there ^{was} is nothing ~~to~~ further ^k consider this issue in the light of the contentions made by the applicant in this OA.

6. The learned counsel for the applicant made the following contentions. They are :-

a) The Appellate authority and the Revisional authority had taken note of his leave record since he joined Railway service in the year 1989 but the Charge sheet only ~~indicates~~ his unauthorised absence from 28-8-1990 to 4-7-1991. Hence, the orders of the Appellate and Revisional authority ^{are} ~~is~~ to be set aside

as they ^{were} ~~are~~ prejudiced against him taking note of previous record into consideration.

b) The Inquiry Officer had considered his case for unauthorised absence from 28-8-1990 to 4-11-1991 whereas the charge-sheet is for unauthorised absence only for the period from 28-8-1990 to 4-7-1991. The Inquiry Officer has considered beyond 4-7-1991 upto 4-11-1991 which is irregular and on that score the whole inquiry proceedings is vitiated and on that basis punishment stands abolished.

c) The applicant relies on the judgement of 1994 (2) ATJ 434 (A. Prasad Rao Vs. General Manager, SC Rlys.) and 1991 (SLJ) 39 (R.A. Shroff Vs. Union of India). By relying on the reported judgements the applicant submits that unauthorised absence is not a misconduct on the part of the applicant. The charge-sheet is issued for misconduct on the part of the applicant for his unauthorised absence. But as the unauthorised absence is not a misconduct in view of the above judgements, the question of issuing a charge-sheet does not arise and hence the chargesheet itself ^{has} ~~should~~ be set aside and thereby the other proceedings are also annulled.

7. The learned counsel for the respondents states that the second Article of charge is for availing unauthorised leave without proper sanction or observing Railway Medical Attendance Rules. A reading of the orders of the Disciplinary, Appellate, and Revisional authorities does not indicate that this point has been noted and because of non-observance of Medical Attendance rules he was punished. Hence, this contention does not appear to be realistic.

4.

8. We have also perused the punishment granted to the applicant. The punishment is to bring his salary down to the initial stage for a period of five years with recutring effect with effect from 15-12-1994. The applicant has been so punished because of which he has to underge punishment for a more considerable length of time in his career. The Applicant, it appears is an ill-literate or semi-literate. To know of all Railway Medical and Leave Rules for him will be very difficult in view of his educational qualification. Hence, in our opinion the punishment awarded to him appear to be very excessive compared to the gravity of the charges. Hence, this also has to be noted in the present case.

9. In inquiry that had been condusted it is stated that the applicant had accepted the charge. In view of that it will not be in order to set aside the orders of the Disciplinary authority under the present circumstances. Even if it is set aside or remitted back to the Disciplinary authority, the Disciplinary authority will be unable to reduce his punishment as ^{his} orders had already been approved by the Appellate and Revisional authorities who are his seniors. Hence, in our opinion setting aside the orders of the Disciplinary authority and remitting the case back to him may not be appropriate. Only the higher authorities may have to reconsider their orders in these circumstances.

10. We feel that the Appellate authority and the Revisional authority being senior officials in the Railways will definitely reconsider the issue denovo taking due note of the contentions raised as above and

..5.

R


also perusing the reported judgements cited in this case. We have no doubt in our minds that the authorities will reconsider the quantum of punishment also in view of the observations made by us.

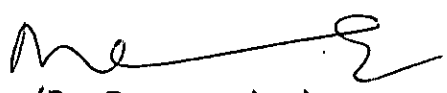
11. Hence, we are of the opinion that instead of passing an order by us at this juncture it will be preferable if the case is remitted back to the Appellate authority to reconsider ~~his orders~~ ^{the appeal} ~~denove~~ in the light of various observations made ^{above}. No doubt the Appellate authority will consider the issues in depth and pass a reasoned order. As we are remitting this case back to the Appellate authority, it is necessary to set aside the appellate order dated 4-11-1994 and revisional order dated 26-8-1996.

12. In view of the above facts and circumstances of this case we set aside the orders of the appellate authority dated 4-11-1994 and Revisional authority dated 26-8-1996 and the case is remitted back to the Appellate authority, ADRM of Vijayawada, to reconsider the issue ~~denove~~ and pass a reasoned speaking order adhering to the instructions laid down in the Railways (D&A) Rules, 1968.

13. The final decision of the Appellate authority should be conveyed to the applicant within two months from the date of receipt of a copy of this judgement. If the applicant requests for a personal hearing the same should be given.

14. The OA is ordered accordingly. No costs.


(B.S. Jai Parameshwar)
Member (Judl.)
16.12.98


(R. Rangarajan)
Member (Admn.)

Dated : December 16, 98
Dictated in Open Court

9/ 6/1/99

II COURT

copy to:

- 1) D.R(A)
- 2) spare copy,

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: 16-12-98.

~~ORDER / JUDGMENT~~

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

in

DA.NO. 799/97

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

~~ORDERED / REJECTED~~

NO ORDER AS TO COSTS

SRR

8 copies

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal ब्रेष / DESPATCH 4 JAN 1999 हैदराबाद ब्याचपीट HYDERABAD BENCH
