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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.588 of 1999

DATE OF JUDGMENT: 20th JANUARY, 2000

BETWEEN:

P.VENKATESWARLU

.. APPLICANT

AND

1. The General Manager,
(representing UOI),
S.C.Railway,
Secunderabad 500 071,
2. The Divisional Railway Manager,
South Central Railway,
Hubli - 580 020,
3. The Divisional Engineer/North,
S.C.Railway,
Hubli 580020,
4. The Assistant Engineer,
S.C.Railway,
Pune.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.S.RAMAKRISHNA RAO

COUNSEL FOR THE RESPONDENTS: Mr.D.F.PAUL, Addl.CGSC

CORAM:

HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN

HON'BLE SRI S.MANICKAVSAGAM, MEMBER (ADMN.)

JUDGMENT

ORDER (PER HON'BLE SRI S.MANICKAVASAGAM, MEMBER (ADMN.))

The applicant joined the respondents' Department on 14.1.76. While working as CPC Gangman under CPWI/GPR Section, disciplinary action was taken against him for

absenting himself from duty unauthorisedly in two spells viz., from 25.3.1994 to 7.12.1994 and 8.4.1995 to 2.6.1995. It is stated in the OA that the Disciplinary Authority had imposed a penalty of removal from service with effect from 3.7.96. The applicant goes on to say that he appealed against the order of removal from service to the Appellate Authority which was rejected. Further, the applicant made a revision application to the Divisional Railway Manager, Hubli Division and that was also rejected. It is under these circumstances that the applicant is before us seeking the following reliefs:-

(a) To set aside the impugned order No.16/DAR dated 20.6.96 of the 4th respondent removing the applicant from service on the charge of un-authorised absence, as confirmed by the Appellate Authority vide orders dated 2.1.97 which was once again confirmed by the revising authority vide his order dated 4.9.1998, declaring the punishment and confirmation of the same by the Appellate and Revising Authorities, as arbitrary, illegal, unwarranted and in violation of Articles 14 and 16 of the Constitution of India; and

(b) To direct the Respondents to reinstate the applicant into service treating him on par with those cases referred to by him in his Appeal, Revision Petitions, by modifying the penalty of removal from service with all consequential benefits.

2. The Respondents have filed a detailed reply. It is averred that the applicant was very indifferent during

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the whole process of disciplinary action. The charge sheet was received by the applicant on 23.8.95. It is stated in the reply that the applicant did not bother to file any reply to the charge sheet. Further, it is stated that though the inquiry was fixed on more ^{than one} occasions viz., 24.1.96, 2.2.96, 25.2.96 and 28.4.96, the applicant did not bother to attend to the inquiry. Since no reply was given to the show cause notice and the applicant also did not appear before the inquiry authority, the Disciplinary Authority decided the case on merits based on the records available. The punishment was confirmed both by the Appellate and the Revisional Authorities. It is further averred in the reply that the applicant had absented from duty for 330 days in all without any authorisation. Though the Respondents gave adequate opportunities to the applicant to defend himself, it is stated that the applicant did not make use of those opportunities.

3. Heard the counsel for the applicant and the respondents. It is strenuously argued by the learned counsel for the applicant that the order of removal from service is disproportionate to the offence. Further, in support of his claim, the learned counsel cited a number of instances where in similar offence of absence from duty, a lesser quantum of punishment has been awarded. Therefore, the learned counsel for the applicant urged that the punishment may be revised downwards.

4. The learned counsel for the respondents vehemently opposed the arguments of the learned counsel for the applicant. It is the case of the respondents that the

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applicant did not care to represent his case properly at the initial stage despite a number of opportunities given to him. It is also urged that the role of a Gangman in the over all work of the Railways is very important and such an indifferent attitude towards work and attendance does not deserve any encouragement.

5. Admittedly, the applicant was absent from duty unauthorisedly for 330 days (in two spells). Though it is claimed that the applicant had produced some medical certificates from private medical practitioners, we would not like to enter into any ^vroving inquiry on the veracity of the certificates. Suffice it to say that the applicant had enough opportunities to prove his case before the inquiry authority when the case was heard initially. It is also a fact that no convincing reason is now adduced for the silence maintained by the applicant when the respondents initiated disciplinary action and inquiry, so much for the conduct of the applicant.

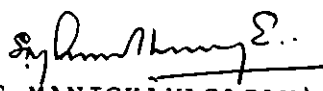
6. Coming to the merits of the case, it is noticed that the applicant had put in about 20 years of service at the time of dismissal. A person ^{with} ~~above~~ 20 years of service needs to be treated with some care and sympathy. Gangmen and similarly placed employees are not perhaps best placed to appreciate the adverse effect of playing truant in the office or the work spot. Sadly, they also perhaps do not foresee adverse implications which will come to them by way of severe disciplinary action which in turn will have serious repercussions to their family life. It appears that the applicant has realised the seriousness of the


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matter only when he was removed from service and now he is pleading for some mercy by disclosing his long years of service and the large family which he has to support. Such caution should have been exercised either at the time of being absent from duty spot or at least at a later stage when the disciplinary proceedings were initiated. It is perhaps a belated appreciation of the set back of life which had forced him to come before the Tribunal seeking the relief.


7. We have given our serious thought to the issue on hand and also we have perused the number of cases wherein such punishments of dismissal have been later on reduced to that of stoppage of increments etc. Though the official respondents have given a one line reply that each case is decided on merits and no case can be compared, we hope that the respondents shall consider the case of the applicant with some sympathy. We would not like to go into the details of the punishment that can be awarded while reconsidering his case.

8. Accordingly, the impugned order dated 20.6.96 is set-aside. It is ordered that the respondents shall consider the case of the applicant sympathetically so that the original order of removal is brought down by another suitable order. This exercise shall be done by the 4th respondent who happened to be the Disciplinary Authority at the first instance and such order shall be passed within three months from the date of receipt of a copy of this order. No order as to costs.


(S. MANICKAVASAGAM)
MEMBER (ADMN.)


(D.H. NASIR. j)
VICE CHAIRMAN

DATED: 20th JANUARY, 2000


21-1-2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

1ST AND 2ND COURT

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1. HDHND
2. HRRN M (ADMN.)
3. HBSJP M (JUDL.)
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5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY
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APPROVED BY

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

THE HON'BLE MR. ~~R. RANGASWAMI~~ *Manicka Varadgan*
MEMBER (ADMN.)

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

* * * 20/1/2000

DATE OF ORDER: ~~20/1/2000~~

MA/RA/CP.NO.

IN

OA. NO. 588/00

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

CP CLOSED

RA. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

3 copies
No spare copy

