IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No.20/01124/2018

Date of Order: 11.06.2019

Between:

K. Prakash Reddy, S/o. Chinnapa Reddy,
Aged 54 years (Group C), Ex. Gangman,
Guntakal Division, South Central Railway,
Guntakal.

… Applicant

And

1. Union of India, rep. by the Secretary,
Railway Board, Ministry of Railways,
Rail Bhavan, New Delhi.

2. The General Manager,
South Central Railway, Rail Nilayam,
Secunderabad – 500 025.

3. Divisional Railway Manager,
Guntakal Division, South Central Railway,
Guntakal.

… Respondents

Counsel for the Applicant … Mr. K. Siva Reddy

Counsel for the Respondents … Mr. T. Hanumantha Reddy,
SC for Railways

CORAM:
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA is filed for rejecting the case of the applicant for not re-engaging him as casual labour by the respondents.

3. The facts of the case are that the applicant was initially engaged as Casual Labour in the respondent organization on 05.07.1980. He was granted temporary status on 21.11.1980 vide the respondents letter dt.

31.12.1985. The applicant continued up to 30.1.1987. Later, he was discharged for want of sanction for regularization of services. His name was kept in the Live Register maintained by the respondents for consideration of his case for re-engagement in future. The respondents re-engaged the applicant on 24.09.1988. The applicant fell sick from 28.09.1988 to 30.07.1989 and he produced private medical certificate certifying about his health condition. On 01.08.1989, the AEN/RU has recommended to the 3rd respondent for consideration of the applicant's case for re-engagement at PWI/KHT. Despite several attempts, there being no response from the 3rd respondent, the issue of the applicant was taken up by the Staff Union in the PNM Meeting as per the Agenda Item No. 76/107/97. The decision in the Meeting was that the Division would be directed to restore the name of the applicant in the Live Register and take further action in the matter. Despite such a decision, applicant was not re-engaged. Aggrieved applicant filed OA No. 488/2006, which was dismissed on 23.11.2010. Challenging the dismissal of the OA, applicant filed WP No. 19045/2011 and when the matter was pending before the Hon'ble High Court, the applicant informs that, respondents assured him to reconsider his case favourably and therefore, he got the writ petition withdrawn. On withdrawal of the writ petition, respondent No.1 was addressed on 28.08.2018 to permit re-engagement of the applicant since he has crossed the age of 40 years, which is the maximum age limit prescribed to engage candidates on casual basis. The 1st respondent rejected the case of the applicant on 28.08.2018. Hence, the present OA.

4. The contentions of the applicant are that he has been given temporary status and having been conferred temporary status, if at all he has to be discharged from service, disciplinary proceedings have to be initiated against him. The applicant cannot be discharged straightaway without following the procedure prescribed under disciplinary proceedings. Though it was agreed in the PNM meeting to consider his case, there has been delay on the part of the respondents in taking a decision and consequently, he crossed the prescribed age limit. The order of the 1st respondent is not a reasoned order and by not re-engaging the applicant, the respondents have violated the Articles 14 & 16 of the Constitution of India.

5. The respondents, in their reply statement, confirmed that the applicant was granted temporary status w.e.f. 21.11.1980 and was discharged from duty w.e.f. 31.1.1987 for want of sanction along with 10 other casual labours working under the Chief Permanent Way Inspector/ Renigunta. These casual labourers were directed to report to Chief Permanent Way Inspector/ Kalahasti for further re-engagement. Out of 10 casual labourers, only K. Prakash Reddy i.e. the applicant did not report to the Chief Permanent Way Inspector/ Kalahasti and consequently, he could not be re-engaged. In 1989, the applicant approached the respondents for re-engagement on grounds that he could not attend duty due to poor health by producing private medical certificates, that too, after a lapse of one year. The Assistant Divisional Engineer vide letter dt. 01.08.1989 has stated that the applicant fell sick and sought further directions from the respondents to re-engage the

applicant. Divisional Railway Manager, has written to the General Manager, South Central Railway on 19.09.1996 recommending the case for re-engaging the applicant since he has to put in more than 5 years of service as casual labour. The same was followed up by another reminder dt. 01.12.2000. In the meanwhile, applicant filed OA 488/2006, which was dismissed by this Tribunal and aggrieved over the same, applicant approached Hon'ble High Court in WP No.19045/2011, which he withdrew on 25.01.2016. Nevertheless, on his repeated representations, and requests through the Staff Unions, request of the applicant was sent to Railway Board on 23.05.2017 to consider his case. However, the same was rejected vide impugned order dt. 28.08.2018. Respondents stated that after a lapse of 30 years, the case cannot be revived through the OA. They have taken support of the judgment of the Hon'ble Supreme Court in C. Jacob Vs. Director of Geology, decided on 03.10.2018.

6. Heard both the counsel and perused the material on record. Issue involves multifarious issues which need to be addressed to arrive at a justifiable end to the unending quest of the applicant in get his grievance redressed.

7 (I) It needs no mention that rules have to be followed. Have the respondents followed the rules in discharging the applicant from service?

Applicant was given temporary status on 21.11.1980 as per the own volition of the respondents in the reply statement. Once the temporary status is granted, respondents are duty bound to abide by D&A

rules to impose any penalty. Para 2005 of IREM Vol. II, given below, which is statutory in nature, confirms the same:

> ***"2005 of IREM Vol. II***
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> *Casual labour treated as temporary are entitled to the rights and benefits admissible to temporary railway servants as laid down in 'Chapter XX III of this Manual. The rights and privileges admissible to such labour also include the benefit of D&A Rules. "*

Applicant being granted temporary status, he should have been proceeded under D & A Rules to terminate his services. Instead, Respondents have straightaway discharged the applicant without following any rule or rhyme. Obviously, action taken against rules stands invalid. Hon'ble Supreme Court has made it clear that, violation of rules has to be seriously viewed and such a tendency has to be curbed and snubbed as under:

> *"The Hon'ble Supreme Court observation in* ***T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544*** *held that "Action in respect of matters covered by rules should be regulated by rules". Again in* ***Seighal's case (1992) (1) supp 1 SCC 304*** *the Hon'ble Supreme Court has stated that "Wanton or deliberate deviation in implementation of rules should be curbed and snubbed." In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held " the court cannot de hors rules"*

The action of the respondents in discharging the applicant infringing rules is violative the directions of the Hon'ble Supreme court cited supra.

Going a step further, D&A Rules draw strength from Article 311 of the Constitution. Elaborate procedures are prescribed in processing a disciplinary case. Commencing from issue of notice, laying of the charges, appointing of I.O. and so on, only emphasise the importance

attached to the adherence of procedures prescribed. Not following the procedure prescribed of issue of notice has prejudiced the interest of the applicant. It has to be repaired by re-engaging the applicant, as ordained by Hon'ble Supreme Court in S***tate Bank of Patiala vs S.K. Sharma (1996) 3 SCC 364*** as under:

> *"(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest.* ***Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under*** *— "no notice", "no opportunity" and "no hearing" categories,* ***the complaint of violation of procedural provision should be examined from the point of view of prejudice,*** *viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively.* ***If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment."***

II) Even if the applicant request were to be rejected, can the Railway Board do so without assigning reasons?

To attempt an answer to this question, a reading of the Impugned order would clear the mist. Order reads as under:

> *" In the circumstances explained in your Railway's letter dated 23.5.2017 on the above quoted subject, the case of re-engagement of Sh. K. Prakash Reddy has been examined in this office and the same was not found feasible of acceptance."*

The phrase used "In the circumstances", would also mean discharging the applicant against rules. Would the Railway Board uphold such a violation? Definitely not. Impugned order lacks the vitals to explain the

why of the decision. Therefore it is always necessary to issue an order, in a reasoned and self speaking manner. The impugned order is neither speaking nor reasoned.

A speaking order need to delve on the 4 Cs namely context, contention, consideration and conclusion, as exposited hereunder:

> *(a) Context: The order should narrate the back ground of the case. As has been laid down in a catena of decisions, law is not to be applied in vacuum. The circumstances that have caused the issue of the orders have to be brought out clearly in the introductory portion of the order. For example, if there is representation about incorrect pay fixation, the speaking order disposing of the representation should narrate how the anomaly has crept in, etc.*
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> *(b) Contentions: Rival submissions, where applicable, must be brought out in the order. For example the evidence led by the presenting officer in support of the charges and by the charged officer for refuting the charges. Needless to add that there may be cases wherein submissions may be unilateral as is the case of stepping up of pay, etc. Even in the course of disciplinary proceedings, there may be some instances wherein the concept of rival submission may not apply as in the case of representation for change of Inquiring Authority or for engagement of legal practioner as defence assistant.*
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> *(c) Consideration: The order should explicitly evaluate the submissions made by the parties vis-à-vis each other and in the light of the relevant statutory provisions. Each submission by the parties must be considered with a view to decide about its acceptability or otherwise. 188*
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> *(d) Conclusions: Outcome of the consideration is the ultimate purpose of the order. It must be ensured that each conclusion arrived at in the order must rest on facts and law (Speaking order)*
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> *The Tribunal would like to let know the respondent community, as how explicitly the Hon'ble Apex Court has expounded the repercussions of a decision which is non speaking and lacks reasoning in Markand C. Gandhi Vs. Rohini M. Dandekar Civil Appeal No. 4168 of 2008 as presented below:*

> *"5. From a bare perusal of the order, it would appear that, virtually, there is no discussion of oral or documentary evidence adduced by the parties. The Committee has not recorded any reason whatsoever for accepting or rejecting the evidence adduced on behalf of the parties and recorded finding in relation to the misconduct by a rule of thumb and not rule of law. Such an order is not expected from a Committee constituted by a statutory body like B.C.I.*
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> *6. We are clearly of the opinion that the finding in relation to misconduct being in colossal ignorance of the doctrine of audi alteram partem is arbitrary and consequently in infraction of the principle enshrined in Article 14 of the Constitution of India, which make the order wholly unwarranted and liable to be set aside. This case is a glaring example of complete betrayal of confidence reposed by the Legislature in such a body consisting exclusively of the members of legal profession which is considered to be one of the most noble profession if not the most. "*

Railway Board is the Policy laying body of the respondents organisation. Its order is as good as law in the respondents organisation. Therefore, every order issued by the Board is expected to be a model for the lower formulations, embedded with the four jewels, stated supra for emulation. Lest, those down the line would imbibe a practice of issuing reasonless orders. In the absence of rudimentary elements of a speaking order, the order issued by the Railway Board *per se* fails the scrutiny of law, since it goes against the fundamental principles of Natural Justice as observed by the Hon'ble High Court of Jharkhand in Jit Lal Ray v. State of Jharkhand, WP(C) No. 469 of 2019, decided on 26-04-2019 as under:

> "*It is settled position of law that a decision without any reason will be said to be not sustainable in the eyes of law, because the order in absence of any reason, also amounts to the violation of the principles of natural justice*."

In the instant case, applicant life line has been snapped by a non speaking and an unreasoned order, which is too harsh a preposition, considering the fact the applicant comes from the lowest rung of the respondents organisation. Therefore the order of the Railway Board is vitiated.

III) The next question which arises as a corollary to the previous one is as to whether the respondents have followed the Principles of Natural Justice in taking a decision they did?

Applicant was marched off from the respondents organisation without even giving a notice. An issue of a notice is *Sine qua non* in initiating any action which has civil consequence. Fundamental to the very core of the Principles of Natural Justice, is to let know the employee through a notice, as to what the employer intends to do for alleged violation of organisational discipline. In fact the Principles of Natural Justice form the bedrock of service law. In the words of Hon'ble Supreme Court in *the case of* ***Canara Bank v. Debasis Das,(2003) 4 SCC 557*** *wherein the Apex Court has held as under:-*

> *" The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play."*

Respondents, failed to issue notice to the applicant and therefore action of discharging him is against the rule of fair play. The basic norm of Principles of Natural justice, as explained, was given a go by, more particularly when a decision of an adverse civil consequence of making the applicant jobless was taken.

> *What is a civil consequence has been answered by Hon'ble Supreme Court in Mohinder Singh Gill & Ors. v. The Chief Election Commissioner, New Delhi & Ors., [1978] 2 SCR 272 Krishna Iyer, J. speaking for the Constitution Bench observed: "But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps? "Civil consequences" undoubtedly cover infraction of not merely property or personal rights out of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence."*

The three line stinger of the invalid Railway Board order dtd 28.8.2018 has snuffed the normal life of the applicant. He has approached every conceivable authority in the respondents organisation over the years to render justice to him. His efforts were not in vain, but resulted in a missive from the G.M. of S.C.R. to the Railway Board seeking approval to relax the age for re-engaging the applicant. When a decision of the Railway Board were to have an adverse impact on the civil life of the applicant, the minimum expectation from the respondents was to at least let know the applicant that the rules of the game have been followed before egressing him out of the organisation, through reasoning which passes the test of reasonableness. Not doing so is a direct contravention of the observation of the Hon'ble Apex Court in **V.C., Banaras Hindu University v. Shrikant,(2006) 11 SCC 42,** the Apex Court has held as under:-

> ***51.*** *An order passed by a statutory authority, particularly when by reason whereof a citizen of India would be visited with civil or evil consequences must meet the test of reasonableness. Such a test of reasonableness vis-à-vis the principle of natural justice may now be considered in the light of the decisions of this Court.*

The action of the respondents in not following the D&A rules and by not even issuing a notice before discharging the applicant grossly fails the test of reasonableness.

Further, whenever any adverse civil consequences impact a citizen, the Hon'ble Supreme Court judgment in Siemens Engineering and Manufacturing Co of India Ltd vs. Union of India & ors, AIR 1976 SC 1785, reiterated that reasons have to be clearly spelt out. It was also observed that the requirement of 'reasons' in support of the order is as basic as the adherence to the principles of natural justice. Therefore, the applicant having been granted temporary status, opportunity to explain as to why he should not be discharged should have been given to the applicant. Having not done so, the observations of the Hon'ble Supreme Court have been violated.

IV) In processing the request of the applicant for re-engagement there was delay. Was it because of the applicant or due to that of the respondent and if so what consequences would arise there of?

The respondents have delayed in processing the request of the applicant for nearly 30 years and consequently, he has crossed the prescribed age limit. The request criss-crossed the hierarchical zones of the decision makers on multiple occasions and ultimately landed in the

Railway Board by which time the prescribed age limit was crossed by the applicant. Applicant cannot now even apply to other organisation for a job. Delay in decision making lies at the door step of the respondents. Therefore it is the mistake of the respondents and not that of the applicant. Had the respondents taken a decision in time, the applicant would have had a fair chance of being considered for re-engagement. It is also to be adduced that the applicant has put in more than 5 years as a casual labour. For such employees there are provisions which enable the re-engagement of the applicant. Similarly situated employees like the applicant were re-engaged by the respondents. It is not known as to why the respondents were too hard on the applicant. Unfortunately, because of the poor health condition, the applicant could not report to the respondents in time for reengagement, for which, respondents penalizing the applicant is harsh to say the least. Laxity in taking a decision and ignoring the statutory procedures to be followed are mistakes evidently seen on the side of the respondents. One cannot afford to rub of one's own mistake to someone for no fault of his. Hon'ble Supreme Court observation in *A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust,(2010) 1 SCC 287, comes to the rescue of the applicant as brought out here under.*

> *"they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents."*
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> *(b) Rekha Mukherjee v. Ashis Kumar Das, (2005) 3 SCC 427:*
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> *36. The respondents herein cannot take advantage of their own mistake.*

(c) The Apex Court has also decided on 14.12.2007 (Union of India vs. Sadhana Khanna, C.A. No. 8208/01) held that the mistake of the department cannot recoil on employees.

The mistakes committed by the respondents like not initiating Disc action as is required in proceeding against the applicant who got temporary status, non-issue of notice etc should not be operated against the applicant. Instead, respondents who committed the mistakes need to own them and provide relief to the applicant in all fairness.

V) How was the conduct of the applicant ? Was it bad as to send him home?

Records on file do indicate the officers under whom the applicant worked have recommended his case for re-engagement. Commencing from the lower level to that of the 3rd respondent and finally the 2nd respondent shooting off a letter to the 1st respondent giving details to relax the age criteria do not spell out any adverse conduct of the applicant. Staff unions have also been pursuing his case. This goes to prove that the conduct of the employee favoured his reengagement. It was definitely not as bad as to be shown the door. Interestingly, similarly placed employees had a smooth sailing and the only hitch for the applicant was his health which came in his way to join peers in the respondents organisation. Nevertheless applicant was knocking the doors of the respondents over the years to consider his prayer to allow him to step into the respondents organisation. Officers in the line of command did raise hope in the applicant by recommending his case but the process took unduly long time ushering the issue of over age. Hon'ble High Court of A.P. in Writ Petition No. 23456 *of* 1998 & batch, has in a similar case where casual labourers were agitating before the judicial

forums the upper age limit was crossed before a judicial pronouncement could be made. In such an eventuality the Hon'ble High court has directed that the petitioners be re-engaged albeit they surpassed the age limit. The observation is extracted here under, since the case of the applicant is no different to the petitioners in the citation.

> *"Taking into consideration the fact that these petitioners have worked as casual labourers (mazdoor) under the respondent – management for such a long period ranging from 1985-86 till date, though pursuant to the interim direction granted by this court, and many of them might have already crossed the age of eligibility and without taking into consideration the genuineness or otherwise of the certificates produced by them, it is now ordered that the respondent management shall engage these petitioners afresh as casual labourers from this day and pay them the wages and other emoluments payable to the casual labourers from this day. Regarding regularisation of these petitioners, it shall depend upon the future exigency, any scheme launched by the management, the suitability of the workmen, etc."*

The case of the applicant was under continuous consideration of the respondents but there was delay in taking a decision compelling the 2nd respondent to approach the 1st respondent to relax the age limitation. Hoping that the respondents would take a fair view by realising the lapses in procedural mistakes committed, the applicant continued his untiring efforts to convince the respondents that he deserves a better deal, as is evidenced from view on the issue in the PNM meetings held by the respondents. In the process, the age restriction came into play and as observed by the Hon'ble High Court of A.P in the cited case, it is too late for the applicant to try his luck elsewhere, therefore the respondent organisation can only be the source to go back to eke out a living. The decision of the Hon'ble A.P High Court strongly supports the case of the applicant to be considered for re-engagement after age relaxation.

(VI) Judgment of the Hon'ble Supreme Court cited by the respondents does not apply to the present case since there was delay on the part of the employee therein in seeking the relief. In the present case, the applicant has been continuously pursuing with the respondents. If at all there was any delay, it was only on the part of the respondents and therefore, cited case does not jeopardise the cause of the applicant.

(VII) In view of the above, it is seen that the respondents have violated the rules in discharging the applicant without initiating any disciplinary action against him. No notice was given to the applicant. Principles of Natural justice were flagrantly violated. Galore of procedural lapses seen. Many observations of the Hon'ble Supreme Court have been violated as discussed in paras supra. Therefore, the action of the respondents is perceptibly against rules, arbitrary and illegal. Consequently, the impugned order dated 28.08.2018 is quashed.

(VIII) Respondents are therefore directed to consider as under:

(i) To re-engage the applicant as casual labour since he has some years to retire.

(ii) Time allowed to implement the order is four months from the date of receipt of this order.

(iii) With the above directions the OA is allowed. No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 11th day of June, 2019

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