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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH: HYDERABAD

O.A. NO. 193 of 1987.

~~T.A. NO.~~

DATE OF DECISION 13/2/90

R. Paulraj

Petitioner

Shri A. Gopal Reddy

Advocate for the
Petitioner (s)

Versus

The Sr. Administrative Officer,

Respondent

Department of Atomic Energy,

Nuclear Fuel Complex, Hyderabad and others

Shri N. Bhaskar Rao

Advocate for the
Respondent (s)

CORAM

The Hon' ble Mr. J. Narasimha Murthy, Member (Judl)

The Hon' ble Mr. R. Balasubramanian, Member (Admn)

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. whether their Lordship wish to see the fair copy of the Judgment?
4. whether it needs to be circulated to other Benches of the Tribunal?
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)

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HRBS
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH : AT HYDERABAD

O.A.No.193 of 1987.

Date at Judgment 13.2.90

R.Paulraj

.. Applicant

Versus

The Sr. Administrative
Officer, Department of
Atomic Energy, Nuclear
Fuel Complex, Hyderabad
and others

.. Respondents

COUNSEL FOR APPLICANT : Shri A.GOPAL REDDY

COUNSEL FOR RESPONDENTS : Shri N.BHASKAR RAO

CORAM:

HONOURABLE SHRI J.NARASIMHA MURTHY : MEMBER (JUDL)

HONOURABLE SHRI R.BALASUBRAMANIAN : MEMBER (ADMN)

I Judgment as per Hon'ble Shri R.Balasubramanian,
Member (Admn) I

This is an application filed under section 19
of the Administrative Tribunal Act by Shri R.Paulraj,
formerly an employee of the Nuclear Fuel Complex
against the Dy. Chief Executive, Department of Atomic
Energy, Nuclear Fuel Complex, Hyderabad and others.

2) The applicant joined the Nuclear Fuel Complex,
Hyderabad in July, 1972. He joined as Tradesman 'B'.
on leave
He proceeded on medical grounds from 3.8.80 and reported
on 22.1.81 alongwith a medical fitness certificate.
He was not taken on duty but instead was asked to report
to the Medical Officer of the Site Dispensary.

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The Medical Officer examined him and referred him to other Doctors for further opinion. The applicant says that he had no money and requested the Senior Administrative Officer to take him on duty and ^{then} proceed with other steps. According to the applicant the Senior Administrative Officer asked him to report for duty to the Plant Manager. The Plant Manager demanded an undertaking from the applicant before taking him to duty and the applicant refused to give the same. After 2-3 days' waiting the applicant had left Hyderabad to his home town Madurai. His repeated representations to take him on duty produced no results. A charge-sheet was issued to him on 25.4.81 the charges being that he remained absent from duty unauthorisedly from 1.8.80 onwards and that he had not complied with the instructions of the Medical Officer regarding further investigations for assessment of his health. An enquiry was instituted. The applicant wanted TA/DA for coming from Madurai to Hyderabad for attending the enquiry. This was not agreed to. Initially the applicant wanted Shri J.V.Lakshmana Rao, an official in the Department of Telecommunications at Hyderabad to be his Defence Assistant. The respondent who took up the matter with the Department of Telecommunications ^{was} ~~were~~ told that the services of Shri J.V.Lakshmana Rao would not be available. Later, the applicant chose the services of one Shri Rajamanickam, a retired official of the Nuclear Fuel Complex settled at Madurai. He wanted TA/DA for the Defence Assistant also.

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The respondent did not agree to this. A request from the applicant to conduct the enquiry at Madurai instead of Hyderabad was also not agreed to. Under these circumstances the applicant ^{who} ~~was~~ attended the enquiry proceedings on 28.8.81 ~~but~~ did not attend ^{the} later sittings. He also represented to the Principal Secretary, Department of Atomic Energy alleging bias on the part of the Enquiry Officer and asked for a change of Enquiry Officer. This was not agreed to. Finally the respondent issued the impugned order dated 2.3.84 removing him from service with immediate effect. Against this the applicant preferred an appeal on 29.3.84. The appeal was rejected finally on 28.6.87. The applicant prays that the punishment order dated 2.3.84 confirmed subsequently by the appellate authority vide his order dated 28.6.87 be quashed; to treat the period of service from 22.1.81 onwards till the date of restatement as duty and pay all consequential benefits.

3) The application is opposed by the respondents. Their version is that the applicant who was in the habit of proceeding on leave frequently dislocating the work applied for leave for 56 days from 6.6.80 for urgent work at his native place. This leave was sanctioned. On 29.7.80 he sent a letter that his family problem still continued and wanted his leave to be extended upto 30.10.80. Since the respondent did not want to sanction the leave and ^{hence} ~~instead~~ sent a telegram ~~on~~ 8.8.80 stating that the extension of leave from 1.8.80 was not granted and asked

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and asked him to report for duty immediately. The applicant instead of joining duty sent a medical certificate dated 4.8.80 issued by a Private Registered Medical Practitioner mentioning that he was undergoing treatment for Peptic Ulcer. A telegram was again sent on 6.9.80 asking the official to report for duty immediately. The applicant who was asked to produce a medical certificate from a Civil Surgeon of a Government Hospital produced a medical certificate from the Honorary Physician of the Govt. Erskina Hospital, Madurai requesting leave for one month from 1.10.80. This was not agreed to and a telegram was sent to the official on 14.12.80 saying that the leave was not granted and asking him to report ^{to} before the Medical Officer, Nuclear Fuel Complex for assessment of his health. The applicant who returned to Hyderabad no doubt appeared before the Medical Officer but did not carry out his instructions to get himself examined by other Doctors. Instead, he left Hyderabad after making certain accusations that he was being asked to give an undertaking. He was later charge-sheeted on ²⁵⁻⁴⁻⁸¹ ~~28-3-81~~. and ~~_____~~ The respondents states that the request of the applicant for conducting the enquiry at Madurai was not justified and therefore did not agree to that request. They also contend that though they were not required to take up the matter they ^{still tried} ~~did~~ to secure the services of Shri J.V. Lakshmana Rao as a Defence Assistant but that they could not succeed because the concerned Department did not agree

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to ^{release} Shri J.V. Lakshmana Rao, but They subsequently approved the nomination of Shri Rajamanickam as a Defence Assistant but they contend that the enquiry being conducted at Hyderabad ^(Headquarters) there is no provision for payment of TA/DA either to the applicant or the Defence Assistant. They also denied that there was any bias on the part of the Enquiry Officer. Subsequently an order of punishment was issued, the applicant made an appeal and the appeal was rejected. It is the contention of the respondents that they provided full opportunities to the applicant to defend his case and there is no infirmity in the conduct of the disciplinary proceedings.

4.0) The question to be decided in this case is whether in the face of unauthorised absence of the applicant the disciplinary proceedings were conducted in accordance with the rules and whether he was given full opportunities to defend himself. We have heard both the learned counsels for the applicant and the respondents and had gone through the case and also the records of the Nuclear Fuel Complex. The applicant has assailed the enquiry mainly on the following grounds:-

- (a) that it was not held at Madurai to suit his requirement,
- (b) that TA/DA was not paid to him and to the Defence Assistant and
- (c) that the Enquiry Officer was biased.

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4.1) The applicant proceeded on leave initially for some private work like construction of his house and wanted to extend the leave that was sanctioned to him. When this was denied he took recourse to application for leave on medical grounds. When he finally reported at Hyderabad in January, 1981 and when he was asked to report to the Medical Officer, he no doubt did so, but did not carry out the instructions of the Medical Officer. Instead, blaming the Production Manager for demanding certain certificate he left Hyderabad on the plea that being on leave without pay for long time he had no money to sustain himself in Hyderabad. The respondents say that no undertaking was demanded from him. The applicant has also not stated what kind of undertaking was required from him and what his objection was to give the undertaking. All that the applicant says is that an undertaking was demanded from him and that he refused to give the same. We fail to appreciate the action of the applicant who had come all the way from Madurai with the expressed intention of joining duty and had abruptly left Hyderabad on a very flimsy ground. We now come to the enquiry portion.

4.2) We do not find anything wrong with the respondents in not agreeing to hold the enquiry at Madurai. Normally departmental enquiries are held at headquarters excepting in specific cases where the disciplinary authority feels the necessity to hold it in a place other than the headquarters. It is quite clear that the enquiry being held in the headquarters itself the applicant himself

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is not entitled to any TA/DA. As to the eligibility of TA/DA for the Defence Assistant, the respondents say that the enquiry being conducted in the headquarters the Defence Assistant also is not eligible for TA/DA. We do not agree with this contention of the respondents. Vide Instruction No.8 contained in Appendix 4 (Ministry of Home Affairs, Department of Personnel O.M.No.35014/1/77-Ests(A) dated 24.8.77) contained in Swamy's Compilation of C.C.S.(C.C.A.) Rules there is provision for a retired Govt. servant assisting a Govt. servant in disciplinary proceedings to be paid TA/DA. In the instant case Shri Rajamanickam whose services as Defence Assistant were subsequently approved by the disciplinary authority is entitled to payment of TA/DA. Be that as it may, the applicant instead of making the TA/DA advance as a reason for not attending the enquiry should have taken his Defence Assistant first without TA/DA advance and have claimed the TA/DA later. While there is provision for TA/DA for the Defence Assistant, there is no rule which demands that he should be paid advance. It is for the delinquent official who is keen to defend himself to make all such arrangements and later claim whatever is due to the Defence Assistant under the rules. We feel that this action of the respondent does not amount to denial of facility to the applicant to defend his case. It is clear that the applicant has consistently refused to cooperate with the Enquiry Officer. On the other hand he had levelled charges of bias against the Enquiry Officer and made

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a request for a change of Enquiry Officer on the plea that the Enquiry Officer was biased. We see from the records of the respondents that they had examined this question and found no reason to accede to the request of the applicant.

4.3 The punishment order was passed on 2.3.84 and the applicant states that he preferred an appeal on 29.3.84. It is only much long after in December, 1986 that the applicant chose to send a reminder to the Dy. Chief Executive, Nuclear Fuel Complex, Hyderabad regarding disposal of his appeal. On receipt of this reminder on 29.12.86 together with an unsigned copy of the appeal dated 29.3.84 purported to have been sent by the applicant the respondents' office examined whether the appeal had been received earlier and, if so, the disposal thereof. They found that his original appeal dated 29.3.84 had not been received in the office. Thereupon on 13.2.87 the respondents addressed the applicant stating that his appeal had not been received and that even at that stage they are ready to entertain the appeal and suggested to him to send a signed copy alongwith the grounds for delay. Thereafter the applicant again sent an appeal which was duly considered. In the appeal he had raised a number of points mostly relating to the enquiry. Most of these points had otherwise been covered in our analysis also. The appellate authority, we find, had given considerable

To:

1. The Senior Administrative Officer, Department of Atomic Energy, Nuclear Fuel complex, ECIL P.O., Hyderabad-500 762.
2. The Deputy Chief Executive(A), Department of Atomic Energy, Nuclear Fuel Complex, ECIL P.O., Hyderabad-500 762.
3. The Chief Executive, -Department of Atomic Energy, Nuclear Fuel complex, ECIL P.O., Hyderabad-500 762.
4. One copy to Mr.A.Gopal Reddy, Advocate, 3-3-42, Station Road, Kachiguda, Hyderabad-500 027.
5. One copy to Mr.N.Bhaskara Rao Addl.CGSC,CAT,Hyderabad.
6. One copy to Hon'ble Mr.R.Balasubramanian:Member:(A), CAT,Hyderabad.
7. One spare copy.

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thought to every aspect and point that the applicant had raised and found that there was no cause for setting aside the punishment. The appellate authority had accordingly confirmed the punishment order issued.

4.4) We find that the applicant who had absented himself unauthorisedly had later failed to cooperate with the enquiring authority. It is difficult to believe that an official who harbours a feeling that he has been unjustly punished prefers an appeal and waits for nearly three years before sending a reminder to the appellate authority.

4.5) In the light of the above, we feel there is no case for this Tribunal to intervene and accordingly dismiss the application. There is no order as to costs.

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(J.NARASIMHA MURTHY)
Member (Judl)

R. Balasubramanian

(R.BALASUBRAMANIAN)
Member (Admn)

Dated 13 - 2 - 1990

S. Venkatesh
DEPUTY REGISTRAR (J)
13/2/90

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