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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDRABAD

ORIGINAL APPLICATION NO.900 of 1997

DATE OF ORDER: 20th JANUARY, 1999

BETWEEN:

M.S.S.PRAKASH

.. APPLICANT

AND

1. The General Manager,
South Central Railway,
Secunderabad,
2. The Chief Electrical Engineer,
S.C.Railway, Secunderabad,
3. The Addl. Divisional Railway Manager,
S.C.Railway, Vijayawada,
4. The Sr.Divisional Electrical Engineer,
Traction Rolling Stock,
Electrical Loco Shed,
Vijayawada,
5. The Asst. Electrical Engineer,
Traction Rolling Stock,
Electrical Locoshed,
Vijayawada.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr. J.M.NAIDU

COUNSEL FOR THE RESPONDENTS: Mr.V.RAJESWAR RAO, Addl.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

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

JUDGMENT

ORAL ORDER (PER HON'BLE SHRI B.S.JAI PARAMESHWAR,
MEMBER (JUDL.))

Heard Mr.J.M.Naidu, Learned counsel for the applicant and Mr.P.Acharyulu for Mr.V.Rajeswara Rao, learned standing counsel for the respondents.

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2. The applicant herein while working as ELF/II/ELS/O/BZA was served with a major penalty charge memorandum dated 17.8.93 for the alleged unauthorised absence for the different periods from 4.6.92 to 26.12.92. The applicant submitted his explanation. It was not accepted. An inquiry was conducted by the Office Superintendent Grade-I, ELS, BZA. The Inquiry Officer by his report dated NIL held that the charge levelled against the applicant is proved.

3. A copy of the report of the Inquiry Officer was furnished to the applicant.

4. The disciplinary authority after considering the findings recorded by the Inquiry Officer and the inquiry records, by his proceedings bearing No.B/P.5/93/TRS/10, dated 13.3.95 (Annexure I at page 8 to the OA) accepted the findings of the Inquiry Officer and imposed a penalty of removal of the applicant from service with immediate effect.

5. Against the said punishment order, the applicant submitted an appeal on 18.3.95 to R-3. The appellate authority by his order dated 27.6.95 (Annexure-II at page 10 to the OA) rejected the appeal and confirmed the punishment.

6. Against the said order of the appellate authority, the applicant submitted a revision petition on 28.7.95 to the Chief Electrical Engineer, Secunderbad. The revisional

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authority by his proceedings No.P.87/BZA/MSSP/2127, dated 9.7.96 (Annexure-III at page 12 to the OA) accepted the order of the appellate authority and rejected the revision petition.

7. The applicant has filed this OA challenging the orders passed by the disciplinary authority (R-2 herein) and the order passed by the appellate authority (R-3 herein) and also the order passed by the revisional authority (R-4 herein) and to quash the same as illegal and arbitrary and for consequential direction to the respondents to reinstate him with all consequential benefits.

8. The respondents have filed counter stating that, earlier, a minor penalty charge memo was issued to the applicant for his unauthorised absence. However, the same was cancelled without prejudice to take action against the applicant as per rules, that the impugned charge sheet was issued and the same was served on the applicant on 16.7.93 and that the applicant had not submitted any explanation, that the applicant during the course of the inquiry admitted the charge of unauthorised absence and that the applicant was given full opportunity during the inquiry.

9. During the course of the hearing, the learned counsel for the applicant submitted that the applicant had undergone the treatment for Gastric Ulcer and that his absence from duty was not wilful. Further, the learned counsel contended that the appellate authority was not justified in taking into consideration his previous records

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while confirming the order of punishment. He further submitted that the punishment imposed on the applicant is too harsh and disproportionate to the charge of misconduct.

10. The applicant, in support of his contentions, relied upon the decision of the Supreme Court in the case of Union of India v. Giriraj Sharma (AIR 1994 SC 215) and also the order dated 14.2.95 in OA 154/94 (Kothapalli Veera Krishna Prasad v. Sr.Divisional Personnel Officer, South Central Railway, Vijayawada and others) passed by this Tribunal and also the order dated 26.7.94 in OA 541/92 (A.Prasada Rao v. The General Manager, South Central Railway, Secunderabad and others) of this Tribunal to contend that the punishment imposed on the applicant is too harsh and on that basis he adds that only wilful absence ~~may~~ ^{only} will lead to removal but absence due to sickness which ~~was~~ ^{is} not wilful cannot be ended with the punishment of removal from service.

11. As seen from the deposition of the applicant in the inquiry proceedings, the applicant had accepted the charges framed against him and he stated that his absence is mainly due to ill health which is not wilful. He also stated that he could not attend due to undergoing treatment of Gastic Ulcer and that he underwent treatment at his native place and that he could not inform due to the circumstances beyond his control.

12. The above points do not appear to have been taken note of by the appellate authority. The appellate authority had stated that the applicant is a habituate

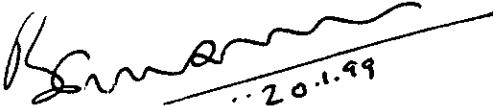
absentee even earlier to the period for which the charge sheet was issued. The learned counsel for the applicant submits that the punishment on the basis of extraneous reasons is not warranted and hence the appellate authority has been biased because of taking extraneous reasons of his absence earlier to the period for which the charge sheet was issued and also after the period for which the charge was relevant.

13. We have also seen the order passed by the appellate authority dated 27.6.95. The appellate authority does not appear to have fully followed the rules provided for consideration of the appeal as incorporated under Rule 22 of the Railway Servants (Discipline & Appeal) Rules. Hence, we feel that it is a fit case for setting aside the order of the appellate authority and also the order of the revisional authority dated 27.6.95 and 9.7.96 respectively and remit this case back to the appellate authority to reconsider the issue in the light of the observations made above in the judgement and also the contentions raised by the applicant in the OA. While doing so, the appellate authority ^{should} ~~can~~ also consider whether the punishment of removal is excessive or not. As the applicant submits that his absence is not wilful, probably a reconsideration of the punishment awarded may be required. In this connection, the judgment of the Supreme Court in Giriraj Sarma's case cited supra is relevant. The appellate authority can also keep in mind the judgement of the Supreme Court cited supra while passing final order in regard to the punishment to be awarded to the applicant.

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14. Time for compliance is three months from the date of receipt of a copy of this judgement.

15. With the above directions, the OA is disposed of. No order as to costs.


20.1.99
(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED : 20th January, 1999
Dictated in the open court

vsn

29/1/99

1ST AND 2ND COURT

COPY TO:-

1. HDHNC
2. HHRP M(A)
3. HBSJP M(J)
4. D.R.(A)
5. SPARE

10 copies

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COMPARED BY

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APPROVED BY

IN 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: 20/1/99

ORDER/JUDGMENT

M.A./R.A./C.P.NO.

In

O.A. NO. 900/97

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

28 JAN 1999

हैदराबाद न्यायपीठ
HYDERABAD BENCH