

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

AT HYDERABAD.

O.A.No. 494 of 1987.

Date of Order: 5/12/89

U.S.Jaya Lakshmi

...Applicant

Versus.

The Engineer-in Chief,
COORD and Person Directorate
Army Head Quarters, New Delhi
and others

...Respondents

Counsel for the Applicant: Mr. K.S.R.Anjaneyulu

Counsel for the Respondents: Mr.E.Madan Mohan Rao, Addl. CG.S.c.

C O R A M:

THE HON'BLE SHRI D.SURYA RAO: MEMBER (JUDL.)

THE HON'BLE SHRI R.BALA SUBRAMANIAM: MEMBER (ADMN.)

(Judgment delivered by Shri D.Surya Rao, Member (Judicial))

The applicant herein is an employee of the Garrison Engineer's Office Chandyangutta, Hyderabad. He has filed this application to set-aside the order of punishment of dismissal from service imposed by the 2nd respondent by his order no.130806/1/R&D/368/E1D, dted 15-7-1986 and order No.78655/798/86/E1D, dated 27-2-1987 passed by the 1st respondent whereby he converted the punishment of dismissal from service imposed by the 2nd respondent to one of reduction in rank from the Post of U.D.C. to the lower post of L.D.C.for a period of three years. The earlier order of the 2nd respondent dated 15-7-1986 was imposed after framing of charges and

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holding an enquiry under Rule 14 of the CCS(CCA) Rules, 1965. The main contentions raised in the application are that the applicant was not supplied with a copy of the preliminary enquiry report which has been referred to in the charge memo, that the prosecution never got the documents marked as Exhibits, that the witnesses relied on in support of the charge were not examined and not made available for cross-examination, that there is no consideration of the defence evidence adduced to establish the contention that the Section Officer harassed and victimised the applicant, that the officer who conducted preliminary enquiry was not made available for cross-examination, that there is no evidence adduced in the enquiry in support of the charge, that the enquiry was not conducted in accordance with the procedure laid down in the CCS(CCA) Rules and that there was no fair trial. Placing reliance upon the full bench decision of the Bombay Bench of the Tribunal in Premnath K. Sharma Vs. Union of India (1988(6)ATC904), it is further contended at the time of arguments/hearing that the Enquiry Officer's report should have been furnished even before the disciplinary authority imposed the punishment so as to enable the applicant to assail the correctness of the findings of the Enquiry Officer before the disciplinary authority. It is, therefore, contended that the orders dated 15-7-1986 and 27-2-1987 passed by the 2nd and 1st respondents respectively are illegal and void.

2. The respondents have filed a counter denying the various contentions raised by the applicant. The main contention is that the charge against the applicant was for

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dis-obedience of a transfer order transferring the applicant from E8 section in the Garrison Engineer's Office, to E1 Section in the same office and that the same amounts to indiscipline and dereliction of duty. It is stated that the Enquiry Officer's report is not vitiated since it is based entirely on documentary evidence and that a prima facie case has been established against the applicant without need to examine the witnesses cited along with the chargesheet.

3. We have heard the learned counsel for the applicant Shri K.S.R. Anjaneyulu, and Shri E. Madan Mohan Rao, Addl. Standing Counsel for the Department.

4. It is unnecessary to go into the contentions raised in the application as the matter can be disposed of merely on the ground that it is covered by the Full Bench decision rendered by the Bombay Bench of the Tribunal in Premnath K. Sharma Vs. Union of India (1988(6) ATC 904), wherein it was held as follows:

" Even after the 42nd Amendment to Article 311(2) the enquiry cannot be said to conclude by the submission of an enquiry report. It continues till the Disciplinary Authority receives the entire material and reserves it for recording his findings on charges and imposes the penalty, if any. Before the matter is finally reserved for recording such finding, any material that is placed on record in the shape of the enquiry report must be given to the Charged officer and he must be accorded a reasonable opportunity to make his representation ----- Failure to do so would amount to denying reasonable opportunity to the charged officer to make his representation in respect of charges levelled against him."

Admittedly, in the instant case, the Enquiry Officer's report has been given only along with the punishment order and not before the disciplinary authority came to a final conclusion that the applicant should be punished.

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For these reasons, it follows that the enquiry is vitiated and that the orders passed by the 1st respondent in Proceedings No.78655/798/86/EID, dated 27-2-1987 agreeing with the disciplinary authority that the charges are proved and consequently imposing upon the applicant the punishment of reduction in rank is illegal and have to be quashed. This, however, will not preclude the respondents from further proceeding with the enquiry by enabling the applicant to make his representation against the Enquiry Officer's report and to complete the disciplinary proceedings from that stage. Since, in this case, the applicant has received a copy of the Enquiry Officer's report alongwith the order of punishment, it would be unnecessary to direct the respondents to once again furnish a copy of the Enquiry Officer's report. If the respondents choose to continue the disciplinary proceedings, they are directed to intimate the applicant accordingly and to give her an opportunity to assail the correctness of the Enquiry Officer's report. They are directed to do so with in ~~the~~ one month from the date of receipt of this order. On receipt of such notice from the respondents, the applicant is directed to submit her representation against the Enquiry Officer's report within a period of one month thereafter. The disciplinary authority is further directed to dispose of the representation of the applicant within 6 weeks ^{of the receipt of the same. As observed} ~~As~~ in the case decided by the full bench, nothing said herein would affect the decision of the disciplinary authority and we would hasten to add that this order of the Tribunal is not a direction to necessarily continue the disciplinary proceedings. That is entirely left to the discretion of the Disciplinary Authority.

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5. In the result, the application is allowed to the extent indicated above. No order as to costs.

D. Surya Rao
(D.SURYA RAO)
MEMBER (JUDICIAL)

R. Bala Subramanian
(R.BALA SUBRAMANIAN)
MEMBER (ADMN.)

(Dictated in open court)
5th December, 1989.

S. Venkatesh
Deputy Registrar (Judl)
11/14/89

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To

- 1). The Engineer-in-Chief, COORD and Person Directorate, Army Head Quarters, New Delhi.
- 2). The Chief Engineer, Head Quarters, Southern Command, Pune.
- 3). The Chief Engineer(P) R&D, Secunderabad.-500003.
- 4). The Garrison Engineer (P)(I) R&D? Kanchan Bagh, Hyderabad.
- 5). One copy to Mr.K.S.R.Anjaneyulu, Advocate,1-1-365/A, Jawaharnagar, Bakaram, Hyderabad-500020.
- 6). One copy to Mr.E.Madan Mohan Rao, Addl.CGSC, CAT, Hyderabad.
- 7). One spare copy.

5th Dec 89
11/14/89