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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. NO. 861 OF 97

Dated, the 17th Feb. '99.

BETWEEN :

S. Venkateswarlu

.... Applicant

A N D

1. Works Manager,
Wagon Workshop,
S.C.Railway,
Guntupalli.
2. The Dy.Chief Mechanical Engineer,
South Central Railway,
Wagon Workshop,
Gunturpalli.
3. Chief Works Engineer,
South Central Railway,
Rail Nilayam,
Secunderabad.
4. General Manager,
South Central Railway,
Rail Bhavan,
Secunderabad.

... Respondents.

COUNSELS

For the Applicant : Mr.GV Subba Rao

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 R D E R

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

1. Heard Mr. G.V.Subba Rao, Learned Counsel for the applicant and Mr. V.Bhimanna, Learned Standing Counsel for the respondents.

2. This an application under Section 19 of the Central Administrative Tribunals Act. The application was filed on 5.4.97.

3. The facts of the case in brief are as follows :

(a) During the years 91-93 the applicant was working as Fitter Skilled Grade-II in Wagon Workshop, Guntupally. His token number was 30659. He remained unauthorisedly absent from duties for 251½ days between July, 1991 and June, 1992.

(b) The Assistant Works Manager (R), Wagon Workshop, Guntupalli issued a charge memo in SF No.V by his proceedings No.GR/P.227/WG/FW/39659/92/26 dt. 1.12.92, (Annexure-I to the O.A). The misconduct alleged against the applicant reads as follows :

"That the said Sri S.Venkateswarlu, T.No.30659 while functioning as Fitter Gr.II in Wagon (FW) Shop/Office, Wagon Workshop, Guntupalli has committed serious misconduct in that he remained unauthorisedly absent as per the statement enclosed without prior sanction of leave by the competent authority or producing Railway Medical Certificate.

Thus he has failed to maintain absolute devotion to duty and violated the provisions under Rules 3 (1)(ii) of Railway Services (Conduct) Rules, 1966."



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(c) Even during December, 1992 the applicant was absent from duties. Hence, the charge memo was sent to his residential address available with the respondent No.1 through Registered Post. The same returned unserved. Further, the charge memo was notified on the notice Board at the place of work of the applicant.

(d) The Dy. Shop Superintendent (Box) Wagon Work Shop, Guntupally conducted inquiry into the above said charge. notice sent by the Inquiry Officer to the applicant to appear before him returned unserved. They were sent to the address of the applicant available with the Respondent No.1 through Registered Post. Since the notices returned unserved, the Inquiry Officer had no option but to proceed with the inquiry ex parte.

(e) The Inquiry Officer submitted his report dt.12.7.97 (Annexure-IV to the OA).

(f) The respondent No.1 sent a copy of the report of the Inquiry Officer to the applicant through Registered post. The same returned unserved. The copy of the report of the Inquiry Officer was notified on the Notice Board at the last place of work of the applicant.

(g) The respondent No.1 considered the report of the Inquiry Officer and agreed with the findings imposing penalty of removal of the applicant from service by his proceedings of even number dt.26.8.93. The penalty order also could not be served in person on the applicant. The penalty order sent to the address of the applicant by Registered Post returned unserved. The penalty order is at Annexure-V to the O.A.

(h) However on 15.9.93 the applicant appeared before the respondent No.1 and acknowledged the penalty order and relevant records.

(i) The applicant submitted an appeal to the Dy. Chief Mechanical Engineer, Wagon Workshop, Guntupally i.e. Respondent

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No.2. His appeal is dated 28.9.93. The appellate authority considered the appeal and by his proceedings of even number dt. 4.10.93 rejected the appeal and confirmed the punishment. The applicant submitted a representation dt. 19.10.93 to the Respondent No.3. On 18.11.93, the respondent No.3 by his proceedings No.P.90/GTPL/SV/1744 rejected the representation petition and the same was communicated the applicant whose letter is dt. 23.11.93. The applicant submitted a mercy appeal to the respondent No.4. The respondent No.4 by his proceedings No.90/GTPL/SV/1744 dt. 6.8.94 informed the applicant that no further action was considered necessary on his mercy appeal.

4. The applicant has filed this OA for the following reliefs :

"to call for the records pertaining to the impugned order No.1. Works Manager Memorandum No.GRP.227/WG/FW/30659/92/96 dt. 14.10.93, (2) Deputy Chief Mechanical Engineer letter No.GR/P.227/WG/FW/30659/92/96 dt. 14.10.93, (3) Chief Works Engineer letter No.GR/P/227/WG/FW/30659/92/96 dated 23.11.93 and the General Manager No.GTPL/SV/174 dt. 6.8.84 and to quash the same by declaring as arbitrary illegal and unconstitutional violative of Article 311(2) 14 and 16 of the Constitution and consequently direct the respondents to reinstate the applicant into service with all consequential benefits such as arrears of salary allowances promotion, etc.".

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

(a) That he was working at Guntupally; that he was not provided with Railway Quarters and therefore, he was at Kondapalli; that the respondents No.1 has not served the charge memo in person; and that the respondent No.1 has sent the charge memo to the address where he was not residing.

(b) The prescribed procedure has not been followed while imposing a major penalty on him.

(c) Rule 9 of the Railway Servants (DA) Rules 1968 (in short rules 68) have not been followed. A copy of the report of the Inquiry Officer was not furnished to him.

(d) The Disciplinary Authority imposed the penalty without application of mind.

(e) The Inquiry Officer has not conducted the inquiry in accordance with the rules. He submits that the charge of misconduct has not been substantiated. The Inquiry Officer has not corroborated the reasons.

(f) The punishment imposed on him is too harsh and grave having regard to the misconduct of unauthorised absence. He submits that Railway Employees with similar misconduct have been let off with lesser penalty.

(g) He submits that he was mentally ill and was not able to participate in the Disciplinary Proceedings. He submits that because of his mental illness, he could not report for duties during the period indicated in the charge memo.

6. The respondents have filed a counter stating that the mental illness of the applicant is an after thought. The applicant remained absent during the period indicated in the charge memo and subsequently thereafter; and that therefore, the respondent No.1 could not serve the charge memo in



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person; that the charge memo and notices to appear before the Inquiry Officer were sent to the address available with them; that charge memo and the notices were duly published on the Notice Board of the last place where the applicant was working. The applicant remained absent throughout and immediately knowing the order of the Disciplinary Authority, appeared before the respondent No.1 and collected the penalty order and relevant papers and submitted the appeal, revision petition and mercy appeal to the respondents No.2 to 4; that the respondents No.2 to 4 considered the grounds raised in these petitions; that the applicant had nowhere indicated in these petitions the actual address where he was staying between 1.12.92 and 26.8.93; that while concluding the disciplinary proceedings they had strictly followed the instructions of the Railway Board letter No.E(D&A)/69-RC-6/29 dt. 19.11.71 (Annexure-VI to the reply); that the applicant while submitting his appeal to the appellate authority had enclosed a Medical Certificate dt. 24.9.93; that on further probing into the genuineness of the said Medical Certificate, it was revealed that the said Medical Certificate was not a genuine one; that the misconduct impugned against the applicant was established on the basis of the records available before the Inquiry Officer; that the alleged mental illness of the applicant is not true and the applicant genuine; and that/as an employee of the Railway Administration in the case of alleged mental illness should have taken recourse to 643 of IERC, Vol.I (1985 Ed) that the applicant had not taken such a course of action; that since the applicant deliberately remained absent during the inquiry proceedings the Inquiry Officer had no alternative but to conclude the proceedings ex parte.

7. The applicant has filed a rejoinder stating that he was residing at Kondapalli and that the charge sheet was not

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at all served on him; that the notices sent by the Inquiry Officer did not indicate the address to which those were sent; that the Inquiry Officer had not followed sub-rule 12 of rule 9 of the Rules 68; that the address furnished by him to the respondent authorities was the address while he was working at Guntur; that the said address could not have been taken by the respondents for service of the charge memo and notices; that the respondents were aware of his Kendapalli address; that his absence from duty was not intentional; that the respondents were not fair in criticising the members of the medical profession and that the O.A. be allowed.

8. The respondents' counsel produced the inquiry proceedings.

9. As the charge memo had not been served in person on the applicant and the inquiry was concluded ex parte, we felt it proper to go through the inquiry records. Accordingly, the respondents' counsel produced the records.

10. The charge memo dt. 1.12.92 was not sent by Registered Post Ack. Due to the applicant to the following address :

S.Venkateswarlu,
S/O S.Venkata Subbaiah,
Fireman 'B', Loco Shed (SC Rly),
Near Groundnut Factory,
Guntur,
Guntur District.

This registered envelope was returned with an endorsement 'not known'. The returned registered envelope is at page 8 of the inquiry records.

11. On 17.2.93, the Workshop Personnel Officer sent a copy of the charge memo to FW Shop for display on the Notice Board. Accordingly, the charge memo was displayed on the Notice Board in the presence of 2 witnesses viz. C.H. Narasimham, Ticket

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No. 29578 and D. Babu Rao, Ticket No. 34164. This is revealed from the letter at page 10 of the inquiry file. Thereafter by letter dt. 13.3.93, Dy.SS(Box) was appointed as the Inquiry Officer to inquire into the charge. The same was sent to the applicant to his official address.

12. A copy of the letter dt. 13.3.97 is at page 11 of the inquiry file.

13. The Inquiry Officer sent notice of the inquiry to the applicant to the address mentioned above. The said envelope was returned with the endorsement that "the addressee has left". The returned envelope is at page 12 of the inquiry file.

14. Again by letter dt. 8.4.93 the Inquiry Officer sent notice fixing the date of inquiry as 18.5.93. The notices were displayed on the notice Board at the last place of ~~the~~ work of the applicant. Copies of the notices are available at pages 17 and 18 of the inquiry file.

15. The notice fixing the inquiry on 23.6.93 is at page 14 of the inquiry file. The same was also sent to the applicant through Registered post to the address mentioned above. It has been returned unserved with an endorsement that 'addressee left'. The returned envelope is at pages 15 and 16 of the inquiry file.

16. In these circumstances, the I.O. concluded the inquiry ex. parte.

17. From the above analysis, it is clear that the applicant was even absent during the period indicated in the charge memo and from 1.12.92 onwards.

18. Rule 26 of the Rules 68 prescribes the procedure for service of the notices and orders. The said rule 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."

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19. The above rule ~~4~~ says that every order and other process shall be served in person on the Railway servant concerned or communicated to him through Registered Post. From the papers available in the inquiry file, it is clear that the respondent No.1 could not serve the charge memo and others papers on the applicant. The same was sent to the address available with them. That address to which charge memo and notices were sent has been indicated above.

20. Besides the respondents have displayed the charge memo and notices fixing the date of inquiry on the Notice Board at the last place of work of the applicant in accordance with Railway Board's letter dt. 19.11.71 (Annexure-VI to the reply). The said letter refers to the instructions given earlier by letter of even number dt. 17.11.70. The letter dt. 17.11.70 prescribes the respondent authorities to paste the order/process on the notice board of the Railway premises in which the employee concerned was working last as well as in the place in the last noted address of the employee. The letter dt. 19.11.81 was issued wherein the pasting of the order or notice on the last noted address of the Railway Employee was dispensed with for the reasons stated therein. As per the instructions contained in the letter dt. 17.11.70 and the letter dt. 19.11.71 (Annexure-VI to reply) it is clear that in case the Railway Servant concerned does not accept the order/notice, and the same is returned undelivered by the postal authorities with the endorsement, such as 'addressee not found', 'refused to accept', etc. it should be pasted on the notice Board of the Railway premises in which the employee concerned was working last.

21. In accordance with the instructions of the Railway Board the respondent authorities had sent the charge memo and

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the notices fixing the date of inquiry to the address available with them.

22. The applicant stated that he was residing at Kondapalli and that the respondent No.1 was aware of his Kondapalli address. The applicant has not produced any material to show that the respondent No.1 was aware of his Kondapalli address. The applicant could have produced any correspondence received by him from his employer at his Kondapalli address before 30.11.92. If such had produced any such correspondence then we could have stated that the respondent authorities were expected to send the charge memo and notices to his Kondapalli address. The respondents have specifically stated that they had sent the charge memo and the notices to the address which was available with them.

23. Whenever there is a change of the address of the employee, then it is the duty of the employee to bring it to the notice of the employer. The applicant has not whispered a word that he was not staying at Guntur to which address the charge memo and notices were sent. Mere assertion that the respondent authorities were aware of his Kondapalli address does not absolve of his responsibility. There is nothing on record to show that the respondent authorities knowing fully well his Kondapalli address, deliberately sent the charge memo and notices to his Guntur address mentioned above.

24. Further when he submitted his memorandum of appeal dt. 28.9.93, he has nowhere stated in the appeal that the address to which the charge memo and the notices were sent was not correct. If really, he has to challenge the said penalty order it was based on the ex parte report.



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Then it was the bounden duty to bring to the notice of the appellate authority that the procedure adopted by the Respondent authorities while serving the charge memo and other notices was not proper. No such contention has been raised by the applicant in the appeal memo. On the other hand he specifically admitted to have been absent during the dates mentioned in the charge memo and thereafter.

25. Therefore, we cannot find fault with the respondents in sending the charge memo to the address at Guntur and following the procedure of pasting the charge memo and notices in the Railway premises where the applicant was last working. They have strictly followed the Rule 26 of the DAR Rules 68 and the instructions given by the Railway Board.

26. The applicant has put forth his mental illness during the period indicated in the charge memo and thereafter. It is stated that he was wandering here and there without any rhyme or reason; that some of his relatives got treated him at Bhavani Nursing Home, Vijayawada. As already observed the applicant submitted a Medical Certificate dt. 24.9.93 issued by Dr. C.V. Rama Sudheer and counter-signed by Dr PV Subba Rao. It is at page 33 of the inquiry file. On going through the Certificate, it is disclosed that the applicant was under treatment for Psycho-neurosis and that he was advised bed rest. This Certificate is contrary to the applicant's submissions made. The applicant stated that he was wandering from place to place and without any rhyme or reason and that his relatives got treated him. This Certificate does not indicate the place of the residence of the applicant. This certificate is issued by Bhavani Nursing Home, Vijayawada. The applicant states that he was residing at Kondapalli.

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26. Lastly the applicant contended that the punishment imposed by the respondent authorities for his unauthorised absence is too harsh as indicated in the charge memo. The Court or Tribunal cannot interfere with the punishment imposed by the Disciplinary Authority. The Hon'ble Supreme Court in the case of Union of India and Others Vs. Paramananda ruled that the Court or Tribunal has no power to interfere with the punishment imposed by the disciplinary authority. Further, the Hon'ble Supreme Court recently observed that it is for the Disciplinary Authority to consider whether the removal ... is necessary for unauthorised absence and impose a proper punishment.

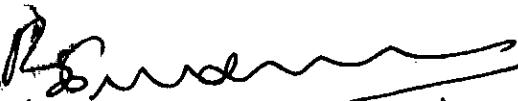
27. In that view of the matter, we do not wish to interfere with the punishment imposed by the authorities.

28. The applicant further submits that certain other Railway employees who were charged with similar misconduct were let off with minor penalty. He has not given any details. In the absence of such details we cannot say that he was discriminated in the matter of awarding punishment.

29. In view of what has been stated above, we do not find any merits in the O.A. and the O.A. is liable to be dismissed.

30. The O.A. is accordingly dismissed leaving the parties to bear their own costs.

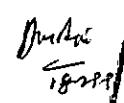
31. The inquiry proceedings produced by the respondents were perused and returned to the respondents.


(B.S. JAI PARAMESWAR)
MEMBER (J)


(R. RANGARAJAN)
MEMBER (A)

Dated, the 17th Feb. '99.

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Copy to:

1. HDHNJ
2. HHRP M(A)
3. HS6JP M(J)
4. D.R. (A)
5. SPARE

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
HYDERABAD BENCH:HYDERABAD.

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

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

THE HON'BLE R.RANGARAJAN
MEMBER (A)

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

DATED: 17.2.89

ORDER/JUDGMENT

M.A./R.A/~~C.P.NS.~~

IN
S.A.NG. : 861/97

~~ADMITTED AND INTERIM DIRECTIONS
ISSUED.~~

ALLIED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO C:STS

9 *Compt*

