

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.14 of 2013

Dated this Monday, the 11th day of November, 2019

CORAM: R. VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Nagorao S/o Rambhau Arsude, Age 62 years, Occu: Pensioner,
R/o C/o Sunil Arsude, Pravora Medical Trust, A/p Pathore,
Tq. Rohta, Dist. Ahmednagar, Off. RHSS, MM, PAU. ... *Applicant*
(By Advocate Shri Yashodeep Deshmukh)

Versus

1. Union of India, Through the Secretary, Ministry of Railways,
Rail Bhavan, 20, Ashoka Road, New Delhi 110 001.
2. The General Manager, South Central Railway,
Rail Neelayam, 3rd Floor, Secunderabad (A.P.) 500 071.
3. The Additional General Manager, 3rd Floor, Rail Nilayam,
South Central Railway, Secunderabad (A.P.) 500 071.
4. The Chief Personnel Officer, Headquarters Officer, Personnel Branch,
South Central Railway, Secunderabad (A.P.) 500 071.
5. The Additional Divisional Railway Manager, Hyderabad Division,
South Central Railway, Secunderabad (A.P.) 500 071.
6. The Senior Divisional Personnel Officer,
And Disciplinary Authority, DRM's Office, Hyderabad Division,
Personnel Branch, Secunderabad (A.P.) 500 071. ... *Respondents*

(By Advocate Shri R.R.Shetty)

ORDER (Oral)

Per : Shri R. Vijaykumar, Member (A)

This application has been filed on
10.09.2012 under Section 19 of the
Administrative Tribunals Act, 1985 seeking the
following reliefs:-

“8(A). By issue of an appropriate order or directions
departmental proceedings against the Applicant and the
impugned order dt. 23/01/2009 (Annex.A-1) may kindly be

quashed and set aside.

8(B). By issue of appropriate order or directions the Respondent authorities be directed to grant the Applicant all consequential benefits thereto including payment of dues as also expunging of remarks from service record of Applicant to the extent of and resulting from the said departmental proceedings;

8(C). The delay in filing of the O.A. may kindly be condoned."

2. The applicant was serving as Assistant Teacher of Railways Higher Secondary School, Purna when he filed a complaint on 03.04.1997 (Annexure A-4) with the respondent No.6 (Sr. DPO & Chairman of Railway Schools) making certain specific allegations against the then Principal of the High School on collection of fees from students, use of paper and ink and school materials, and other malpractice in collection of fees under the subject heading "corruption, the malpractices and maladministration in Railway H.S. School, Purna (Jn)-regarding". He has followed this with a further complaint addressed to the Hon'ble Prime Minister on 23.08.1997 with the following subject heading:-

"Subject: A) Humble request to investigate "Fee Scam" over 3 lakhs in Railway Higher Secondary School, Purna Dist. Parbhani (Maharashtra State) by Shri V.R.Mundhe, Principal of above School.

B) Many other corruptions, malpractices and maladministration in Rly. H.S. School, Purna may kindly

be investigated through any vigilance committee."

3. This complaint explicates the previous complaint made to Respondent No.6 in greater detail and a further complaint that the Principal had appointed his daughter as KG Teacher (Annexure A-5). This letter was issued by the applicant in his capacity as Secretary, S.C.R, Teacher Association, Purna District along with a parent as co-signatory. A copy of this letter has been sent to the Railway Minister and to the General Manager, Respondent No.2. The applicant filed a further complaint dated 03.02.1998 (Annex A-6) on 03.02.1998 directly to respondent No.2 alleging misuse of quarters, misappropriation, and bribery/corruption by the Principal. This complaint asserted that all the staff members were depressed and tortured by the Principal and also made personal allegations which questioned the character and reputation of the Principal. The respondents conducted a Vigilance inquiry which examined all these complaint and informed him in their replies dated 15.02.1998 and 20.02.1998 and duly received by the applicant. In these letters, the Applicant was advised that all his

complaints and charges had been inquired and found to be baseless and that the said Principal had acted as per Rules applicable.

4. The respondents then issued charge memorandum dated 28.07.1998 containing one item of charge which reads as below:

“Sri. N.R.Arsude, Asst. Teacher, RHSS/MM/PAU while working as RHSS/MM/PAU made complaint dtd.23/8/97 addressed to Prime Minister/GOI against Sri. V.R.Mundhe, Principal, RHSS/MM/PAU levelling certain allegations against Sri. V.R.Mundhe. Based on this complaint, Vigilance Investigations were made. The investigations revealed that the allegations made in the complaint were baseless and vague. Sri. N.R.Arsude is a habitual complainant against the The Principal, RHSS/MM/PAU whoever it is. He also made complaint against Sri. V.R.Mundhe, Principal/RHSS/MM/PAU to DRM/HYB and CPO/SC and similar allegations were made against him. The Divisional Administration, Hyderabad Division has made enquiries about the allegations and stated that Sr. V.R.Mundhe is acting according to the Rules and Regulations of Railway Administration. Sri N.R.Arsude was further advised not to make such baseless and false complaints in future on his own interest.

Making false complaint against Sri. V.R.Mundhe, Principal/RHSS/MM/PAU with a view to harassing him is highly irregular.

Thus Sri N.R.Arsude, Asst. Teacher/RHSS/MM/PAU committed misconduct and acted in a manner unbecoming of Railway Servant and thus violated Rule 3(1)(iii) of RSCR-1966.”

5. Applicant filed his reply and inquiry was thereafter conducted in which the applicant has participated and after examining each aspect of the allegations made by the applicant, the Inquiry Officer forwarded his report on

15.03.1999 (Annexure R-4) to the Disciplinary Authority who invited views of the charged employee and then passed orders on 15.06.1999 (Annexure A-7). After examining the record of the inquiry, the Disciplinary Authority held that making false complaint against the incharge official directly to the Hon'ble Prime Minister amounted to gross indiscipline and was a violation of Rule 3(1)(iii) of Railway Servants (Conduct) Rules, 1966. Expunging the view that this warranted imposition of severe penalty, a lenient view was taken in the context of the applicant's good performance as a teacher and in consequence, the Disciplinary Authority imposed a penalty of withholding of increment for a period of six months. On appeal, the Appellate Authority in orders dated 07.06.2000 enhanced the penalty to reduction by two stages for a period of one year with adverse cumulative effect. Further, this was reduced in order of respondents dated 09.07.2001 (Annexure A-9) passed by the Chief Personnel Officer after a detailed consideration of conduct of the applicant and inquiry conducted by the respondents and the punishment reduced to

withholding of one increment for a period of three months without cumulative effect. This order has been confirmed by the Revisionary Authority in impugned order dated 23.01.2009 (Annexure A-1) after granting personal hearing.

6. During the arguments, the learned counsel for the applicant argued that the applicant had not made any complaint subsequent to the results of the vigilance inquiry communicated to the applicant in February 1998 and therefore his initial acts of making complaint to various authorities including Prime Ministers could not be construed as misconduct. He relied on the views of the Principal Bench of this Tribunal in **C.S.Manral Vs. Union of India & Ors, 1986 ATC 587 dated 30.06.1986.** He also argued against the factum of punishment because in his view, this was a stigma on his career although it did not affect his pension. The learned counsel for the respondents has justified the charge memorandum issued to the applicant and penalty imposed by virtue of the fact that the applicant had made a series of very serious complaint imputing both financial irregularities and attributing grave deficiencies of character on

the part of the Principal.

7. Therefore, where the applicant was given an opportunity to establish his innocence rising the evidence available with him, he could not do so and could not support any of the allegations made by him while corresponding directly with the Hon'ble Prime Minister. This showed grave misconduct in terms of the definition of such misconduct under the Rules, in their view. The punishment eventually imposed on the applicant was also of a minor nature and therefore, there could not be any grievance on the part of the applicant on the proportionality of punishment.

8. The matter has been carefully examined. It is seen that all opportunities were given to the applicant to establish the veracity of his complaints through vigilance inquiries conducted by the respondents, the results of which were also communicated to the applicant although they were under no requirement to do so. This was followed by a full scale disciplinary inquiry where the applicant has been given all opportunities to justify his action of making allegations and addressing the Prime Ministers by bypassing official channels and further, to

establish any basis for the allegations made by him but he could not establish any aspect of the allegations either in respect of financial irregularities, nepotism, personal character assassination, that he had indulged in his various letters nor justify his actions in addressing these communications. The punishment imposed is also extremely lenient and we do not find it disproportionate in any manner.

9. The learned counsel argues that such action cannot be called 'misconduct'. The term misconduct has not been defined in the Railway Service (Conduct) Rules, 1966 although Section 20 states as below:

"20. Canvassing of Non-Official or other Influence:- No Railway servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining his service under the Government".

In this regard, clarifications have been issued by the respondents subsequently as below:

"The Government servants should adopt constitutional method to get their grievances redressed and should not try to enlist the support of an outside agency for the purpose. [R.B.No.E(D&A) 70 RG 6-9 of 7-7-71] (N.R., S.N.5479)

The proper procedure to be followed by Railway servants for seeking redress of their grievances in service matters through proper channel is laid down in R.B. Letter No.E(D&A)69 RG 6-37 OF 14-2-69. (N.R., S.N.4623)

It has also been particularly stressed therein that the habit of Government servants of sending copies of their representations to outside authorities is most objectionable, contrary to official propriety and subversive of good discipline.

The Railway staff must not send copies of their representationS or seek personal interview with MR/MSR in violation of Rule 26 of Railway Servants (Conduct) Rules. [GM(P)'s No.145E(O)/Dup/E 4 of 12-9-85](N.R., S.N.8818A)".

10. In the present case, the applicant first addressed the General Manager and then to Respondent No.6 who was Senior Divisional Personnel Officer and Chairman of Railway Schools on 03.04.1997 and even without obtaining a reply, he has addressed the Hon'ble Prime Minister on 23.08.1997 with an expanded list of complaints. These actions bring him within the scope of violation of Section 20 of the Conduct Rules. Further, in **Baldev Singh Gandhi Vs. State of Punjab**, AIR 2002 SC 1124, the Hon'ble Apex Court held that "misconduct" is the antithesis of the word "conduct" and it has to be construed with reference to the subject and the context wherein it occurs. Black's Law Dictionary, 6th Edn. defines misconduct as 'A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, wilful in character, improper or wrong behavior; its

synonyms are mis-demeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.'

11. Misconduct implies a wrongful intention and not mere error of judgment and also not necessarily the same thing as conduct involving moral turpitude. Essentially, the term misconduct requires a wrongful intention and if it has no bearing in reality in terms of facts as subsequently verified or in the hands of persons exhibiting such conduct, would amount to misconduct. In the present case, quite apart from violation of Section 20, the applicant had no basis for any of his allegations which were essentially scurrilous and were intended to bring down not only the reputation of the Principal of the School, but also of the Railway School Institution for which he was Secretary of the Parent Teacher Association. He had also associated with some parents in his adventure to heap abuse and calumny on the Principal without any basis whatsoever. Therefore, such activities cannot by any stretch of imagination be considered to be the actions of a whistleblower as the learned counsel for the applicant

sought to present. The learned counsel for the applicant has argued that this bypassing of his official superiors could not amount to misconduct by reference to **C.S.Manral** supra. However, we notice that in the cited case, the complaint of the official was not forwarded and his superior communicated his refusal to him and then sent letters to Prime Minister, Home Minister, Railway Minister and Financial Adviser. The facts in the present case are quite different and no attempt has been made to argue similarity in facts or context. These are plainly, acts of serious misconduct and the respondents have appropriately proceeded against the applicant. All these aspects have been addressed by the respondents in the process of inquiry and adequate opportunity is seen to have been provided to the applicant to make his defence.

12. In view of the above, we do not find any merits in the present OA. Hence, this OA is accordingly dismissed. No order as to costs.

(R
Memorandum
kmg*)

(R. Vijaykumar)
Member (Administrative)

