

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA.No.1446/97

Date of the decision: 10.3.1999

BETWEEN:

B.Swamy ... Applicant

A N D

1. The Union of India,
rep. by Secretary,
Railway Board,
New Delhi.
2. The General Manager,
South Central Railway,
Secunderabad.
3. The Divisional Railway Manager,
Hyderabad Division,
South Central Railway,
Secunderabad.
4. The Senior Divisional Electrical
Engineer, Hyderabad Division,
South Central Railway,
Secunderabad.
5. The Assistant Electrical Engineer, II,
MG Division, South Central Railway,
Secunderabad.

... Respondents

Counsel for the Applicant - Mr.S.Laxma Reddy, Advocate

Counsel for the Respondents- Mr.K.Siva Reddy, SC for Rlys.

CORAM:

THE HON'BLE MR.R.RANGARAJAN : MEMBER (ADMN.)

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

...

O R D E R
(per Hon'ble Mr.B.S.Jai Parameshwar, M(J))

Heard Mr.S.Laxma Reddy, learned counsel for the
applicant and Mr.K.Siva Reddy, learned standing counsel
for the Respondents No.1 to 5.

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2. This is an application under Section 19 of the Administrative Tribunals Act. Application was filed on 3-10-97.

3. While the applicant was working as Elec. Train Lighting Fitter Skilled Gr.III under the Respondents Railway administration, remained unauthorisedly absent from 21.2.1989 onwards. The disciplinary authority issued a charge memo vide proceedings No. YP/DAR/Elec/4/89, dt. 7.6.89. The applicant did not participate in the enquiry, as per the enquiry report which was submitted to the Disciplinary Authority. The Disciplinary Authority after considering the findings of the Enquiry Officer and agreeing with the same by his proceedings of even No. dt. 24.9.91 imposed the penalty of removal of the applicant from service.

4. Against the said penalty order, the applicant submitted an appeal dt. 23.2.93. The Respondent No.4 is the Appellate authority. The Respondent No.4 after considering the Enquiry records and taking into consideration the mental depression suffered by the applicant and also the calamities faced by him during the period of absence modified the penalty of removal of applicant from service to that of reinstatement as Electrical Khalasi in the Scale of Pay of Rs.750-940 with bottom most seniority (Loss of seniority).

5. Against the said order of the Appellate authority the applicant submitted a revision petition to the Respondent No.3. The Respondent No.3 felt that the Revision Application was beyond time and after going through the Enquiry records felt unnecessary to interfere

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with the orders passed by the Appellate authority. It also felt that modification of the punishment by the Appellate authority was justified. Hence it rejected the Revision Petition.

6. Against the said order the applicant submitted a petition dt.31.7.96 to the President. The Respondent No.2 by his impugned letter dt.24.6.97 informed the applicant that his representation was under Rule 31 of the Railway Servants (D&A) Rules,1968 (in short "the rules 1968") and that, the competent authority in exercise of the appellate powers considered his case and he had not produced any new material or evidence which has the effect of changing the nature of the case i.e., unauthorised absence.

7. The applicant has filed this OA for following reliefs -

To declare the action of the second respondent in withholding the petition submitted by the applicant for forwarding the same to the President of India through the impugned order No.YP/DAR/Elec/4/89 dated 24.6.97 as totally illegal and without jurisdiction and consequently to direct the second respondent to forward the same to the President of India or in the alternative to declare the proceedings of the third respondent No.YP/DAR/Elec/4/89 dated 22.2.1996 confirming the orders of the fourth respondent No.YP/535/Elec C.IV/Pt.IV dated 25.6.1993 reinstating the applicant as Electrical Khalasi in the scale of Rs.750-940 at Rs.750/- with bottom most seniority passed in modification of the orders of the fifth respondent removing the applicant from service as totally illegal and without jurisdiction and violative of articles 14 and 21 of the Constitution of India and

consequently direct the respondents to reinstate the applicant as Electrical Train Lighting Fitter in the skilled grade III with all consequential benefits.

8. The Respondents have filed a reply justifying the action of the Respondent No.2 in withholding the petition submitted by the applicant to the President of India, that the Respondent authorities had issued a charge memo in accordance with the rules, 1968 and that there was absolutely no new material or evidence for the President to consider.

9. After hearing the learned counsels and considering the various averments made in the application and in the reply the following points arise for our consideration:-

- (i) Whether the Respondent No.2 was justified in withholding the representation dt.31.7.96 of the applicant to the President ?
- (ii) Whether the order passed by the Appellate Authority requires interference by this Tribunal ?
- (iii) to what order ?

10. Our findings :-

- (i) Yes
- (ii) No
- (iii) as under

11. R E A S O N S

Point (i) (a) The Applicant submitted a petition to the President against the order passed by the revisional authority. The petition is dt.31.7.96 The order passed by the revisional authority is dt.22.2.96 (Annexure II, page 11)

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(b) Under Rule 31 of the rules 1968 a Railway servant is free to exercise his right of submitting a petition to the President in accordance with the instructions contained in Appendix-X to the IREC Vol.I. Further, the instructions have been issued for the submission, receipt and Transmission of petitions to the President of India, under instruction No.6, certain circumstances are detailed under which the prescribed authority can withhold the petition submitted by a Railway Servant from submitting to the President of India.

(c) Part III para 9 of Instruction No.6 is relevant and we reproduce herein below:-

"6. Circumstances in which petitions may be withheld. The prescribed authority may, in his discretion, withhold a petition when;

xxx xxx xxx
(g) the petition is a representation against an order

xxx xxx xxx

(a) from which the petitioner has already exercised, or has failed to exercise a right or appeal available under the rules of orders of the contract regulating his conditions of service;

(b) passed by a competent authority in the exercise of appellate or revisional powers conferred by any rule, order or contract regarding his conditions of service."

xxxxx xxxxxxxxx xxxxx

(d) The prescribed authority under the instructions has got discretion to withhold the petition submitted by the Railway servant to the President. The prescribed authority has to consider whether it is a fit case to submit the petition submitted by the Railway Servant to the President of India. The prescribed authority has to exercise his discretion judiciously. He must satisfy himself whether the Railway employee has made out a new case or placed a material which has the effect of changing the nature of the case. The

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prescribed authority cannot act as a postman in submitting the petitions/memorial of a Railway employee to the President. He has to satisfy himself the need or justification to submit the petition of the Railway employee to the President. This we feel, is the gist of the power of the Prescribed authority under the instructions.

(e) In this case the Respondent authorities entertained the appeal and revision petition, even though they were beyond time and the appellate authority taking into consideration the alleged mental depression of the applicant and certain calamities faced by the applicant, modified the punishment of removal and reinstated him back to service. Further, the authorities had passed those orders under the rules, 1968.

(f) When this was so, the prescribed authority was duty bound to examine the petition dt. 31.7.96 submitted by the applicant to the President. In our opinion, the prescribed authority has rightly withheld the same. We do not feel that the exercise of the discretion by the prescribed authority was either improper or irregular. We do not find any illegality in the letter dt. 24.6.97.

(g) Hence we answer this point against the applicant.

Point (ii)

12 (a) The applicant remained unauthorisedly absent from 21-2-89 onwards. He never participated in the disciplinary inquiry proceedings. It is only after 1.9.93, he submitted a representation to the disciplinary authority against the penalty order dt. 24.9.91. The appeal submitted by the applicant was dt. 23.2.93. Even though the appeal was beyond the time-limit the appellate authority entertained

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the same and having regard to the alleged illness of the applicant and calamities faced by the applicant felt it proper to modify the punishment and accordingly reinstated the applicant into service with loss of seniority as Electrical Khalasi in the scale of pay of Rs.750-940 (RSRP). When that is so there was absolutely no need to interfere with the said order and come to the conclusion that the Respondent authorities have not properly considered the case of the applicant.

(b) The applicant remained unauthorisedly absent for over 4 years. He had not participated in the disciplinary proceedings even accepting for the sake of arguments that there was certain calamities and mental depression, nothing prevented him or any of the members of his family to submit a representation to the Respondent authorities about his state of health and the reasons for remaining absent. The applicant was working as ELF Fitter Skilled Gr.III. Atleast he should have common knowledge that he was required to inform his official superior about his absence on any ground. We cannot say that he is too illiterate to remain absent for a period of 4 years without informing his official superior. After conclusion of inquiry proceedings he challenged imposition of penalty. The appellate authority has taken note of the facts judiciously and has considered appropriate to modify the punishment of removal from service imposed by disciplinary authority.

(c) The Court or Tribunal cannot interfere with the discretion exercised by the Respondent authorities

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in imposing the punishment of removal from service for his unauthorised absence. The applicant cannot contend that the punishment imposed by the appellate authority is excessive, having remained unauthorisedly absent for a period of 4 years. There are no circumstances to forgive or justify any Railway employee to remain unauthorisedly absent for such a long time, even without informing his official superior. Hence this point is answered against the applicant.

Point (iii)

13 (a) In this view of the matter, we find no reasons to interfere with the impugned orders. We are of the considered view that the Respondent No.2 has rightly withheld submission of the memorandum dt. 31.7.96 to the President of India. There are absolutely no convincing reasons to interfere with the punishment imposed by the appellate authority.

Hence we find no merits in this O.A. and the OA is liable to dismissed. Accordingly the O.A. is dismissed. No orders as to costs.

~~R.S.
B.S. DAI PABAMESHWAR~~

(B.S. DAI PABAMESHWAR)

MEMBER (JUDL.)

10.3.99

~~and~~

(R.RANGARAJAN)

MEMBER (ADMN.)

Dated: 10 March, 1999

'SA'

Archer
10.3.99.

Copy to:

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

24/3/99
1ST AND 2ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

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: 16.3.99

ORDER/ JUDGEMENT

MA/RA/CP. No.

IN

O.A. NO. 1446(97)

ADMITTED AND IN INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR



Form No. 9.
(See Rule 29)

BY.R.P.A.D.

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD.
1st Floor, HAC Bhavan, Opp: Public Garden, Hyderabad. 500004.A.P.

ORIGINAL APPLICATION NO.

OF 199

1446.

7.

Applicant(s)

V/S

Respondent(s)

By Advocate Shri:
R. Swamy.

The Secretary, Railway Board, New-Delhi &
S. Lakshma Reddy. (By ~~others~~ Govt. Standing Counsel)

To.

Mr. K. Siva Reddy, SC for Rlys.

1. The Secretary, Railway Board, Union of India, New-Delhi.
2. The General Manager South Central Railway, Secunderabad.
3. The Divisional Railway Manager, Hyderabad Division, South Central Railway, Secunderabad.
4. The Senior Divisional Electrical Engineer, Hyderabad Division, South Central Railway, Secunderabad.
5. The Assistant Electrical Engineer-II, MG Division, South Central Railway, Secunderabad. Application filed by the above named applicant under Section 19 of the Administrative Tribunal Act, 1985 as in the copy annexed hereunto has been registered and upon preliminary hearing the Tribunal has admitted the application.

Notice is hereby given to you that if you wish to contest the application, you may file your reply along with the document in support thereof and after serving copy of the same on the applicant or his Legal practitioner within 30 days of receipt of the notice before this Tribunal, either in person or through a Legal practitioner/ Presenting Officer appointed by you in this behalf. In default, the said application may be heard and decided in your absence on or after that date without any further Notice.

Issued under my hand and the seal of the Tribunal
This the day of . **October** 1997.
Thirty First.

//BY ORDER OF THE TRIBUNAL//

Date:

12-11-97.

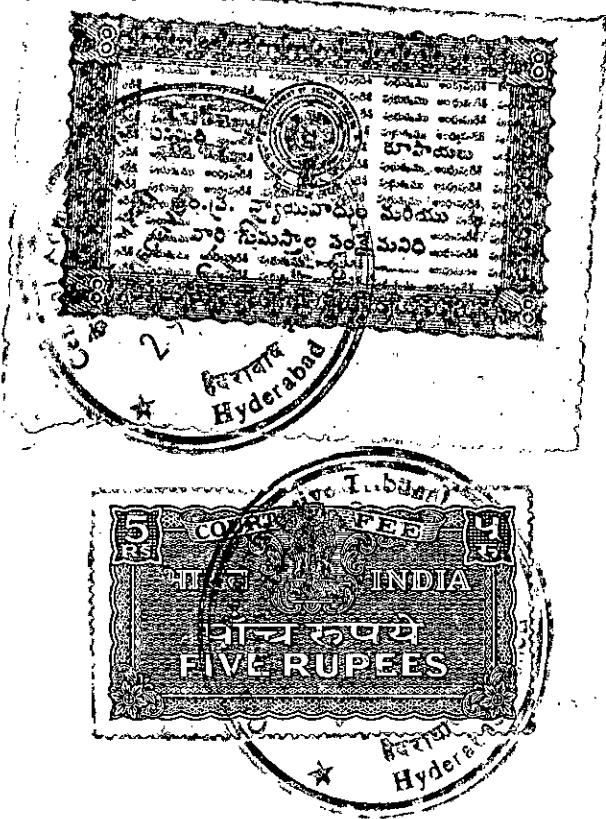
FOR REGISTRAR.

17/11/97

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Central Administrative Tribunal Hyderabad Bench Despatch
21 NOV 1997
Hyderabad Bench HYDERABAD BENCH



S. R. No

District

~~CAT Hyd~~ ~~Bench~~
**In the High Court of Judicature
of Andhra Pradesh Hyderabad**

APPELLATE SIDE

CA No.

of 1997.

AGAINST

No.

of 1997

on the file of the Court of CAT Hyd

VAKALAT

ACCEPTED

S. Lakshma Reddy
Advocate

Appellant
Counsel for Petitioner
Respondent

Date ... 22. 10. 1997

S. Lakshma Reddy

M.A. (ECO), LL.B.

ADVOCATE

Appellant
Advocate/s for Petitioner
Respondent

Address for Service : Ph. : 594413

3-5-155 to 161, Premier Plaza apartments,
Flat No. 102, Opp. Prince Cafe,
Near Water Tank, Narayanaguda,
Hyderabad-29.

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

~~In the High Court of Judicature~~

OF ANDHRA PRADESH AT HYDERABAD

APPELLATE SIDE/SPECIAL ORIGINAL JURISDICTION

○ A No.

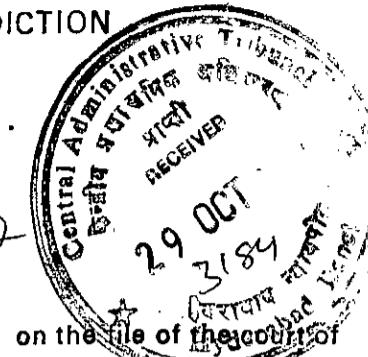
1446 of 1997

AGAINST

No.

of 1997

B. Swarney



Appellants
Petitioner

VERSUS

I/We UOI before Railway Board claim
New Delhi and 3 others.

Respondent

Appellant-Petitioner

Respondent

In the above Appeal/Petition do hereby appoint and retain

S. LAKSHMA REDDY

M.A. (ECO), LL.B.

ROM. *S. LAKSHMA REDDY*
ADVOCATE

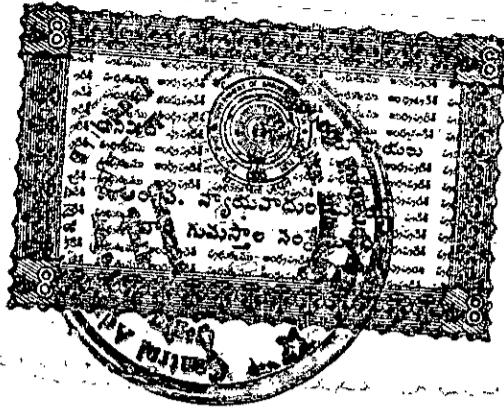
Advocate/s of the High Court to appear for me/us in the above Appeal/Petition and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein inculding all applications for return of documents or the receipt of any moneys that may be payable to me/us in the said Appeal/Petition and also to appear in all application under Clause XV of the Letters Patent and in all applications for review and for leave to the Supreme Court of India and in all application for review of judgement.

B. Swarney

I Certify that the contents of this Vakalat were read out and explained in (*English*) in my presence to the executant or executants who appeared perfectly to understand the same and made his/her/their signature or marks in my presence.

Executed before me this 21st day of Oct 1997

Kishore Motwani
ADVOCATE, HYDERABAD.



**Central Administrative Tribunal
Hyderabad Bench, Hyderabad.**

OA/RA No. 1446 of 1997

MEMO OF APPEARANCE

**K. SIVA REDDY
ADVOCATE
Standing Counsel for Railways**

Counsel for.....Respondent.....

Address for Service

Phone : 7563151

**H. No. 3-4-873/2, Barkatpura,
HYDERABAD-500 027.**

WB

Central Administrative Tribunal, Hyderabad Bench,
HYDERABAD.

DATE:

OA/RA No. 1446

of 1997

BETWEEN

B. Swamy

Applicant (s)

Vs.

UNION OF INDIA
& OTHERS

Respondent (s)

MEMO OF APPEARANCE

To,

The Registrar,

C.A.T,
Hyd



I K. SIVA REDDY, Advocate, having been authorised..... by.....

Railways

(here furnish the particulars of authority)

by the Central/State Government/Government Servant/..... authority/
corporation/society notified under Sec. 14 of the Administrative Tribunal
Act. 1985. Hereby appear for applicant and/Respondent No. Sole...../I
undertake to plead and act for them in all matters in the aforesaid case.

Place : Hyderabad

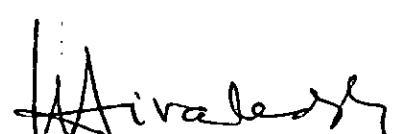
Date : 10/3/98

K. Siva Reddy

H. No. 3-4-873/2,

Barkatpura

HYDERABAD-500 027.


Signature & Designation of the
Counsel.

K. Siva Reddy
Standing Counsel for Railways