

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 784/87
T.A.No.

Date of Decision : 24.9.1990

P. Venkateswarlu

Petitioner.

Sri M. Surendar Rao

Advocate for the
petitioner (s)

Versus

AP Income Tax Dept. Employees Coop.
Society Ltd., Hyderabad & another

Respondent.

Mr. F. Madan Mohan Rao, Addl. CGSC

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. B.N. JAYASIMHA, VC

THE HON'BLE MR. J. NARASIMHA MURTHY, MEMBER(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *m*
2. To be referred to the Reporter or not? *m*
3. Whether their Lordships wish to see the fair copy of the Judgment? *A*
4. Whether it needs to be circulated to other Benches of the Tribunal? *m*
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

BNS
(HBNJ)

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(HJNM)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH AT : HYDERABAD

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O.A.No. 784/87

Date of order: 24.9.'90

BETWEEN

P. Venkateswarlu,

.. Applicant

Versus

1) A.P. Incometax Dept. Employees
Co-op. Society Ltd., Aayakar
Bhavan, Basheer Bagh,
Hyderabad.

2) The Chief Commissioner of
Income Tax (Admn.)
Income Tax Dept. Co-op.
Society Ltd., Aayakar Bhavan,
Basheerbagh,
Hyderabad.

.. Respondents

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APPEARANCE

For the applicant

: Sri M. Surender Rao, Advocate

For the Respondents

: Sri E. Madan Mohan Rao, Addl.
Standing Counsel for Central
Govt.

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CORAM

THE HON'BLE SHRI B.N. JAYASIMHA, VICE CHAIRMAN

THE HON'BLE SHRI J. NARASIMHA MURTHY, MEMBER (JUDL.)

(Judgement of the Bench delivered by Shri B.N. Jayasimha)
Hon'ble Vice Chairman

Handwritten signature and initials

The applicant herein is a Counter Clerk in the Income Tax Dept. Co-op. Canteen Society Ltd., Hyderabad. He has filed this application questioning the proceedings No. PF/PV/87-88 dt. 30.6.87 and Memorandum Con. No. 116/86 dt. 30.10.1987 issued by respondent No. 1 and 2 by which a penalty of reduction in rank was imposed upon him which was modified in the order dt. 30.10.87 and a Show Cause Notice issued for enhancing the punishment imposed.

2. The applicant states that he was appointed by an order of the Secretary on 26.11.73 as a Counter Clerk in the Canteen. He has been discharging the duties without any complaint and he was promoted to the post of Asst. Manager on 3.12.1979. He is an employee of the Income Tax Dept., Employees Coop. Canteen Ltd., and *His Services* are governed by the notification dt. 23.12.1980 issued by the Dept. of Personnel & Admn. Reforms. He was placed under suspension by an order of the respondent No. 1, dated 29.8.84 stating that the disciplinary proceedings were pending against him. An enquiry was ordered to be held under Rule 20 of the Departmental Canteen Employees' Rules, 1980. The applicant denied the allegations made against him and requested that an opportunity be given to *him* to defend his case. An enquiry officer was appointed by letter dt. 18.11.1985, and that without giving an opportunity to cross-examine the witnesses the evidence was

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recorded. A statement was obtained from the applicant and on the basis of the Enquiry Report, the Secretary of the Society by Proceedings No.PF/PV/87-88 dated 30.6.87 passed an order under Rule 20(10) of GSR 54 imposing a punishment of 'Reduction in Rank' on the applicant i.e, reverting the applicant from the post of Asst. Manager to that of Counter Clerk. The applicant states that he is in no way connected with the affairs of the Credit Society; that he was not an employee of Credit Society and contends that he was appointed in ^{the} canteen and therefore no charge ^{sheer} could have been ^{issued in respect of} matters relating to the Credit Society. He was only asked to look after the work of the Credit Society. The applicant contends that the action of the respondent No.1 in imposing punishment of reduction in rank is illegal and in violation of natural justice.

3. Aggrieved by the orders of the respondent No.1, the applicant submitted his appeal on 31.7.87 under Schedule 'C' of the Departmental Canteen Employees' Rules, 1980 to the Chairman of the Managing Committee. The Chief Commissioner of Income Tax (Admn.) directed the applicant to explain as to why the penalty imposed on him should not be enhanced. Instead of considering the appeal of the applicant sympathetically, the Chief Commissioner has issued notice for enhancement of punishment which he contends ^{is} illegal and without jurisdiction. The Chief Commissioner is not the competent authority and therefore cannot issue any Show Cause Notice. On these grounds the applicant has filed this application.

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4. The respondents in their counter stated that there is no entity called Income Tax Dept. Coop. Canteen Society Ltd., The main organisation in Income Tax Dept., is "A.P. Income Tax Dept. Employees Co-op. Society Ltd., having commenced its business some time in 1965. One of the objectives of the Society is to run a canteen or eating house for the supply of eatables beverages and other stores for the benefit of the members as per clause (f) of the objectives of Society. The Society started a canteen in 1965, and the applicant was appointed as Counter Clerk/Salesman by the Society w.e.f. 26.11.1973. It is admitted that he was promoted as Asst. Manager of the Income Tax Dept. Employees Co-op. Society Canteen by order dt. 3.12.1979. He was placed under suspension for violating Conduct Rules specified in Sch. D to Rule 17 of the Service Rules, 1980. An inquiry was instituted by appointing an Enquiry Officer and on the basis of the Enquiry Report the Disciplinary Authority passed the impugned order. The allegation that the enquiry was conducted in violation of principles of natural justice are denied. The applicant himself defended his case before the Enquiry Officer through^{out} the proceedings. The applicant did not choose to cross-examine the witnesses and thus he waived his right of cross-examination.

The respondents also state that the Canteen is one of the limbs of the Credit Society and it has no separate existence or entity. All the employees of the Society whether appointed for the work of the Society or for the

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for the work of canteen are appointed by the Credit Society only and not by the Canteen as such. The allegation of the applicant that the Secretary is the concerned officer and he used to endorse the necessary bills and vouchers and he was merely assisting the Secretary as per the oral orders and that he has been made scape-goat is incorrect and baseless. If the applicant had obtained signatures of the management, when he passed on various fictitious loans, he could as well have produced such evidence before the Enquiry Officer when serious allegation of embezzlement of funds of the Society was levelled against him. On the basis of the report of the Enquiry Officer, the Secretary of the Credit Society passed an order imposing punishment of Reduction in Rank in as much as the serious charges were proved against the applicant. The Enquiry Officer has ~~found~~ ^{found} ~~that~~ ^{found} that there was clear misappropriation of the funds of the Society to an extent of Rs.9990/- and that an amount of Rs.2140/- could be recovered from the applicant. It is well within the purview of the appellate authority to issue a notice for enhancing the punishment. The respondents contend that the grounds urged by the applicant are without any merit and therefore liable to be dismissed.

We have heard Shri M. Surender Rao, learned Counsel for the applicant and Shri E. Madan Mohan Rao, Addl. Standing Counsel for Central Govt. The first

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contention urged by Sri Surender Rao is that disciplinary action has been initiated against the applicant under GSR No.54 (Departmental Canteen Employees) (Recruitment and Conditions Rules, 1980). These rules apply to the incumbents in the Canteen. As action has been initiated under these rules the applicant should be deemed to be an employee of the Canteen. He cannot be proceeded against for any irregularities alleged to have been committed by him in relation to his work in the society. He could be proceeded ~~proceeded only~~ in accordance with the rules only in respect of his work connected with Canteen and not with regard to any matter connected with the society. He therefore states that as the charge memo contains allegation relating to the affairs of the society also the entire proceedings are liable to be quashed.

Shri E. Madan Mohan Rao states that the applicant was in fact appointed in the society but asked to discharge certain duties in the Canteen also. The respondents have adopted the Departmental Canteen Employees (Recruitment and Conditions of Service) Rules, 1980 for the members of the society also and proceeded against the applicant.

From the rival contentions it is seen that while the applicant claims that he is an employee of the Canteen, the respondents contend that he is an employee

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To

1. The A.P. Income Tax Dept. Employees
Co-op. Society Ltd., Aayakar Bhavan,
Basheer Bagh, Hyderabad.
2. The Chief Commissioner of Income Tax(Admn.)
Income Tax Dept.Co-op. Society Ltd.,
Aayakar Bhavan, Basheerbagh, Hyderabad.
3. One copy to Mr.M.Surendar Rao, Advocate
Plot No.5 Bagh Amberpet, Hyderabad.
4. One copy to Mr.E.Madanmohan Rao, Addl.CGSC.CAT.Hyd.Bench.
5. One copy to Hon'ble Mr.J.Narasimha Murty. Member(J) CAT.Hyd-Bench.
6. One spare copy.

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of the society. We do not find it necessary to give any finding on this. It is clear however that the applicant has been proceeded applying the Departmental Canteen Employees (Recruitment and Considtions of Services) Rules, 1980 and the Charge Memo contains allegations connected with his work both in the canteen as well as in the society. Obviously this could not have been done. The disciplinary action can be initiated separately by the society or by the department depending upon his status viz., whether he is an employee of the society or an employee of the departmental canteen. In the result both the impugned orders are set aside and the recoveries made will be paid back to the applicant. However, this order does not preclude the society/department from proceeding against the applicant after determining his status. The application is allowed subject to the above directions. No order as to costs.

B.N. Jayasimha
(B.N. JAYASIMHA)
VICE CHAIRMAN

MS
(J. NARASIMHA MURTHY)
MEMBER (JUDICIAL)

Dictated in the open court

Dt. 24.9.1990

S. Narasimha Murthy
Sov Deputy Registrar (Judl)

Mvs

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