

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/01377/2014 with MA 1066/2015

HYDERABAD, this the 26th day of November, 2020

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member



K.S.R.Pradeep Mathur,
S/o late Sri K.M.Krishna,
Aged 57 years, Deputy Director of Training,
Regional Directorate of Apprenticeship Training,
DGET, ATI-EPI Campus, Ramanthapur,
Hyderabad-500 013, R/o Flat No.303,
H.No.3-11-6/A, Gokhale Nagar,
Ramanthapur, Hyderabad-500 013.

...Applicant

(By Advocate :Dr.P.B.Vijay Kumar)

Vs.

- 1.Union of India rep by its Secretary to
Government of India, Ministry of Labour,
Shram Shakti Bhawan, New Delhi-110 001.
- 2.The Director General / Joint Secretary, DGET,
Government of India, Ministry of Labour,
Shram Shakti Bhawan, New Delhi-110 001.
- 3.The Director (Administration), DGET,
Government of India, Ministry of Labour,
Shram Shakti Bhawan, New Delhi-110 001.
- 4.The Regional Director,
Regional Directorate of Apprenticeship Training,
ATI-EPI Campus, Ramanthapur,
Hyderabad-500 013.
5. Sri M.R.Gajre, The Regional Director,
Regional Directorate of Apprenticeship Training,
ATI-EPI Campus, Ramanthapur, Hyderabad-500 013

....Respondents

(By Advocate: Mr.T.Hanumantha Reddy, Sr. PC for CG)

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

Through Video Conferencing:



2. The OA has been filed assailing the proceedings dt. 14/17.11.2014 by the 4th respondent passing an order of dies non and ordering recovery of Rs.3,55,056/- from the applicant.

3. Brief facts of the case are that the applicant is working as Dy. Director in the respondents organization from 25.06.1997. He was issued a charge memo on.4.2.2009 containing 4 charges which were denied. As the applicant was not paid salary and asked to face disciplinary proceedings, he filed OA No.654/2009 at Hon'ble Calcutta Bench of this Tribunal, which was disposed of on 10.06.2009 directing disbursement of salary while directing the applicant to cooperate with the inquiry. Thereafter, he was transferred to Hyderabad Office of the respondents on 27.09.2011. Applicant filed OA 157/2014 seeking finalization of the disciplinary proceedings. The said OA was disposed on 10.02.2014 directing the respondents to finalize the disciplinary action. The respondents complied with the same by imposing a punishment of reduction by two stages in the time scale for a period of two years, after initiation of the contempt proceedings against the respondents. Applicant claims that since he has filed the contempt proceedings, respondents have become vindictive and are harassing him in one form or the other. Regional Director, who is the 5th respondent, has been assigning works which are to be done by subordinates to the applicant. In fact, applicant was assigned the responsibility of verifying furniture and stationery by

order dt.17/18-07-2014 and accordingly applicant submitted a report on 31.07.2014. Even then, a Memo was issued to him on 8/9 September 2014. Thereafter, the said work was given to a Training Officer vide order dt.21/22-10-2014. Further, respondents have issued show cause to the applicant dt. 30.09.2014 to explain as to why the period from 25.03.2014 to 30.09.2014 should not be treated as dies-non. The respondents treated the said period as dies-non vide order dt.14/17.11.2014 and ordered recovery of Rs.3,55,056/-. Aggrieved, OA has been filed.



4. The contentions of the applicant are that the 5th respondent is neither the appointing authority nor the disciplinary authority in his case to impose dies-non and consequent recovery. Respondents entrusting unrelated works to him is irregular and arbitrary. The officers have to be given posting commensurate to their status as per the Hon'ble Supreme Court judgment in P.K. Chinnaswamy v. Govt. of T.N., 1987 (4) SCC 601. Applicant claims that he is being harassed because he had filed contempt proceedings to enforce the directions of the Tribunal to complete the disciplinary proceedings early.

When the matter came up for admission, Tribunal passed an interim order on 03.12.2014 staying further recovery.

5. Respondents filed the reply statement wherein they stated that the applicant exhibits insubordination. The duties assigned to the applicant are as per the Apprentice Act 1961 which were circulated by an order dt. 25.03.2014. Any duty entrusted to the applicant by the HOD has to be discharged and the applicant is brazenly not complying with the orders of



the HOD. Applicant was entrusted with the responsibility of achieving physical targets fixed by DGE&T, New Delhi vide letter dt. 25/28.04.2014 and for not discharging the responsibilities assigned Memo dt. 28.05.2014 was issued. Besides, applicant was asked to act as an Observer in the All India Trade Test which the applicant did not comply with the said order whereas other officers did. Further, applicant was entrusted with conduct of physical verification of stores and furniture, which can be assigned to any Officer and it is mandatory to be complied with. Applicant did not complete the work entrusted and therefore, it was given to another officer. Respondents assert that the applicant avoids duties and shirks responsibilities. For not complying with the orders of the HOD, a Memo dated 30.09.2014 was issued on the ground that the applicant, though available in the office during the period from 25.03.2014 to 30.09.2014, did not do any work. Therefore, it was asked to explain as to why the said period should not be treated as dies-non excluding holidays/leave. Applicant was given time up to 7.10.2014 to submit his explanation which he did not do and therefore, the cited period was treated as dies non. Respondents 4 & 5 are the leave sanctioning authority and therefore competent to issue the order of dies- non as per Rule 3(1)© of CCS (Leave) Rules, 1972. Under FR 17(1) provision, the applicant would not be entitled for pay and allowances for the period, which has been treated as dies non. Allegation made by the applicant about taking away the powers and duties from him is a bald allegation. The judgment cited by the applicant is not relevant to the facts and circumstances of the case. Applicant has got a bad track record as is evident from the orders of dies-non issued to him on quite a few occasions in the past. Besides, there are



adverse remarks in applicant's APAR in regard to his irresponsible attitude towards work and was also charge sheeted in the past. In fact, applicant has threatened Sri T.V.N. Ushachander Rao, Training Officer not to act as Drawing & Disbursing Officer and for doing so, applicant was severely warned and cautioned vide Memo dt. 26.11.2014. On another occasion, applicant was asked to act as an Observer for the 101st All India Trade Test at Hubli, which is 500 Kms away from Hyderabad. Applicant did not go over to Hubli claiming that Air tickets were not available and time at his disposal was inadequate to reserve tickets to even travel by Rail or Road. Applicant did not submit APAR for 2013-14 despite being reminded on several occasions. Respondents denied the submission of the applicant that he was issued the impugned order because of the contempt petition filed by him.

The applicant filed a rejoinder wherein it is submitted that he is a vocational training cadre officer and therefore, he cannot be treated on par with Training Officers, who belong to Group B cadre promoted from the ranks. For Group 'A' officers like the applicant, Hon'ble President is the appointing authority. Further, as per Rule 12 of CCS (CCA) Rules, officers performing current duties of a post cannot exercise statutory powers under the Rules. Dy. Director is the administrator of Apprenticeship Act, 1961 as per RDAT Manual and Director is the sanctioning authority. The proper procedure has not been followed in respect of passing the order of dies-non. There is no sanctioned post of DDO at RADT Hyderabad and therefore, Sri T.V.N. Ushachander Rao, Training Officer had no cheque signing authority. The tour advance to go over to Hubli was given at 4 PM on 28.10.2014 for the duty to be attended

to at Hubli on 30.10.2014 at 10.00 AM. Time was too short and that tickets were not available to travel by train/ plane. Respondents have not followed the due procedure in ordering recovery.



Respondents have filed an additional reply wherein they state that the Regional Director is the Head of the Department and is competent to issue the order of dies-non. Joint Director was declared as Head of Office for RDAT, Hyderabad w.e.f. 08.4.2013 vide letter dt. 8.4.2013. The Regional Director being HOD, has delegated powers to the Joint Director. The allegation of corruption made are totally denied. The HOD can ask any officer to work as DDO.

The respondents filed MA 1066/2015 for vacating the stay granted to the applicant on 03.12.2014 in regard to the recovery. We have gone through the MA in detail wherein the contentions made are more or less similar to those adduced in the OA and the additional reply.

6. Heard both the counsel and perused the pleadings on record.
7. I. It is not under dispute that the applicant while working in the respondent organization as Dy. Director was issued a charge memo dt. 4.2.2009. Thereafter, when salary of the applicant was not drawn, he approached the Hon'ble Calcutta Bench of this Tribunal in OA 654/2009 which was disposed on 10.06.2009, directing disbursement of salary while ordering the applicant to cooperate with the inquiry. Subsequently, when he was transferred to Hyderabad Office of the respondents organization on 27.09.2011, applicant filed OA 157/2014 seeking finalization of the disciplinary proceedings. The said OA was disposed directing the

respondents to finalize the disciplinary action and when the respondents did not comply with the Tribunal order, applicant filed contempt case No.92/2014 and to avoid contempt respondents imposed the penalty of reduction of pay by two stages in the time scale for a period of two years.



Thereupon, applicant claims that for filing CP, he has been harassed by the respondents on one count or the other. Applicant further claims that he has not been given duties commensurate to his status and to support his contention, has cited the judgment of the Hon'ble Supreme Court in P.K. Chinnasamy v. Govt. of T.N. Further, applicant claims that the 5th respondent is not the appointing authority or the disciplinary authority to take any action against him. With the above backdrop of the case, we proceed to resolve the dispute as under.

II. As seen from the details of the case, applicant was asked to verify the stock of furniture and stationery vide order dt. 17/18-07-2014. Applicant claims that he has verified and reported on 31.07.2014, whereas respondents state that the applicant did not do the verification and therefore, the said duty had to be entrusted to another officer on 21/22.10.2014. In this context the Memo dt.08/9.09.2014 issued to the applicant, reads as under:

“Under the circumstances as explained above, it is evident that Sri Mathur, DDT had tried his level best to step-out of his jurisdiction of “Physical Verification of Stores” & submit a compliance report to the Regional Director, RDAT/ Hyderabad as directed vide above referred office order.

He should have confined himself to the task/ job entrusted by the undersigned in this regard instead of making sweeping allegations without completing the assigned-duty. This type of delaying tactics by a senior officers seems to be unwarranted in smooth running of this organization.

Habitually negligent in respect of the duties for which he is engaged., Not discharging the duties entrusted to him., Willful insubordination or disobedience to a lawful, reasonable & written orders of the undersigned as

Head of Department of RDAT, Hyderabad., Discourteous & partial to the Master, etc. amount to misconduct under CCS (Conduct) Rules, 1964.

Sri Mathur, DDT is therefore called upon to furnish his explanation to the undersigned by 12th September, 2014 on the "Reasons for not completing the work of physical verification & non-submission of the detailed verification report with the findings", to take further suitable action in this regard."



The remarks are of very serious nature and that too against a senior officer. Applicant did not complete the work of physical verification assigned to him and therefore respondents had to perform give the task to Smt. Rakhi Kumari, Training Officer vide Officer Order dt. 21/22.10.2014, wherein it is stated as under:

"This order is necessitated as Sri K.S.R. Pradeep Mathur, DDT, RDAT, Hyderabad who was earlier directed to conduct Physical Verification of Furniture, Stationery/ Stores items etc, vide Officer Order No. RDH/FV/2003/Estt/501, dt.17/18-07-2014 of the undersigned failed to comply with the said office order."

If the applicant were to complete the work assigned satisfactorily, there was no necessity for the respondents to assign the work to another officer. The submission of the applicant that he has submitted a report is not tenable. Submitting reports is not important but what is important is completing the work given in accordance with the rules and regulations of the organization which is acceptable to the controlling officer within the ambit of rules. Applicant has thus failed to comply with the orders of the competent authority as is evident from the above.

III. Another order was given by the competent authority on 25/28.04.2014 to the applicant for achieving the physical targets fixed by the Director General, Employment & Training. Applicant did not comply with the said order and therefore was issued another Memo on 28.05.2014. The memos indicate that the applicant's approach to work was not what it ought to be. Any employee has to discharge whatever work is assigned to



him. It requires no mention that Duty ranks first and right later, since the good of the Organization is intrinsic and we find that the respondents have been assigning only legitimate duties to be discharged by the applicant by holding the position he is holding. The respondents have also averred that the applicant has been imposed *dies non* on a few occasions in the past and that there are adverse entries in the APAR, which were not countered by the applicant in his rejoinder. He also states that the past cannot be taken to judge the present case. Charge sheet was issued to the applicant while he was working at Howrah resulting in imposition of a penalty, after a CP was filed by the applicant to enforce the decision of the Tribunal to finalize the disciplinary case.

IV. Further, applicant was directed to attend as an Observer for conducting the All India Trade Test at Hubli. Applicant was granted advance but he did not go over to Hubli stating that he has got the advance on 28.10.2014 evening whereas he was expected to report at Hubli on 30.10.2014 morning and that the time available to book confirmed tickets was insufficient. The distance between Hyderabad and Hubli is approximately 500 kms and when the applicant could not book rail/Air tickets, he could have travelled by road to attend to an important task of being an observer for an All India Test. Being a Group A officer, he could have travelled by road and claimed the eligible road mileage as per rules. Obviously, applicant has not made any such effort. Government servants are expected to commit themselves sincerely to the job assigned to them. Management would have appreciated, if the applicant reached Hubli and performed the duty assigned despite odds stated. In administrative parlance such accomplishments come under the ambit of an officer like

quality. Goal is important and achieving it in public interest is paramount, come what may. Finding reasons to explain non performance is easy but accomplishing a given task is where the ability of an officer is evaluated, particularly when the going is tough. Designations are the indicators of the responsibilities to be discharged and the applicant being in a senior position in RDAT should have measured up to the situation and set a good example for others.



V. The respondents have enclosed several memos which were issued to the applicant calling for his explanation for not discharging the duties/ work assigned to him by the Head of the Department. We have perused those memos. The applicant was issued a Memo dt. 18.09.2014 calling for his explanation in not complying with the orders given and for which he did not submit any explanation. Thereafter, another memo dt. 30.09.2014 was issued to the applicant to explain as to why the entire period from 25.03.2014 to 30.09.2014, excluding the holidays and leave, should not be treated as dies- non as his acts amount to refusal to perform duties/ work assigned to him though present in the office. Respondents cited an analogous Rule 62 of P & T Manual Vol. III in issuing the memo cited which reads as under:

“62. Absence of officials from duty without proper permission or when on duty in office, they have left the office without proper permission or while in the office, they refused to perform the duties assigned to them is subversive of discipline. In cases of such absence from work, the leave sanctioning authority may order that the days on which work is not performed be treated as dies non, i.e. they will neither count as service nor be construed as break in service. This will be without prejudice to any other action that the competent authorities might take against the persons resorting to such practices.”

By application of the above rule, the applicant for attending office and not doing any work, is as good as being away from office without

permission. Applicant surprisingly did not submit his reply. It was not explained as to why he did not choose to reply. The opportunity granted, if it was availed, would have enabled the applicant to defend himself effectively. The mistake was that of the applicant and therefore he cannot blame the respondents for the consequences that followed. In accordance with the cited rule, respondents declaring the period from 25.03.2014 to 30.09.2014 as dies-non after excluding the holidays and leave periods, is in order. FR 17(1) does not permit payment of pay and allowances during the dies- non period and hence the order of recovery of a sum of Rs.3,55,056/- cannot be questioned.



VI. The applicant contends that the 5th respondent is neither the appointing authority nor the disciplinary authority. However, to impose dies-non, which is not a punishment, leave sanctioning authority is competent. The leave sanctioning authority is the 5th respondent and also the Head of the Department. Therefore, the contention of the applicant that only the appointing/ disciplinary authority are competent to impose dies-non is incorrect. Respondents relied on Rule 62 of the P & T Manual, which has not been challenged by the applicant. For having not acted the way the applicant should, as a responsible officer, dies-non was thus imposed coupled with recovery of the amount due for period of dies-non, under relevant rules cited.

VII. We also observe that a number of memos have been issued to the applicant which indicate the attitude and aptitude of the applicant towards official work. The instances referred to like going over as observer for the All India Trading Test, verification of furniture and

stationery, achieving targets etc are part and parcel of the official duties of the applicant. They are works of responsibility which are commensurate to the position he is holding and hence the Hon'ble Supreme Court observation, relied upon by the applicant has not been infringed.



Applicant on the contrary was found to raise objections to the same on flimsy grounds.

We do note that the contexts in which the memos were issued to the applicant are different and they have nothing to do with the contempt case filed by the applicant. The averment of the applicant that he is being harassed because of filing of the contempt case before the Tribunal by issue of memos does not hold water in view of the circumstances explained paras supra.

VIII. In view of the aforesaid, we find that the respondents have acted in accordance with rules by granting reasonable opportunity to the applicant to defend himself. We found no reasonable grounds to intervene on behalf of the applicant and therefore finding no merit in the OA, it deserves to be dismissed. Accordingly, OA is dismissed, with no order as to costs. Consequently, interim order issued on 03.12.2014 stands vacated and MA 1066/2015 is allowed.

(B.V.SUDHAKAR)
ADMINISTRATIVEMEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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