

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION NO.273/99

DATE OF ORDER : 15-3-2000

Between:-

K.Sadananda Rao

...Applicant

And

1. The General Manager, S.C.Railway, Rail Nilayam, Sec'bad.
2. The Divisional Railway Manager, S.C.Railway, Vijayawada.
3. The Divisional Safety Officer, SC Railway, Vijayawada.

...Respondents

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COUNSEL FOR THE APPLICANT : Shri P.Krishna Reddy

COUNSEL FOR THE RESPONDENTS: Shri K.Siva Reddy, SC for Rlys

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CORAM:

THE HONBLE SHRI R.RANGARAJAN : MEMBER (A)

THE HONBLE SHRI B.S.JAI PARAMESHWAR : MEMBER (J)

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

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

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Heard Mrs.P.Sarada for Sri P.Krishna Reddy, learned counsel for the applicant and Sri K.Siva Reddy, learned Standing Counsel for the Respondents.

2. The applicant in this OA was removed from service on 7-7-1987 for unauthorized absence. His date of superannuation in normal course was 31-8-1987. The applicant submits that no DAR proceedings were initiated against him and no charge sheet was issued to him and the order of punishment was issued to him under Rule 14(ii) of Railway Servants (D&A) Rules, 1968. He was also informed of his date of retirement earlier to that date i.e. on 26.5.1987. The applicant submits that in the earlier OA i.e. OA 1404/95 which was disposed of on 17-11-1995 a direction was given to re-consider the issue of removal from service taking due note of his removal from service under Rule 14(ii) of <sup>The</sup> Railway Servants (D&A) Rules. On that basis the General Manager should exercise his power of revision in regard to modification for punishment. But that was not done. Even though in the order No.P.94/BZA/KSR/2076 dated 20-5-1996 (Annexure-I page-7 to the OA), the competent authority has taken note of the earlier judgement <sup>he</sup> and passed an order without exercising his mind. Hence the learned counsel for the applicant submits that this impugned order has to be set aside and the applicant should be deemed to have been re-instated into service.

3. This OA is filed to set aside the order No.P.94/BZA/KSR/2076 dated 20-5-1996 confirming the order of removal passed by the Respondent No.2 and to direct the respondents to give all the consequential benefits including arrears of salary and payment of pensionary benefits from 1-7-1987.

4. The main contention of the applicant in this OA is that he was removed from service without even issuing charge sheet, under Rule 14(ii) of Railway Servants (D&A) Rules, 1968, which is irregular. The General Manager on the basis of the direction given in OA 1404/95 should have reviewed the process which lead to the removal of the applicant from service and should have passed

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order in regard to the modification of the punishment. The General Manager failed to do so. Hence the impugned order of the General Manager has to be set aside.

5. In the reply the facts mentioned above are confirmed but the respondents submit that the applicant was un-authorizedly absent from 25-7-1984 to 13-4-1986. The DAR proceedings were issued against him for major penalty by issuing SF-5 memorandum dated 23-5-1986. As the whereabouts of the applicant was not known, the procedure for initiation of the Disciplinary Proceedings has been started. As it was not reasonably practicable to conduct the inquiry, the Disciplinary Authority exercised powers under Rule 14(ii) of Railway Servants (D&A) Rules, 1968 and imposed the penalty. The order issued as above cannot be questioned as it was done in accordance with the rules and the circumstances prevailing at that time. The learned counsel for the Respondents further submits that the order in OA 1404/95 is only to the limited extent of reviewing the punishment imposed on the applicant. It does not convey any meaning directing the General Manager to review the whole Disciplinary Proceedings and on that basis pass the punishment order. Further the applicant having prayed for the <sup>same</sup> relief in the earlier OA, the same relief cannot be asked for in this OA in view of the Rule of resjudicata. The respondents sustain the impugned order stating that the General Manager had re-examined the quantum of punishment and upheld the punishment for the reasons stated therein. Hence it is submitted that this OA has no merits.

6. The contention of the applicant as stated above should have been properly projected in the OA 1404/95 but for some reasons the same were not adverted in the judgement dated 17-11-1995 in that OA. The learned counsel for the applicant further contends that the purport of the direction to the General Manager to reconsider the punishment means that he should have looked into the procedural aspects of removal of the applicant from service and on that basis the quantum of punishment should have been adjudged. We do not agree to the

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above. If the relevant portions in regard to the procedure adopted in the removal of the applicant from service had been contested in OA 1404/95 and the same was not adverted in the judgement, then the applicant should have filed Review Application in that OA or he should have gone to the Appellate Forum. The applicant did not take any such action. Even if it is raised in the earlier OA and it is not adverted <sup>to</sup> in judgement, this OA is not a substitute for considering those points which were not considered in the judgement in OA 1404/95. In our opinion, the purport of the judgement in OA 1404/95 is only to the extent that the quantum of the punishment has to be looked into and considered in view of the circumstances as the employee was removed and he has also retired from service. That reconsideration of the punishment is a prerogative of the General Manager and he is at liberty to use his discretion in regard to the modification of the punishment. Such discretion cannot be questioned in the Court of Law. If all discretions are to be questioned, then nobody will use any discretion to pass any orders. Hence it has to be held that the General Manager has used his discretion and came to the conclusion as given in the impugned order dated 20-5-1996. In that view, we feel that the prayer of the applicant to set aside the order dated 20-5-1996 cannot be accepted.

7. In view of what is stated above, we find that the applicant has not made out any case to grant the relief as prayed for. Hence the OA is liable to be dismissed and accordingly it is dismissed with no order as to costs.

  
(B.S.JAI PARAMESHWAR)  
157310  
Member (J)

  
(R.RANGARAJAN)  
Member (A)

Dated: 15<sup>th</sup> March, 2000.

Dictated in open Court.

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