

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/01052/2014, 21/0363/2018 & 21/0421/2018

HYDERABAD, this the 3rd day of December, 2020

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



OA No. 1052/2014

P.Rama Manohara Rao S/o Venkanna Dora,
Aged about 54 years,
Occ : Senior Branch Manager, Films Division,
Kendriya Sadan, Sultan Bazar,
Government of India, Hyderabad.

...Applicant

(By Advocate : Dr. A. Raghu Kumar)

Vs.

1. Union of India rep by Secretary,
Ministry of Information and Broadcasting,
Government of India, Shastry Bhavan, New Delhi.
2. The Secretary, Union Public Service Commission,
Dholpur House, New Delhi.
3. Shri K.Venugopal S/o Not known,
Occ : Senior Branch Manager, Films Division,
Govt. of India, CGO Complex, B-Block,
Poonkulam, Vellayani P.O. Thiruvananthapuram.
4. The Director General, Films Division,
Ministry of Information and Broadcasting,
Government of India,
Dr.Gopalrao Deshmukh Marg, Mumbai.
5. Shri Anil Kumar. N, S/o Not known,
Occ : Officer In-charge of Distribution,
Films Division, Government of India,
Mumbai-400026.
6. Shri V.S.Kundu, I.A.S.
Director General, Films Division,
24, Dr.G. Deshmukh Marg, Mumbai-400026.
- 7.Smt.Rita Hemrajani,
Director of Administration, Films Division,
24 - Dr. G. D. Marg, Mumbai-26.

....Respondents

(By Advocate : Mrs. K. Rajitha, Sr. CGSC)

OA No.363/2018

Padi Rama Manohara Rao S/o Venkanna Dora,
Aged about 58 years,
Occ : Senior Branch Manager, Films Division, Gr.'B',
Kendriya Sadan, Sultan Bazar, Hyderabad.
Government of India, R/o D.No.3-6-779/A/201,
Lakshmi Narayana Apartments, Street No.15,
Himayath Nagar, Hyderabad-500 029.

...Applicant



(By Advocate : Mr. B.Pavan Kumar)

Vs.

1. Union of India rep by its Secretary,
Ministry of Information and Broadcasting,
Government of India, Shastry Bhavan, New Delhi.

2. The Director General, Films Division,
Government of India,
Ministry of Information and Broadcasting,
24- Peddar Road, Mumbai-400 026.

....Respondents

(By Advocate : Mrs. K. Rajitha, Sr. CGSC)

OA No.421/2018

Padi Rama Manohara Rao S/o Venkanna Dora,
Aged about 58 years,
Occ : Senior Branch Manager, Films Division, Gr.'B',
Kendriya Sadan, Sultan Bazar, Hyderabad.
Government of India, R/o D.No.3-6-779/A/201,
Lakshmi Narayana Apartments, Street No.15,
Himayath Nagar, Hyderabad-500 029.

...Applicant

(By Advocate : Mr. B.Pavan Kumar)

Vs.

1. Union of India rep by its Secretary,
Ministry of Information and Broadcasting,
Government of India, Shastry Bhavan, New Delhi.

2. The Director General, Films Division,
Government of India,
Ministry of Information and Broadcasting,
24- Peddar Road, Mumbai-400 026.

....Respondents

(By Advocate : Mrs. K. Rajitha, Sr. CGSC)

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

Through Video Conferencing:



2. The OAs are filed by the applicant against the same respondents in regard to the validity of the corrigendum issued on 2.12.2013 and the Charge Memo. dt. 19.08.2014 (OA 1052/ 2014), imposition of penalty of 'Censure' imposed vide Order dt. 29.05.2017 (OA 363/2018) and stoppage of one increment with cumulative effect vide order dt. 06.02.2018 consequent to charge Memo dt.26.05.2015 (OA 421 /2018). As the OAs are interrelated, they have been heard together and a common order is passed.

3. Brief facts are that the applicant joined the Films division of the respondents organisation at Hyderabad on 31.3.1997 on being selected by UPSC. The 4th respondent on 12.9.2013, transferred the applicant to Lucknow, which was challenged in OA 1177/2013. Being unwell, applicant was advised rest by the CGHS doctor from 27.9.2013 and therefore proceeded on leave on medical grounds. During the pendency of the OA cited, R-3 took charge of the office and denied GPF/salary. Respondents issued charge memo for not complying with the transfer order. While dismissing OA 1177/2013 on 23.10.2013, respondents were directed by the Tribunal that a regular DDG shall monitor the work of the applicant. Respondents issued the corrigendum dated 2.12.2013 in a manner infringing the order of the Tribunal in OA 1177/2013. He was also issued charge memo dt. 19.08.2014 for not complying with the transfer order. Challenging the Corrigendum dt. 2.12.2013 and the Charge Memo dt. 19.08.2014, the OA 1052/2014 is filed.

4. Contentions of the applicant in respect of the Corrigendum are that the applicant need not comply with the corrigendum since it was contrary to the Tribunal order dated 23.10.2013. The allegation that the applicant did not hand over charge is false. R3 was impatient and he took charge of a public office without obtaining proper transfer of charge, which is arbitrary.



Leave application was sent on 27.9.2013 by incurring office expenditure and R3 took charge on 30.9.2013. Memo sent to the applicant on 1.10.2013 rejecting the leave without referring to the medical certificate submitted. The 3rd respondent in whom the 7th respondent was interested, held additional charge of Trivandrum branch up to 27.9.2013. Applicant was directed for 2nd medical opinion though the transfer was under challenge before the Tribunal. OA 856/2012 was filed contending that 7th respondent has violated DOPT memo dated 30.1.1997 and Hon'ble Supreme Court order in R.K. Sabharwal v. State of Punjab; Ajit Singh II v. State of Punjab; and Dev Dutt v. Union of India in order to favour the 5th & 3rd respondents. The corrigendum issued precluded the applicant from resuming duty and that he could not represent to R-1 since he was arrayed as a party to the OA. Other contentions were also made, which we have gone through carefully.

For not complying with the transfer order, respondents issued the charge memo to the applicant dated 19.8.2014 and consequently, the respondents issued Order dt. 29.05.2017 imposing the penalty of Censure on the applicant. Challenging the said Penalty, the applicant filed OA 363/2016 wherein he contends that IO/PO were appointed by an incompetent authority violating Rule 2 (a) of CCS (CCA) Rules 1965. An

in charge DG exercised quasi judicial powers and imposed the penalty of censure.



Another OA 421/2018 was filed challenging the penalty of withholding of one increment with cumulative effect vide dated 6.2.2018 based on the finalisation of the charge memo dated 26.5.2015 wherein the charge was related to incurrence of unauthorised expenditure without proper authorisation from the competent authority. Applicant contends that an incompetent authority has initiated the disciplinary process. Three persons were engaged to create documents. The charge sheet was issued without listing any witnesses in Annexure IV. Inquiry was not conducted as per rules and that the penalty was imposed by an incompetent officer.

5. In the reply statement filed in respect of OA 1052 of 2014, the respondents state that the applicant was proceeded on disciplinary grounds for incurring expenditure from govt. funds without proper authorization and to conduct an effective inquiry, applicant was transferred to Lucknow. Applicant did not join at Lucknow despite several instructions and instead, went on medical leave. Thereupon, applicant was directed for 2nd medical opinion to Gandhi Hospital, Secunderabad and he did not appear though asked to appear even by the Supdt. Gandhi Hospital. OA 1177/2013 filed challenging the transfer was dismissed on the grounds that the applicant was working at Hyderabad for 13 years but laid a condition that the work of the applicant shall be monitored by a regular DDG. A Senior most officer from the respondents organisation was looking after the duties of DDG as there was no regular incumbent posted to the said post. The Branch Manager from Trivandrum was asked to hold additional charge of



Hyderabad branch. In compliance with the Tribunal order, Corrigendum was issued on 2.12.2013 stating that Sri A.P.Singh, Chief Cameraman, working as in charge DDG would not monitor the work of the applicant. GPF advance of Rs.2 lakhs was credited to the applicant's account by cheque dated 10.10.2014. Necessary action was taken in regard to payment of GPF and in respect of leave for the period 27.9.2013 to 3.10.2013, respondents asserted that leave cannot be demanded as a matter of right, more so in the context of the applicant not appearing for the 2nd medical opinion. OA 856/2012 has no relation to the issued under contest. After issuing show cause notice, charge memo was issued for disobeying orders of transfer, on 19.8.2014.

Applicant filed a rejoinder where he states that Sri V. S.Nagarjan is not the regular DDG. The deponent cannot claim that the corrigendum has not adversely affected the applicant. The 3rd respondent has to take proper charge as per GFR 33/Rule 255(1). The respondents have to issue a fresh transfer order since the imperfection in the transfer order was removed by the Tribunal. Respondents are prejudiced against the applicant. When there was no regular post of DDG in the department, the question of monitoring by a regular DDG would not arise. The applicant has made as many as 33 contentions in the rejoinder which we have gone through carefully.

The respondents in their reply statement in OA 363/2016 have submitted that Sri Mukesh Sharma holding charge of the post of DG, Films Division appointed the IO/PO and Sri Manish Desai holding charge of the post of DG, Films division imposed the penalty. The DG is disciplinary authority for the applicant and as per MOF OM dt.15.10.1960,

an officer holding current charge is empowered to exercise disciplinary powers. The DDG post was revived on 9.5.2011.

No reply has been filed in respect of OA 421/2018. Ld respondent counsel argued that the same contention that the officer holding additional charge of DG post is competent to impose the penalty in question would hold good and that the most of the material furnished in the replies in the other OAs filed by the applicant would suffice to decide the OA.



6. Heard both the counsel and perused the pleadings on record.

7. I. The OA 1052 of 2014 was filed challenging the corrigendum issued by the respondents on 2.12.2013, the show cause notice dated 31.12.2013 and the charge memo dated 19.8.2014. When the challenge was examined against facts on file, it is seen that the respondents have found that the applicant has incurred government expenditure without proper authorisation and therefore, in order to investigate, it was felt proper to transfer the applicant to Lucknow. The transfer order was challenged in OA 1177/2013 which was dismissed with a rider that the work of the applicant will be monitored by a regular DDG. The applicant has not obeyed the transfer order and instead, went on medical leave after the transfer order was issued. Respondents thereon have directed the applicant for second medical opinion and the applicant did not appear before the concerned medical authority even after the applicant being addressed repeatedly. The applicant has not explained as to why he has not appeared before the medical authority for 2nd medical opinion. If he was really sick, there was no need to avoid appearing before the medical authority for 2nd medical opinion. By not appearing before the medical authorities, even after being



directed several times, gives an impression that the applicant was using the medical certificate submitted by him to avoid the transfer. Hence, the action of the applicant in not appearing before the medical authorities for 2nd medical opinion is incorrect. Moreover, the transfer was necessitated in view of the alleged involvement of the applicant in incurring govt. expenditure without proper authorisation. Besides, transfer is incidental to service and the Tribunal has rightly dismissed the OA 1177/2013 but with a condition that applicant's work would be monitored by a regular DDG. The respondents issued a corrigendum stating that Sri A.P. Singh, In-charge DDG will not monitor the work of the applicant on 2.12.2013. Without joining at Lucknow, the applicant is challenging the corrigendum issued which is surprising. It is a well settled legal principle that an employee on transfer can represent after he joins the new post to the competent authority. Instead of joining at Lucknow, applicant had made excessive pleadings about the validity of the corrigendum, which, we have gone through carefully and do not agree with them. Respondents complied with the order of the Tribunal by issuing the corrigendum that Sri A.P.Singh will not monitor the work of the applicant. After joining at Lucknow, the applicant would have a right to challenge the respondents, if his work was not got monitored by a regular DDG. Therefore, we reiterate, though at the cost of repetition, that without joining at Lucknow, the multifarious pleadings made by the applicant would not stand valid in regard to the issue of a comprehensive corrigendum. The applicant has also not handed over charge as per his own admission, which, in fact, is insubordination and for disobeying the orders of transfer, applicant was proceeded on disciplinary grounds and charge memo was issued on 19.8.2014 after issuing a show



cause notice on 31.12.2013. The respondents have been fair enough to follow the Principles of Natural Justice by issuing a show cause notice and then, issuing the charge memo. One cannot find fault with the same. When the applicant has not handed over charge, seeking cover under GFR 33/Rule 255(1) would not arise. The applicant was holding a public office and therefore, the 3rd respondent had to perforce assume charge when the applicant did not hand over charge despite clear directions to this effect by the respondents. Applicant was working in a senior position and he has to work at any place where he is posted. Avoiding transfer on medical grounds which were not got proved through 2nd medical opinion would not go in favour of the applicant. Grant of medical leave is not a right and it is the discretion of the sanctioning authority to be satisfied about the purpose and thereafter decide. In the instant case, the medical leave was applied after the transfer order was issued and the applicant did not present himself for 2nd medical opinion as provided for under rules. The applicant has to submit the medical fitness certificate to avail the medical leave and if he does not submit the same, he is liable for consequential action as held by the Hon'ble High Court of Punjab and Haryana at Chandigarh in ***Karamjit Singh Versus Central Administrative Tribunal, Chandigarh and others*** in Civil Writ Petition No.16521 of 2019 on July 01, 2019. We find that the applicant has evaded the 2nd medical opinion. He did not even contend by producing documentary evidence that he had submitted the medical fitness certificate at the appropriate time to seek grant of medical leave. GPF advance was paid and it was not explained by the applicant as to how OA 856/2012 has any bearing on the case. Thus, the different contentions made by the applicant, we find, are not sustainable in regard to the compliance of

the respondents in issuing the corrigendum in question. Therefore, in view of the above, we do not find any error in regard to the corrigendum, show cause notice and the charge memo issued, as referred to above, by the respondents.



II. In respect of the imposition of the penalty of Censure, the same was imposed after due inquiry vide order dated 29.5.2017. The respondents narrated the background of the community certificate submitted by the applicant which is under legal challenge. The Ministry of Finance vide OM No.F.12(2) EII (A)/60 dated 15.10.1960 has bestowed the officer who holds current charge of a post, with the powers as are vested in a regular incumbent with a caveat that in case the officer who holds current charge shall not modify the decision taken by the regular incumbent without taking the permission of the next higher authority. Therefore, in the context of the above clarification, the objection that the officer holding current charge of the post of DG has appointed the IO/PO will not hold good and also an officer holding the current charge of DG, imposing the penalty of Censure cannot be found fault with. Therefore, the contention of the applicant that incompetent officers appointed IO/PO and imposed the penalty of censure has no sting in it.

III. Coming to the OA 421/2018, respondents have instituted an inquiry into the charge of authorized expenditure, in which the I.O. appointed has held some of the charges as proved. Applicant has been given reasonable opportunity to defend himself in the inquiry. There are 8 articles of charge. The findings of the I.O. dated 19.12.2016, are extracted hereunder:

“ARTICLE –I

That the said Shri P. Rama Manohara Rao, while functioning as Sr. Branch Manager, Films Division, Hyderabad purchased one Lenovo Desktop Computer with HP Laserjet Printer 1020 and UPS from M/s. S.V. Computers and Tele Systems, Hyderabad without getting approval sanction from the competent authority which is against the procedure laid down in the General Financial Rules.

ARTICLE II

Shri P. Rama Manohara Rao, while functioning as Sr. Branch Manager, Films Division procured a computer system (Lenovo) and UPS with the fund of Rs.35,000/- conveyed vide IFA's letter No. G-20011/5/2013-Acctts dated 22.3.2013. IFA had allocated funds to Hyderabad Branch vide above letter for IT but not conveyed approval/ sanction of competent authority for purchase of above items. This is gross violation of the financial rules as well as recommended practice of procurement of equipment and mechanism adopted for the effective functioning the office.

ARTICLE III

M.S.S.V. Computers and Tele Systems has quoted Rs.7,800/- for HP Laserjet printer 1020+ as per DGS &D contract but Shri P. Rama Manohara Rao, Sr. B.M. Films Division procured laser printer of Rs.18,000/-. That means he has not purchased Laser Printer before 31.3.2013 i.e. on expiry of the rate contract period. He has shown negligence, dereliction of duty and failure to perform duties assigned to him within the Rules and Regulations made for procurement of stores in government office which has caused loss to the Government.

The Charged Officer has denied the allegations pertaining to the above three Articles in his reply para (1). Whereas, the Charged Officer while in office had procured the computer, UPS and Printer and conveyed the same to HQ vide letter No. FD/HE/LOC/IA/2012-13 dated 05.04.2013 and requested to allocate additional funds to make payment towards the pending bills. The Charged Officer has clearly violated the financial administrative proceedings. The Charged Officer instead of getting approval/ sanction of the competent authority after submitting the proposal went ahead with the procurement of office equipment with the allocated funds. This is gross violation of financial rules and charged officer has committed an act of insubordination exceeding all administrative parameters.

ARTICLE IV

Shri P. Rama Manohara Rao, Sr. BM, Films Division, has purchased Plain Cold Dispenser on 13.07.2009 for Rs.5,500/- from M/s. Vasantha Distributors, Banjara Hills, Hyderabad, without obtaining financial sanction of the competent authority which exceeds limit of Rs.5,000/- as per the delegation of the Financial Powers conferred by the Head of Department.

ARTICLE V

Shri P. Rama Manohara Rao, Sr. BM, Films Division, has purchased empty tin cans from 12.11.2010 onwards 9 times of the cost ranging from Rs.2100/- to Rs.10500/- at a time. It is also noticed from the statement prepared by the Inquiry Unit regarding purchase of empty tin/ cans during

19th January 2012 to 2nd August 2013 that he has purchased the same for Rs.10,500/- regularly for 5 times without the financial concurrence/ approval of the IFA and sanction of the Competent Authority.

The Charged Officer in his reply has given his views on the above Articles. However, when going through the series of correspondences, it has to be mentioned here that there are lapses on both sides. The Charged Officer has carried out his duties in the interest of the Office. Though there are some violations, it should not be viewed seriously. Moreover, there are no pending audit paras either AG Audit or PAO audit rating to the above purchases.



ARTICLE VI

Shri P. Rama Manohara Rao, Sr. BM, Films Division, has not maintained hierarchy of the administrative system in FD as he always referred the administrative and financial matters directly to higher officers i.e. DA and DG instead of OCD who is the controlling Officer of the Distribution Branches to whom the Branch Manager/ Sr. Branch Manager has to address every issue of the Distribution Branches Office first.

ARTICLE VII

Shri P. Rama Manohara Rao, Sr. BM, Films Division, has not properly carried out the instructions of OCD regarding the issue of Agreement to Cinema Exhibitors for supply of approved films and also irregularities in issue of Agreement with Cinema Exhibitors.

The Charged Officer has denied the allegations on Articles VI & VII. It is to be mentioned here that the Articles VI & VII and the correspondences related to these Articles were not included / listed as part of the Annexure III and these charges were not mentioned in the Memorandum/ Show Cause Notice No. C-14012/3/2013-Vig.dated 8.7.2013 and no witness to support any articles. In this case, it will be improper on my part to substantiate the charges.

ARTICLE VIII

On his transfer, Shri P. Rama Manohara Rao, Sr. BM, Films Division, has purchased did not hand over charge of the Distribution Branch Office to Shri K.Venugopal, Sr. Branch Manager. Trivandrum. Shri Rao did not obey the Competent Authority's order to make suitable alternate arrangements during his absence for the smooth functioning of the Office. This act of Shri Rao is clearly disobedience and insubordination to authority.

The Charged Officer has transferred to Lucknow with immediate effect and was avoiding to join at Lucknow. The CO was asked to hand over the keys of his chamber. Shri K. Venugopal, Sr. Branch Manager. Trivandrum was given additional charge of Hyderabad. As per the normal practice and to ensure smooth functioning of the office. Shri K. Venugopal. Sr. Branch Manager had taken over the additional charge of the Hyderabad under transfer of certification of charge as per the rules and procedure.

The Charged Officer has time and again shown his disobedience and insubordination to authority without following the Rules while incurring expenditure, has not maintained hierarchy of the administrative system and as acted in his own style. Thus, the Charged office has conducted

himself in a manner unbecoming of a Govt. servant attracting penalty under Rules.”



The IO has held most of the charges as proved based on documentary evidence. It cannot be said that the IO has not properly inquired since he was fair to hold that some of the actions of the applicant were taken in the interest of service, though not strictly following the procedure laid down. Documentary evidence was adequate enough for the disciplinary authority to charge the applicant. Citing of witness depends on the nature of lapse involved. If no witness is cited, it does not mean that the charge sheet/inquiry is invalid. Applicant claims that the documents were created without presenting any rational basis. The applicant by the multiple contentions made was only pleading for re-appreciation of evidence which is beyond the purview of the Tribunal. The disciplinary authority has imposed the penalty based on the overall findings of the inquiry officer. Applicant has not cited any rule which prevent an officer of the Govt. of India to act in different roles of being deponent, I.O etc depending on the orders received by them from the competent authorities. The I.O being a deponent in OA 1052/2014 would not forbid him in donning the role of an I.O in the disciplinary inquiry under question in the instant OA, as long as he acts as an independent adjudicator. In fact, the I.O has been fair since he did not hold that all the charges have been held as proved. The charges relate to financial issues involving public funds and public interest which are to be spent strictly as per rules laid down and in fact for this reason of violation of rules in incurring government expenditure, the applicant was transferred from Hyderabad to Lucknow, which was contested by the applicant in 1177/2013 but lost. The in-charge DG is competent to impose

the penalty as per MOF memo dated 15.10.1960 cited supra and hence the contention that an incompetent authority had imposed the penalty is invalid. The applicant being a Government servant has to conduct himself as per relevant and for breach of the rules he is liable to be proceeded on grounds of misconduct/discipline. The applicant for not following the rules in regard to Govt. expenditure was proceeded on disciplinary grounds and after giving reasonable opportunity was given to the applicant the penalty under reference was imposed. Therefore, it cannot be said that the disciplinary proceedings were vindictive and to harass the applicant. For violation of rules the applicant has hold himself responsible and not the respondents. Any Govt. employee would be proceeded if he violates the rules and the applicant can be no exception to the same. Rules have to be followed as observed by the Hon'ble Supreme Court 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 **Seigal'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*

IV. In all the OAs we observe that the applicant has made excessive pleadings some of which were not relevant, in order to protrude the issues into areas which had no nexus to the issue disputed, be in regard to transfer, Corrigendum issued, charge memo and the imposition of the penalties. We have gone though all the contentions carefully and are of the view that the contentions were made in a large numbers, but in essence they do not support the effective cause of the applicant. The action of the respondents was in accordance with rules and on every occasion they have

given reasonable opportunity to defend his action, before coming to a final conclusion.



V. Therefore, based on the aforesaid, we find that the action of the respondents in issuing the corrigendum, show cause notice and the charge memo cited and imposing the penalties of censure/stopping of increment is as per rules and law. The Principles of Natural Justice were followed. It was the applicant who invited disciplinary action on himself because of his conduct and blaming the respondents for his follies is inappropriate as observed by the Hon'ble Supreme Court as under:

A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust, (2010) 1 SCC 287

“they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents.”

Hence, finding no merit in the three OAs in terms of Rules and Law, as discussed in the paras supra, we dismiss all of them, with no order as to costs. Pending MAs shall stand closed.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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