
(2001) 04 AP CK 0141

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11548 of 1998

P. Vasantha Rao

APPELLANT

Vs

General Manager, SCR Rail Nilayam, Sec"bad and others

RESPONDENT

Date of Decision : 25-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 3
Penal Code, 1860 (IPC) — Section 409
Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 10(3)
Railway Services Conduct Rules, 1966 — Rule 3(1)

Citation : (2001) 4 ALD 234

Hon'ble Judges : S.B. Sinha, C.J;V.V.S. Rao, J

Bench : Division Bench

Advocate : Mr. J. Sudheer, for the Appellant; Mr. Gouri Shankar Sangi, SC for Railways, for the Respondent

Judgement

S.B. Sinha, CJ

1. This writ petition is directed against the order of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad in OANo.1102 of 1995, 3-4-1998 whereby and whereunder the original application filed by the petitioner, who was working as Senior Cashier in South Central Railway, Secunderabad, against the order removing him from service was dismissed.

2. A short question as regards the interpretation of sub-rule (3) of Rule 10 of the Railway Servants (Discipline and Appeal) Rules, 1968 (for short "the Rules") falls for consideration in this writ petition.

3. The fact of the matter shortly stated is as follows:

The petitioner was appointed as Shrof in South Central Railway on 11-5-1964 and at the relevant time he was working as Senior Cashier. During February, 1993 he was entrusted with the duties of distributing salaries, allowances and advances etc., and maintaining the accounts and vouchers in relation to the

routes (1) Secunderabad to Wadi, (2) Vikarabad to Parli, (3) Secunderabad to Kondapalli and (4) Secunderabad to Balharsha via Kazipet. On 2-2-1993 he had encashed a cheque of the SB1 for Rs.3,64,5 85-45 and as per the balance sheet, Rs.1 1,53,593-45 was in his custody. On 3-2-1993 along with three RPF escort staff carried the cash and voucher boxes and other relevant registers for distributing the salaries etc., on Vikarabad to Parli route and for the said purpose he was provided with a diesel car attached to Manjeera Express.

He disbursed the cash at Vikarabad on 3-2-1993 and 4-2-1993. On 5-2-1993 he left Vikarabad for Bidar and on the midway he disbursed cash at five railway stations and reached Bidar at 4.30 pm. According to the petitioner, he left Bidar on 6-2-1993 at about 8.00 a.m. and at that time he was suffering from stomach pain, vomiting and fever and in spite of that, he disbursed cash at Haburga, Bhalki and other railway stations. His request to relieve him of the duties on account of his health condition made to the Chief Controller, Secunderabad, through the Station Masters at Chakkur and Pangaon was not considered. According to the petitioner, after seeing his condition, the Station Master, Ghat Nandur, allowed the diesel car to proceed to Parli after seeking assurance from the petitioner that cash and vouchers of the said station will be handed over to Traffic Inspector at Parli-Vaijnath. He reached Parli at 5-45 p.m. and as his condition had further worsened, he got down at home signal gate and proceeded towards the hospital and kept cash and his brief case under the custody of the escort instructing them to remain at the waiting room and to take care of the cash box. The keys of the cash box were kept in his brief case but he had forgotten to lock the brief case due to his condition. As no doctor was available at the hospital, he left for his sister's place at Ambajgai for medical attendance.

As the petitioner did not return to Parli station, the Superintendent of the station sealed the cash box on 7-2-1993 and on 9-2-1993, a panchanama was conducted in the presence of the Divisional Cashier and other officials and RPF personnel and the son of the petitioner who was brought from Secunderabad. It was found that the cash box did not tally with the registers and vouchers and there was a difference to the tune of Rs.1,32,055-15 ps. He appeared before the Divisional Accounts Officer (BG), Secunderabad and submitted explanation that he had to leave the duties due to severe stomach pain and sought 30 days time to make good the shortage. He was placed under suspension pending enquiry on 11-2-1993.

A criminal complaint was lodged against him in Cr.No.32/93 with the railway police.

4. The Divisional Accounts Officer (SC), S.C. Railway, Secunderabad issued charge-sheet on 5-4-1993. The Articles of charges read thus:

Article I: That Sri P. Vasantha Rao, Senior Cashier/BG/SC, committed serious misconduct in that while working as Sr. Cashier on 6-2-1993, for disbursement of salaries and other payments to the staff on Vikarabad-Parli Section, he

abandoned carelessly the Cash Box containing Government cash entrusted to him for making payments to the staff and disappeared at the Home Signal of Parli Station and deserted the pay special in which he was travelling. He thus failed to maintain absolute devotion to duty and acted in a manner unbecoming of a railway servant, contravening Rules 3(1)(ii) and (iii) of the Railway Services Conduct Rules, 1966 as detailed in the statement of imputations.

Article II : That Sri P. Vasantha Rao, Senior Cashier/BG/SC, committed serious misconduct in that he as a Sr. Cashier was entrusted with making payments to the staff on the Vikarabad-Parli Section on 6-2-1993. He did not make payments to the Staff of Ghatnandur and Parli stations though he was entrusted with the connected pay sheets and sufficient money for disbursement of these payments, creating unrest and dislocation in Railway working and thus failed to maintain devotion to duty and acted in a manner unbecoming of a Railway servant contravening Rule 3(1)(ii) and (in) of the Railway Services Conduct Rules, 1966 as detailed in the statement of imputations.

Article III: That Sri P. Vasantha Rao, Sr. Cashier/BG/SC committed serious misconduct on 6-2-1993, in that where he was entrusted with sufficient money and the connected pay sheets for making payments to the staff on the Vikarabad-Parli section, he did not make payments to the staff on Ghatnandur and Parli stations and misappropriated a sum of Rs. 1,32,055.15 with an intention to gain pecuniary advantage to himself and cause loss to the Railway Administration. He thus exhibited lack of integrity and failed to maintain devotion to duty and acted in a manner unbecoming of a railway servant contravening Rule 3(1), (i), (ii) and (iii) of the Railway Services Conduct Rules, 1966, as detailed in the statement of imputations".

5. The petitioner submitted his explanation to the charge memo and a detailed enquiry was conducted. The enquiry officer submitted his report on 22-9-1993 holding that the charges 1 and 2 as proved and charge No.3 as partly proved. The report of the enquiry officer was furnished to the petitioner who submitted his explanation on 14-12-1993. The disciplinary authority agreed with the findings of the enquiry officer with regard to the first and second charges, but, did not agree as regards the third charge stating that:

In view of the above discussion, I agree with the findings of the Enquiry Officer as far as the charges 1 and 2 are concerned. As far as the charge in Article 3 is concerned, the Enquiry Officer has stated that the charge in Article 3 is only partly proved. I do not agree with this and in view of my discussion of the case as above I hold this charge is also fully proved.

6. Accordingly, by proceedings dated 24-12-1993, the 5th respondent imposed the punishment of removal from service. The appeal preferred to the 3rd respondent was rejected on 22-7-1994 and the revision preferred there against was also rejected on 17-5-1995 by the 2nd respondent. Aggrieved by the said orders, the petitioner filed the OA which was dismissed by the Tribunal.

Aggrieved there against, the present writ petition is filed.

7. It may also be noticed at this stage that in the criminal case filed in CC No.301 of 1993 on the file of XIII Metropolitan Magistrate, Secunderabad u/s 409 IPC, the petitioner was convicted and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.1000/-in default to suffer simple imprisonment for a period of three months. But, on appeal, in CrI. A No.423 of 1995 on the file of I Addl. Metropolitan Sessions Judge, Hyderabad, he was acquitted of the charges.

It was recorded by the Tribunal in the judgment that the Railway Board in its letter No.E(D&A)/95, RG-6-4, dated 7-6-1995 laid down certain principles to consider the cases of delinquent employees who were punished in the disciplinary proceedings but later acquitted of the charges by the Court of law which position was admitted by the respondents in their counter. Therefore, the Tribunal at para 9 of the order gave liberty to the petitioner to make a detailed representation to the authority to review his case in the light of his acquittal of the criminal charge.

8. Rule 10 of the Rules deals with "action on the inquiry report". Sub-rule (3) of the said rules which is relevant for the purpose of disposal of the writ petition reads thus:

The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any articles of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record, is sufficient for the purpose.

9. It is undisputed that in the criminal case instituted against the petitioner for defalcation of the amount a finding of acquittal was passed in his favour.

The enquiry officer found as of fact that the petitioner failed to discharge his duty and he was so sick that he has no other option but to break the journey, but, however, recorded that he is guilty of lack of devotion to duty.

10. Rule 10(3), as noticed hereinbefore, must be strictly construed. The requirements of the said rule are: (1) the disciplinary authority must record its reasons for disagreeing with the findings of the enquiry officer and (2) must arrive at an independent finding as regards the commission of misconduct on the part of the delinquent officer on the basis of the materials available.

None of the afore-mentioned requirements had been complied with by the disciplinary authority. Furthermore, the cardinal principles of natural justice applicable in a case of this nature is that a notice must be issued to the delinquent officer by the disciplinary authority showing as to on what points he intends to record his reason for disagreement so as to enable the delinquent employee to show that same are not correct.

11. The point of law involved on the issue is no longer res Integra. In Om

Prakash and another v. Union of India, 1988 (5) SLR 140, dealing with the very same Rule 10(3), the Central Administrative Tribunal held:

On a plain reading of the sub-rule, it is manifest that a statutory obligation is cast on the disciplinary authority not only to record its reason for disagreeing with the report of the Enquiry Officer but also record its own finding on the charge levelled against the applicants. Further, he had to ensure that the evidence on record was sufficient for the purpose of arriving at a finding of guilt against the applicants. It is indeed deplorable that despite these express requirements of the rule, the disciplinary authority, in the instant case, chose to differ from the report of the Enquiry Officer without evaluating the evidence on record and without giving any reasons in support of the view taken by him. Under the circumstances, the decision of the disciplinary authority is vitiated by illegality going to the very root of it. Even the appellate authority fell into the same error, in that, there is nothing record to suggest that it perused the evidence on record and its conclusions were based on a proper appreciation of the evidence.

Hence, we entertain no doubt in our mind that the impugned order of punishment has to be quashed and set aside.

12. In Kalidas Biswas v. Union of India 1990 (6) SLR 413, it was held:

It is true that a departmental enquiry was held against the applicant. From annexure-A to the application we find that the applicant was charged with 2 articles of charge. Annexure-C is the copy of the enquiry report. From the concluding portion of it we find that it was the finding of the enquiry officer that the charges framed against the applicant had not been sustained. From annexure-D, we find that the Senior Divisional Commercial Superintendent, Kharagpur i.e., the disciplinary authority of the applicant had disagreed with the conclusion of the enquiry officer and imposed a minor penalty on this applicant. Under the Railway Servants (Discipline & Appeal) Rules, 1968, a disciplinary authority can disagree with the findings of the enquiry officer and may impose on the railway servant such penalty as is within its competence in accordance with the said rules. But under sub-rule (3) of Rule 10 it is incumbent on the disciplinary authority to record its findings for such disagreement and record its own findings on such charge, if the evidence on record sufficient for the purpose. We have already mentioned with reference to annexure-C that it was the finding of the enquiry officer that none of the charges framed against the applicant had been established. From the order passed by the disciplinary authority, we find that he found charge No.1 as framed against the applicant as established and as such he imposed a minor penalty on him. But the order passed by the said authority as we find from annexure-D does not show any reason whatsoever recorded by it for such disagreement. Nor had the disciplinary authority recorded its own finding on charge No. 1, as contemplated in sub-rule (3) of the said rules. Such being the position, we have no other alternative than to hold that the order of penalty imposed by the disciplinary authority is not in conformity with

law and as such it is liable to be set aside.

13. In Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , the Apex Court interpreting a similar provision contained in Regulation 7(2) of the Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977, clearly observed:

Under Regulation 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not to be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case (AIR 1994SCW 1050) (supra).

The Supreme Court further observed :

The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file representation before the disciplinary authority records its findings on the charges framed against the officer.

14. In the light of the above decisions, we are of the view that the impugned order of the disciplinary authority dated 24-12-1993 and the consequential orders of the appellate as well as revisional authorities dated 22-7-1994 and 17-5-1995 respectively cannot be sustained.

15. However, Sri Sudheer, learned Counsel appearing for the petitioner placed

reliance on paragraph 2 of the Circular Letter dated 7-6-1995 of the Railway Board, copy of which has been produced before us, to contend that the charges in the criminal proceedings and disciplinary proceedings being identical and the petitioner having been acquitted of the criminal charge, he should have been discharged from the disciplinary proceedings as well by reviewing the decision consequent on the acquittal of the petitioner by the criminal Court and the disciplinary authority having failed to do so, this Court should interfere. We do not agree.

Paragraph 2 of the said circular letter reads thus:

It is clarified that there is no legal bar to the initiation of departmental disciplinary action where criminal prosecution is already in progress and generally there should be no apprehension of the outcome of the one affecting the other, because the ingredients of delinquency/misconduct in criminal prosecution and departmental cases, as well as the standards of proof required in both cases are not identical. Thus, the departmental and criminal proceedings can be initiated simultaneously against the delinquent employee and the disciplinary proceedings can also be continued and concluded without waiting for the conclusion of criminal case against the employee on the same charges.

However, if the facts, circumstances and the charges in the departmental proceedings are exactly identical to those in the criminal case and the employee is exonerated/ acquitted in the criminal case on merit without benefit of doubt or on technical grounds), then the departmental case may be reviewed if the employee concerned makes a representation in this regard.

16. No doubt, the circular letter clarifies that if the circumstances and the charges in the departmental proceedings are exactly identical to those in the criminal case and if the employee is exonerated/ acquitted in the criminal case on merit, the departmental case has to be reviewed. But, the exercise as to whether the charges in both the cases are identical or not has to be gone into by the disciplinary authority having regard to the facts and circumstances of the case and has to record its finding on a representation made by the delinquent officer in this regard. This Court, exercising the power of judicial review under Article 226 of the Constitution cannot go into the same.

17. It is also not possible for us to accept the submission of the learned Counsel that in view of the decision of the Apex Court in *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.* 1999 (3) Sup376, to the effect that having regard to the fact that the petitioner has been exonerated of the criminal charges, the departmental proceedings must also be quashed. The said decision does not state that upon acquittal of the delinquent employee in the criminal proceedings, the departmental proceedings should automatically come to an end. In such a situation, the disciplinary authority has to apply its mind, record its reasons and pass an order in that regard. This aspect of the matter has been considered by a Division Bench of this Court in *V. Srinivas Vs. Superintendent of Police, Medak*

Dist., Sangareddy, Medak and others, , wherein it was held:

The learned Counsel for the petitioner himself has placed reliance upon a decision of the Apex Court in *M. Paul Anthony v Bharat Gold Mines Ltd.* 1999(3) SCC 6769, wherein the law has been laid down in the following terms:

As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer to in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceeding can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the disciplinary authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge, has to be proved by the prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without being a variance. There cannot thus be any dispute whatsoever that both the criminal charges and the departmental proceedings can proceed simultaneously.

18. As regards the question that this Court should impose a minor penalty is concerned, in our opinion, as the matter is required to be considered afresh by the disciplinary authority, this Court should not exercise the jurisdiction at this juncture.

19. For the reasons aforesaid, the order of the disciplinary authority dated 24-12-1993 and the orders of the appellate authority and the revisional authority dated 22-7-1994 and 17-5-1995 respectively are hereby set aside and the matter is remitted to the disciplinary authority for taking action in the light of the observations made above and in accordance with law.

The writ petition is accordingly allowed.