



**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 7TH DAY OF AUGUST, 2024

PRESENT

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A.PATIL

WRIT PETITION NO.104121 OF 2024 (S-CAT)

BETWEEN:

1. THE RAILWAY BOARD
RAIL BHAWAN, NEW DELHI 110001,
REPRESENTED BY ITS SECRETARY.
2. THE GENERAL MANAGER
SOUTH WESTERN RAILWAY, RAIL SOUDHA,
GADAG ROAD, HUBBALLI 580020.
FOR AND ON BEHALF OF UNION OF INDIA.
3. THE PRINCIPAL CHIEF PERSONNEL OFFICER,
SOUTH WESTERN RAILWAY, RAIL SOUDHA,
GADAG ROAD, HUBBALLI 580020.
4. THE SENIOR DEPUTY GENERAL MANAGER
-CUM-CHIEF VIGILANCE OFFICER,
SOUTH WESTERN RAILWAY, RAIL SOUDHA,
GADAG ROAD, HUBBALLI 580020.
5. THE DIVISIONAL RAILWAY MANAGER
BENGALURU RAILWAY DIVISION,
SOUTH WESTERN RAILWAY,
BENGALURU 560023.
6. THE DIRECTOR GENERAL,
RAILWAY HEALTH SERVICE (DGRHS),
4TH FLOOR OF COFMOW OFFICE,

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Location: High
Court Of
Karnataka,
Dharwad Bench



RAILWAY OFFICES COMPLEX,
TILAK BRIDGE, NEW DELHI 110002.

7. THE PRINCIPAL CHIEF MEDICAL DIRECTOR
SOUTH WESTERN RAILWAY,
RAIL SOUDHA, GADAG ROAD,
HUBBALLI 580020.
8. THE CHIEF MEDICAL SUPERINTENDENT
DIVISIONAL RAILWAY HOSPITAL,
BENGALURU 560023.
9. THE CHIEF MEDICAL SUPERINTENDENT
DIVISIONAL RAILWAY HOSPITAL,
MYSURU 570020.

... PETITIONERS

(BY SRI. SANJAY S. KATAGERI, ADVOCATE)

AND:

DR. S.M. MANJULA W/O DR. HIMACHAL V.K.,
AGE. 62 YEARS, OCC. (NOW RETIRED)
EARLIER WORKING AS
ADDL. CHIEF MEDICAL SUPERINTENDENT (ACMS),
SWR RAILWAY HOSPITAL/SBC, BENGALURU 560023.

R/O. B-104, 'FORTUNA BLUE WINGS'
TALAKAVERI APARTMENTS,
BASAVANAGAR, BENGALURU 560037.

... RESPONDENT

(BY SRI. LAXMINARAYAN, SENIOR COUNSEL FOR
SRI. VADIRAJ PADANKALA, SMT. ANUSHA L., ADVOCATES)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO, A WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER WRIT OR DIRECTION, BY QUASHING THE IMPUGNED ORDER DATED. 06-11-2023 PASSED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL, BENGALURU BENCH, IN ORIGINAL APPLICATION NO.170/00434/2022, AS PER ANNEXURE-A HEREIN, AND CONSEQUENTLY DISMISSING THE SAID ORIGINAL APPLICATION NO.170/00434/2022 AS FILED BY THE RESPONDENT HEREIN, BY ALLOWING THIS WRIT PETITION BY THIS HON'BLE COURT, IN THE INTEREST OF JUSTICE AND EQUITY.



THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT
AND
THE HON'BLE MR. JUSTICE VIJAYKUMAR A.PATIL

ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT)

The Railway Board and its officials are knocking at the doors of Writ Court for laying a challenge to the order dated 06.11.2023 whereby the Bangalore Bench of Central Administrative Tribunal having favoured respondent employee's O.A. No.170/00434/2022 has quashed the Charge Memo dated 21.10.2022. By issuing the said Charge Memo, disciplinary proceedings were initiated against the respondent who has since retired from service, on the ground that she had *inter alia* recommended for referring a job aspirant for eye test for the purpose of detecting Lasik Surgery at the hands of K.R.Hospital, despite knowing that such a facility was not available there. There are other allied charges also.



2. Learned Senior Panel Counsel appearing for the petitioner vehemently seeks invalidation of Tribunal's order essentially on the following grounds:

- (i) The Tribunal grossly erred in entertaining respondent's OA at a premature stage inasmuch as challenge was to the Charge Memo
- (ii) The respondent-employee has committed a gross misconduct involving moral turpitude and therefore, Disciplinary Enquiry would not have been interdicted.
- (iii) The charges alleged against the delinquent employee were serious inasmuch as, because of the alleged defective report, an unworthy candidate would have gained employment to a post which requires perfect eyesight.
- (iv) The Tribunal erred in overlooking the seriousness of the matter when two of the three Members of the Medical Board have been awarded punishment of censure and the employee being Convenor of the Board had higher responsibility.

3. Learned Senior Counsel, Mr. V.Laxminaryana appearing for the respondent-employee apart from



repelling the above contentions advanced on behalf of the writ petitioner takes up the following contentions to resist the petition:

- (i) Any civil servant like the respondent has got a right not to be unlawfully proceeded against in disciplinary enquiry and therefore, the Tribunal has rightly entertained the OA in question. The argument of 'premature' is untenable.
- (ii) The initiation of disciplinary enquiry is vitiated inasmuch as it is done on the verge of retirement of the employee that too after brooking a lot of delay.
- (iii) An employee is entitled to be left unafflicted post-retirement and therefore, initiation of disciplinary enquiry in such a case is a serious matter. The respondent has retired from service having put in 36 years of spotless service and the petitioners are not justified in withholding her terminal benefits.
- (iv) Lastly, the respondent for buying peace is agreeable to suffer the same punishment viz., censure which has been awarded to the co-members of the Medical Board.



4. We have heard the learned counsel for the parties and perused the original file made available by the Railway Officials personally present in the Court. We decline indulgence in the matter for the following reasons:

- i) The respondent employee, a Medical Doctor, has retired having put in a long and spotless service of about 36 years and now being a senior citizen, is in the evening of her life. In service jurisprudence, long and spotless service is a factor in the initiation of disciplinary proceedings attracting minor punishment. We say this, because the second medical report, which happens to be the fulcrum of intended disciplinary proceedings, was given by the Board comprising of three Doctors, one of them being the respondent herein. Thus, it was an institutional decision as distinguished from individual. The other two doctors have been awarded minimum punishment of censure under the extant Rule 6(i) vide order dated 02.08.2023. Mr. Laxminarayana is right in contending that when institutional decision of the Medical Board is faltered and the candidate has been disqualified, same punishment has to follow against all of them in the absence of demonstrable variation in their contribution to the act complained.



Merely because the respondent was the Convenor of the Medical Board, she was nevertheless nor more a Member. Nothing in variance has been pointed out from the instrument by which the Board is constituted. Much of the lis in this petition withers away because of the fair stand taken by the respondent-employee that she too be awarded the punishment of censure. No useful purpose would be served by remitting the matter for holding the disciplinary enquiry at this length of time more particularly, because of her retirement.

- ii) There is lot of scope for arguing that no culpability can be attributed to the Members of the Board inasmuch as when they undertook the second medical examination of the candidate, he had already undergone some medical intervention and got his ophthalmic problem cured. Therefore, the second report found him fit. We are not shown any Rule that prohibits treatment and cure of eye disease of the kind. However, it is true that in making appointment to the post in question, the candidate should have a perfect vision. Now, that question pales into insignificance because of de-candidature of the concerned job aspirant. Therefore, it is not a



case where any loss or hardship has been occasioned to the Department.

- iii) The vehement submission of learned Panel Counsel that the cause on which the respondent had structured her case before the Tribunal was inchoate & premature is difficult to countenance. An employee, as already observed above, is entitled to be free from any enquiry except the one initiated in accordance with law. The first medical report was issued on 18.07.2019 declaring the candidate 'unfit'. Subsequently, the second test was undertaken and the report was given on 30.09.2019 wherein he was declared 'fit'. During the interregnum, the candidate had undergone surgical intervention and had set right his vision. Therefore, it is not a straight case that can be called as a spurious one generated at the hands of the Medical Board. That being the position, we cannot falter the act of employee approaching the Tribunal for laying a challenge to the Charge Memo itself. Countenancing a contra argument amounts to saying that a diabetic patient should not see the doctor till gangrene is developed in the organs. Our native jurisprudence does recognise preventive remedy. After all, an old adage goes "prevention is better than cure".



iv) The next contention of learned Senior Panel Counsel appearing for the Railways that the employee having already retired, awarding of punishment of censure does not serve the purpose, cannot be accepted as a thumb rule. Ordinarily, punishment of the kind is handed when the delinquent employee is still in service. In this case the enquiry was initiated when the employee was in the verge of retirement. Censure also carries some amount of stigma, cannot be denied. An entry of such a punishment in the Service Records, in our view, would be symbolic of the delinquency and whatever little purpose it serves would suffice. In the peculiar facts and circumstances of the case, this is done, with no intent to evolve any new norms of jurisprudence. After all, Article 12 entities like the petitioners have to conduct themselves as a model employer, with high probity and candour, as observed by the Apex Court in **BALRAM GUPTA VS. UNION OF INDIA**¹. It is more so, when the employee having served the Railways for about three & a half decades *sans* any black spot, has retired from service. That is a constitutional expectation enacted in Article 42 of the Constitution as a Directive Principle of State Policy.

¹ AIR 1987 SC 2354



v) The second report was issued on 30.09.2019 and on that basis, the candidate was not selected, the same having been found defective; in fact, he had shed his candidature. There is a huge gap between the incident and the initiation of enquiry. As already observed above, the respondent-employee was about to retire in a short stint of time. When asked, the learned Panel Counsel for the railways submits that the delay was brooked because of the outbreak of COVID Pandemic. Such an explanation has not been constructed from the records. An off hand reply coming from the Bar, which is not supported from the records, cannot be accepted. The Railways being an instrumentality of the State under Article 12 of the Constitution, cannot be permitted to resort to a course that would afflict a retired employee in the evening of her life. It is more so, when she is agreeable to take the punishment of censure instead of undergoing the turmoil of disciplinary proceedings, which would take its own time to culminate into an end product, which runs the risk of further challenge to from either of the sides.

5. Lastly, we are told that the respondent-employee has not been given regular terminal benefits such as pension, etc., although temporary pension is being



handed to her, because of contemplated disciplinary enquiry. We are also told that she has approached the Tribunal even to get the same released and the case is still pending. This is not a happy thing to happen to an employee who has served the institution for more than 35 years that too without incurring any stigma. Now that, we have awarded the punishment of censure and that should put an end to all the turmoil, leaving the retiree to the evening of her life. The contention of learned Senior Panel Counsel that the retired employee should prosecute the case pending before the Tribunal, is unconscionable. We repeat that ours is a Welfare State and not East India Company of the bygone era. Therefore, the petitioners should ensure that all her terminal benefits are paid within an outer limit of three months and delay if brooked shall carry interest at the rate of 1% per *ensem* for the first two months and at the rate of 2% per *ensem* for the period next following. This interest component may be recovered from the erring officials in accordance with law.



In the above circumstances and observation, this petition is disposed off with a direction to the petitioners to settle employee's terminal benefit as indicated above.

Costs made easy.

**Sd/-
(KRISHNA S.DIXIT)
JUDGE**

**Sd/-
(VIJAYKUMAR A.PATIL)
JUDGE**

VNP/KMS,
CT:VP
LIST NO.: 1 SL NO.: 31