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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 1135/99

DATE OF ORDER : 11-07-2000

Between :-

S.Babu Rao

...Applicant

And

1. Union of India rep. by
The General Manager, SC Rlys,
Sanchalan Bhavan, Sec'bad.
2. The Additional Divisional Railway
Manager (O), SC Rlys, Sanchalan
Bhavan, Sec'bad.
3. Sr.Divisional Operating Manager,
SC Rlys, Sanchalan Bhavan, Sec'bad.
4. Divisional Operating Manager,
SC Rlys, Sanchalan Bhavan,
Sec'bad.

...Respondents

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Counsel for the Applicant : Shri C.Balagopal

Counsel for the Respondents : Shri V.Rajeshwar Rao, SC for Rlys

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CORAM:

THE HON'BLE JUSTICE SHRI D.H.NASIR : VICE-CHAIRMAN

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (A)

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

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...2.



(Order per Hon'ble Shri R.Rangarajan, Member (A)).

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Heard Sri Rajeshwar Rao for Sri C.Balagopal, learned counsel for the applicant and Sri V.Rajeshwar Rao, learned standing counsel for the Respondents.

2. The applicant was issued with a charge memo dated 27.2.1997 (Annexure A8 pages 26 to 28 to the OA) for the unauthorised absence. The articles of charges reads as follows :-

Article-I : That the said Shri S.Babu Rao while functioning as Station Porter/SNF during the period June 1996 to January, 1997 remained absent in an unauthorised manner during the period (s) from 14.6.1996 = 10 day 20-6-1996 to 28-9-1996 = 101 days,

28-10-1996 to 30-10-1996 = 3 days

13-11-1996 = 1 day

15-11-1996 to 19-12-1996 = 35 days

all for 141 days in different spells.

Which period (s) is/are neither covered by a Medical Certificate issued by a Railway Doctor Form M8 & 9 B nor covered by leave sanctioned by the competent authority. Thus he has failed to maintain devotion to duty and has contravened Rule 3 I (i) & (ii) of Railway Service Conduct Rules, 1966.

3. An enquiry was conducted and the applicant participated in that enquiry. The applicant was given the Enquiry Report and he submitted his explanation. The Disciplinary Authority passed impugned order No.C/T/194/UA/4/SNF/97 dated 20.05.1998 (Annexure 5 page-16 to the O.A.) removing the applicant from service. Against that the applicant filed an appeal and that appeal was disposed of by order dt.18.11.1998 modifying the punishment of removal to that of compulsory retirement from service. Against the punishment of compulsory retirement he filed a mercy petition which was disposed of by order dated 22.2.1999 confirming the appellate

order.

4. This O.A. is filed to set aside the order dated 20.05.1998 of Respondent No.4, order dated 18.11.1998 of Respondent No.3 and order dated 22.2.1999 of Respondent No.2 and consequently direct the respondents to re-instate [the applicant back in service.

5. This Tribunal has powers to interfere with the Disciplinary Proceedings only (i) if such proceedings are initiated with a malafide intention; (ii) on the ground of no evidence and (iii) on the ground of perversity. The applicant in his grounds for relief has not quoted any such grounds for setting aside the order except saying that it is a case of no evidence. For this he relies on the Enquiry Report (enclosed at page-19 to the OA) and submits that leave was asked for was not granted to him but a reduced leave was granted and that was/proved by producing witnesses. This is a fact which can be ascertained from the records and the Enquiry Report decides the issued on the basis of the records. The question of confronting in this regard is not necessary. The applicant cannot take leave without obtaining proper approval from the competent authority. The applicant has not even produced any material to come to the conclusion that he did submit ~~the~~ the leave application but the respondents refused to receive that leave application. In the absence of ^{law} relevant details we cannot consider that the applicant/made out punishment a case to set aside the ~~case~~ on account of 'no evidence'.

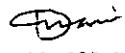
6. The main submission of the applicant is that the punishment is disproportionate to the gravity of the charges. The applicant was charge sheeted for unauthorised absence of 141

days. For that he was compulsorily retired by the appellate authority which was confirmed by the revisional authority. Hence he submits that the whole case needs review. As stated earlier the Tribunal cannot interfere with the punishment given. The only way the applicant can be given relief is to direct the applicant to file a mercy appeal to the General Manager, who can consider his mercy appeal and pass suitable orders in case he is also of the opinion that the punishment is dis-proportionate to the charges.

7. In that view, we feel that the applicant, if so advised, may submit a detailed mercy appeal to the General Manager, i.e. the Respondent No.1 herein and if such a mercy appeal is received, Respondent No.1 should dispose of the same in accordance with the law. In that matter, if the applicant requests for personal hearing, Respondent No.1 should grant the same so that the case can be disposed of taking all the pleas raised by the applicant including that of the difficulties faced by the applicant in view of the compulsory retirement.

8. Original Application is ordered accordingly. No order as to costs.


(R. RANGARAJAN)
Member (A)


(D.H. NASIR)
Vice-Chairman

Dated: 11th July, 2000.
Dictated in Open Court.

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