

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDRABAD

ORIGINAL APPLICATION NO.733 of 1997

DATE OF ORDER: 28th JANUARY, 1999

BETWEEN:

T.HEMANTHA KUMAR SINGH

.. APPLICANT

AND

1. The Divisional Commercial Manager,
South Central Railway,
Vijayawada,
2. The Sr.Divisional Commercial Manager,
S.C.Railway, Vijayawada,
3. The General Manager,
S.C.Railway, Secunderabad,
4. The Superintendent of Police,
C.B.I,
Visakhapatnam.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr. G.V.SUBBA RAO

COUNSEL FOR THE RESPONDENTS: Mr.V.BHIMANNA, Addl.CGSC

CORAM:

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

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

JUDGMENT

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

None on either side. The facts of this case are
as follows:-

The applicant was appointed as Ticket Collector
in Hubli Division of South Central Railway and was

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transferred to Vijayawada Division on request. He was subsequently promoted as Travelling Ticket Examiner (TTE) and was posted at Secunderabad in the Headquarters Flying Squad. The applicant submits that he had received more than 120 cash awards and merit certificates for outstanding performance in showing high targets of excess fare earnings. His work was appreciated by all. The applicant was transferred to Vijayawada Division on 21.12.95 from the Headquarters Flying Squad as he was borne on the Ticket Checking ~~category~~ ^{Cadre} in the Vijayawada Division. He was placed under suspension on 5.1.96. The applicant alleges that he was placed under suspension on 5.1.96 without assigning any reason except stating that he was placed under suspension contemplating disciplinary proceedings. The applicant challenged that order of suspension by filing OA 1222/96 which was allowed and as a result of the same he was put back to duty on 25.11.96. He was posted as Senior Ticket Collector even though he was working as TTE. The applicant was once again placed under suspension by the impugned order No.B/C.Con/63/96, dated 4.2.97 (Annexure-I at page 12 to the OA). The order posting him as Senior TC was issued by memo No.B/C/Con./63/96, dated 25.11.96 (Annexure-II at page 13 to the OA) in view of the quashing of the earlier suspension order dated 5.1.96 by this Tribunal in OA 1222/96. The applicant submitted a representation for revoking the suspension order dated 4.2.97 by his representation dated 27.2.97 addressed to R2. That was rejected by R-2 by his order No.B/C.Con/63/96, dated 17.3.97.

2. This OA is filed for setting aside the impugned order No.B/C.Con/63/96, dated 4.2.97 whereby the applicant

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was suspended and also the Memo No.B/C/Con./63/96, dated 25.11.96 whereby he was posted as Senior TC, Vijayawada and also the letter No.B/C/Con/63/96, dated 17.3.97 whereby his representation for revoking suspension order issued by the letter dated 4.2.97 was rejected, by holding them as arbitrary, illegal and unconstitutional and for consequential direction to the respondents to reinstate the applicant back to service in his capacity as TTE with all consequential benefits such as arrears of pay, allowances etc.

3. The main contentions of the applicant are as follows:-

(i) The applicant was irrationally placed ^{under} ~~on~~ suspension on 5.1.96 inspite of his meritorious performance in the Department. He challenged that order by filing OA No.1222/96 which was allowed. Hence he was posted as Senior TC. The applicant contends that posting him as Sr.TC when he was working as TTE earlier to his suspension is unwarranted and malafide. This is a reversion to him. The respondents have no right to post him as Sr.TC ignoring his past meritorious service as TTE. His posting as Senior TC is malafide as he had challenged the suspension order dated 5.1.96 and obtained favourable orders from this Tribunal which resulted in revoking his suspension.

(ii) The second contention of the applicant is that the second suspension issued by the order dated 4.2.97 is uncalled for. There are number of officials who were

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taken up for similar charges by the CBI by filing cases in the appropriate courts. Those officials were not suspended whereas he was singled out and suspended for no reason. This is a vindictive attitude on the part of the respondents to harass him as he had earlier filed OA No.1222/96 and was successful in getting favourable order to him.

4. A reply has been filed in this OA. The respondents admit that he was reinstated in view of the directions given in OA No.1222/96 disposed of by this Tribunal. However, it was informed to them by the Superintendent of Police, CBI/SPE, Visakhapatnam by the letter dated 14.11.96 (Annexure R-1 to the reply) that two charge-sheets were filed in the court of Special Judge for CBI Cases at Visakhapatnam on 7.11.96 and that judicial forum had ^{Registered Cases in} ~~issued~~ C.C.No.13/96 and 14/96 on 11.11.96 respectively (copies of which are enclosed to the reply). In view of the pending of the criminal cases filed by CBI against the applicant, again the applicant was kept under suspension by the impugned order dated 4.2.97 by the disciplinary authority i.e, R-1 herein in accordance with the provisions of rule 5(1)(c) of the Railway Servants (Discipline & Appeal) Rules, 1968. It is further stated by the respondents that the applicant was kept under suspension by R-I in view of the Criminal Case pending for the serious offences connected directly to the day today working of the applicant. However, the employee was sanctioned subsistence allowance at the rate of 50% vide memo No.B/C.Con/63/96, dated 3.3.97 and later it was enhanced to 75% by the memo No.B/C.Con/63/96, dated 20.6.97

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(Annexure R-IV to the reply). It is also admitted that his representation for revocation of suspension was rejected by R-2 in view of the charge sheet filed against the applicant in the court of Special Judge for CBI Cases at Visakhapatnam. It is also stated that the summons to witnesses were also issued by the Special Judge for CBI cases and the trial has been commenced.

5. The applicant is facing serious charges i.e, usage of fake Excess Fare Tickets (EFTs). The EFTs are issued to the passengers whenever necessary by the authorised Railway Servants who remit the money collected from the passengers to the Railway treasury. In the instant case, the applicant alleged to have issued fake EFTs and appropriated the amounts collected on EFTs.

6. In view of the above, the respondents pray for dismissal of the OA.

7. The first relief asked for in this OA is to set aside the order dated 25.11.96 posting him as Senior TC in Vijayawada after he was reinstated, in view of the direction in OA 1222/96. The respondents had clearly stated that it is not a case of reversion as stated by the applicant as both the TTE and Senior TC are in the same scale of pay. He has been posted as Senior TC to ensure that malpractice exercised by him earlier is not repeated.

8. The post of TTE and Senior TC being the same and interchangeable, it is not for the applicant to dictate where he should be posted. There is ^a serious case pending

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in the Court of the Special Judge for CBI cases. Hence there is no reason to post the applicant in a post where he will not be able to repeat his alleged misdeeds as pointed out by the respondents and also to ensure that the applicant is not in a position to interfere with the proceedings of this case. There is no irregularity in posting the applicant as Senior TC insofar as he has not been brought down in the scale of pay. The status of TTE and the Senior TC being the same and the scale of pay is also same, there is no irregularity in posting him as Senior TC especially with a view to avoid any interference in conducting the cases filed by the CBI. Hence this relief is rejected.

9. The second relief asked for in this OA is to revoke the suspension order dated 4.2.97 and reinstate him in service. The respondents have stated that the two cases ^a were pending in the Court of the Special Judge for CBI Cases, Visakhapatnam. That was informed to them by the Superintendent of Police, CBI, Visakhapatnam, R-4 herein, on 14.11.96. In order to ensure that there is no interference in the cases for which the applicant has been charge sheeted, he has been kept under suspension. He has been paid the subsistence allowance to the extent of 75% by the order dated 20.6.97. Hence the applicant should have no grouse in regard to the continuation of his suspension.

10. The Superintendent of Police, R-4 herein, informed the respondents in regard to the pending cases against the applicant in the court of Special Judge for CBI Cases, Visakhapatnam on 14.11.96 (Annexure-1 to the reply).

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It is also seen that the trial has already been commenced. That means, the charge sheet had already been filed and on that basis the trial has been started. Hence it may be possible that the applicant may not be in a position to interfere with the proceedings of those cases especially so when he has been posted as Senior TC instead of TTE. R2 has issued the letter dated 14.11.96 and the applicant was placed under suspension thereafter on 4.2.97. After the issue of the letter by R-4 on 14.11.96, more than two years had elapsed. In view of the elapse of plenty of time, there may be some reason for consideration for revoking his suspension. This point has to be reviewed by the respondents in consultation with R-4. The respondents i.e., R-1 herein should immediately approach R-4 for getting his advice in regard to revocation of the suspension of the applicant issued by the order dated 4.2.97. On the basis of the advice given by R-4, a final decision has to be taken in regard to the revocation of the suspension order dated 4.2.97. While reviewing the suspension order, it should be kept in mind that the applicant ^{had been} ~~is~~ posted as Senior TC, ^{and whether that posting} ~~is~~ is sufficient to avoid his interference with the pending cases in the Court of the Special Judge for CBI Cases at Visakhapatnam.

11. In view of the above discussion, the following direction is given:-

(i) The request of the applicant to set-aside the impugned memo dated 25.11.96 whereby he was posted as Senior TC is dismissed.

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(ii) R-1 should, in consultation with R-4, review the impugned suspension order dated 4.2.97 for the reasons stated as above in para 10 supra. The review should be completed and the applicant should be informed of the result within two months from the date of receipt of a copy of this order.


12. The OA is ordered accordingly. No order as to costs.



(B.S. JAI PARAMESHWAR)

MEMBER (JUDL.)

28.1.99



(R. RANGARAJAN)

MEMBER (ADMN.)

DATED : 28th January, 1999

vsn

Amh.
28/1/99

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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. S.S. JAI PARAMESHWAR:
MEMBER (J)

DATED: 28/1/99

ORDER/JUDGMENT

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

IN

O.A.NO :

733/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

