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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

O.A.No.151/97.

Date of decision: 21-1-1999

Between:

Y. Seshagiri. .. Applicant

And

1. Union of India represented by the South Eastern Railway, Calcutta.
2. Divisional Railway Manager, S.E.Railway, Waltair.
3. Senior Divisional Operating Manager, S.E.Railway, Waltair.
4. Divisional Operating Manager, S.E.Rly., Waltair. .. Respondents.

Counsel for the Applicant: Sri P.B.Vijaya Kumar.

Counsel for the Respondents: Sri C.V.Malla Reddy.

CORUM.

Hon'ble Sri B.Rangarajan, Member (A)

Hon'ble Sri B.S.Jai Parameshwar, Member (J)

JUDGMENT.

(by Hon'ble Sri R.Rangarajan, Member (A))

Heard Sri P.B.Vijaya Kumar for the Applicant and Sri C.V.Malla Reddy for the Respondents.

The Applicant in this O.A., while working as Junior DTI, Waltair was asked on 11.6.1993 to proceed to Jagadelpur to work in place of CDTI who

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was by then on sick leave. The applicant submits that by the time the directions were issued to him only ^{available} Passenger train between Visakhapatnam and Jagadalpur had left the station and the next train was available only on the next day at 10-00 A.M. Hence he proceeded to meet his family members and the ailing father at Parvathipuram and to collect certain provisions, clothes etc., for his stay at Jagadalpur. But he submits that unfortunately he fell sick and took treatment from a Government Doctor at the Government Hospital, Parvathipuram who issued a Medical Certificate for the period from 12-6-1993 to 16.6.1993, the date on which he was placed under suspension. He was paid subsistence allowance from 16.6.1993. He was served with a charge-sheet dated 2/31.12.1993. The Charge reads as follows:

"Article-I:

The said Sri Y.S.Giri, Jr.DTI/WAT was asked to proceed to JDB on 11.6.1993 to work as DTI/JDB vice Sri M.B.S. Chandra Sekhar, CDTI/JDB who was under sicklist. Sri Y.S.Giri neither sent to JDB nor conveyed any information to the office for not proceeding to JDB.

As his whereabouts were not known, the said Sri Giri was unauthorisedly absenting himself from duty from 12.6.1993 to the date of his submission of PMC on 25.8.1993, besides leaving his headquarters without any authority or permission.

He had thus neglected and failed to maintain devotion to duty and thereby committed an act of serious misconduct contravening the provisions of Rule No.3.1(ii) of the Railway Services (Conduct) Rules, 1966 and rendered himself liable for disciplinary action being taken against him under RS(D&A) Rules, 1968 as amended from time to time...

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An enquiry was conducted and the Enquiry Officer submitted his report on 31.12.1993. The Enquiry Officer held that the Articles of Charge under Article-I of Standard Form No.5 bearing No. WTI/2/61/93 dated 2/31/12/1993 levelled against Sri Y.S.Giri is not proved. The applicant was given a copy of the report and was asked to submit his representation in writing. He submitted his representation on 21.8.1995. On that basis, the Disciplinary Authority viz., the Respondent No.4 issued the impugned Order dated 10.2.1995 imposing the penalty of stoppage of increments for three years with cumulative effect (Annexure A-V Page 17 to the O.A.). The Disciplinary Authority disagreed with the findings of the Enquiry Officer and held that "the applicant was unauthorisedly absented himself from duty from 12.6.1994 to 25.8.1994 and subsequently the period was covered by PMCs., and hence I impose a penalty, of stoppage of increments for 3(three) years C.E" (Page 18 to O.A.)

Against that order the applicant filed an appeal to the Respondent No.3 which was disposed of by by the impugned Order dated 17.8.1995 (Annexure A-7 Page 23 20) to the O.A.) and rejected his appeal. Thereafter the applicant filed a revision petition which was disposed of by the Respondent No.2 by his order dated 7-3-1996 (Annexure A-9 Page 22 to the O.A.) confirming the punishment already imposed by the Disciplinary Authority and the Appellate Authority.

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This O.A., is filed to set aside the Proceedings in WTI/2/61/93 dated 7.3.1996 and for consequential restoration of increments withheld.

The learned counsel for the applicant at the outset contends that the order of the Disciplinary Authority is not valid as he failed to follow the Rules when the Disciplinary Authority disagreed with the findings of the Enquiry Officer. The Disciplinary Authority for the reasons stated in its Order dated 10-2-1995 had disagreed with the findings of the Enquiry Officer ~~the reasons stated therein~~ and imposed the penalty of stoppage of increments for three years with cumulative effect. When the Disciplinary Authority disagreed with the findings of the Enquiry Officer, the Disciplinary Authority should have given a show cause notice to the applicant to explain as to why the Disciplinary Authority considered it necessary to impose the punishment against overruling him ~~ignoring~~ the findings of the Enquiry Officer. The learned counsel for the Applicant submits that the applicant was not given such a notice and the punishment was unilaterally imposed against him by the Disciplinary Authority without hearing him further. This action of the Disciplinary Authority in imposing the penalty against the applicant without giving him notice had caused prejudice to ~~the cause~~ of the applicant. Had he been given notice indicating the reasons for dis-

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disagreeing with the findings of the Enquiry Officer, the applicant would have given a detailed explanation as to why the reasons mentioned by the Disciplinary Authority are invalid and are not borne out on record. As he was not given any notice, the Applicant was deprived of this opportunity to explain his case which is against the principles of natural justice.

We have examined the above contention. The reasons given by the Disciplinary Authority in his Order appear to be rebuttable, if an opportunity is given to the Applicant. As the reasons given in the speaking order could have been verified from the records a suitable ^{by} reply can be given in this connection to the applicant. Hence, we agree with the learned counsel for the Applicant when he submits that it has prejudiced the case of the Applicant by not issuing a notice by the Disciplinary Authority before passing orders disagreeing with the findings of the Enquiry Officer.

The above view of ours is in consonance with the observation of the Apex Court in the reported case 1998 LAB.I.C.3012 (Punjab National Bank & others Vs. V. Kunj Bahani Misra) that if the disciplinary authority disagrees with the Enquiry Officer's report in favour of the delinquent employee an opportunity must be given to the delinquent before recording its conclusions to adhere to the principles of natural justice.



The second contention advanced by the learned counsel for the Applicant is that the orders of the Appellate Authority viz., Respondent No.3 herein is very short and crisp and does not follow the Rules as prescribed in the Railway Service (Discipline & Appeal) Rules. We have perused the ~~Disciplinary~~ Appellate Authority's Order dated 7.2.1995. It only says that he had objectively considered the Appeal and decided to reject his appeal. What consideration has been given by him and whether the Appeal has been looked into fully and whether he followed the instructions given in Rule 22 of the Railway Service (Discipline and Appeal) Rules has not been clearly brought out in the Appellate Order. Hence, it has to be held that the Appellate Order is also not sustainable in view of the reasons given above. Hence the Appellate Order also needs reconsideration.

In view of what is stated above, we feel that the Orders of the Disciplinary Authority, Appellate Authority as well as the Revisional Authority have to be set aside and the case should be remitted back to the Disciplinary Authority to reconsider the issue following the extant rules before finalizing the Disciplinary Proceedings.

The learned counsel for the Applicant also submits that he will be satisfied if the whole issue is reconsidered right from the stage of awarding punishment order by the Disciplinary Authority.





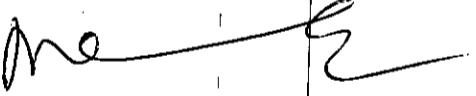
In view of the above, all the three orders viz., the Orders of the Disciplinary Authority, the Appellate Authority and the Revisional Authority are set aside. The case is remitted back to the Disciplinary Authority to pass an appropriate speaking order from the stage of the receipt of the explanation from the Applicant to the Enquiry Report given to him and pass final orders in accordance with the law. Of course, the applicant has got further channel of appeal against the orders of the Disciplinary Authority if the orders of the Disciplinary Authority are adverse to him in pursuance of the above directions.

With the above directions, the O.A., is ordered. No costs.


(B.S. JAI PARAMESHWAR)

Member (J)

21.1.99


(R. RANGARAJAN)

Member (A)

Date: 21-1-1999

Dictated in open Court.

sss.

COPY TO:-

1. HONJ
2. HHRP M(A)
3. HSSP M(J)
4. D.R. (A)
5. SPARE

TYPED BY
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: 21-1-89

ORDER/ JUDGMENT

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

In

D.A. NO. 151/97

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 अधिकारण Central Administrative Tribunal प्रेषण / DESPATCH
- 1 FEB 1999
हैदराबाद आयोगी HYDERABAD BENCH