

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

OA.NO.644/89

Date of order: 24th June, 1992

BETWEEN

Sri N.S.Raju

.. Applicant

A N D

1. Deputy Secretary,
Department of Space
Cauvery Bhawan, Kempegowda Rd,
Bangalore-560 009

2. Controller
Indian Space Research Organisation
SHAR Centre, Sriharikota
Nellore District
Andhra Pradesh

.. Respondents

Counsel for the Applicant: Mr V. Raja Gopal Reddy

Counsel for the Respondents: Mr N. Bhaskara Rao, Addl. CGSC

CORAM:

HON'BLE SHRI P.C.JAIN, MEMBER (ADMN), PRINCIPAL BENCH

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDD.)

(Order of the Division Bench delivered by Hon'ble
Shri P.C.Jain, Member (Admn), Principal Bench)

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who is Scientist/Engineer Gr. 'SC' in the Forest and Horticulture Section, SHAR Centre, Sriharikota, has assailed the impugned order dated 25.10.1988 to withhold his ~~xx~~ increments for a period of two years with the stiputation that at the end he will be restored to the Grade to which he would have gone but for the stoppage that was imposed on him. ~~He has~~

2. He has prayed for quashing the above impugned order and for a direction to the respondents to give effect to his promotion to the post of 'SD' ~~xxxxxx~~ (Section-5) with effect

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from the date of his selection by promotion as such with all monetary or ~~the~~ other benefits including further promotions in the normal course.

3. The respondents have contested the OA by filing a reply. However, no rejoinder to the counter affidavit has been filed by the applicant. We have carefully perused the material on record and also heard the learned counsels of both the parties.

4. Facts relevant for the issue before us are-

- i) that the applicant was issued a memorandum of charges dated 10.1.84, on four accounts.
- ii) As the applicant denied the charges, an Enquiry Officer was appointed and an oral enquiry was held in which the applicant participated.
- iii) The Enquiry Officer held that only articles of charges II & IV were established.
- iv) After consulting the Central Vigilance Commission, and the UPSC, the Disciplinary authority imposed the aforesaid punishment.
- v) As the President of India was the disciplinary authority in this case and the impugned order of punishment had been passed by him, no appeal lies under the CCS and CCA rules and as such, no appeal was preferred by the applicant.

4. The first contention that the learned counsel for the applicant very strongly urged before us is that, apart from the applicant, 5 other officers were involved in the transaction in respect of which, the applicant was issued a memorandum of charge sheet, and, therefore, the Disciplinary Authority should have ordered for holding common proceeding against all the six persons in accordance with the requirement

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of Rule 18 of the CES(CCA) Rules, 1965. Rule 18 of the CCS(CCA) Rules, 1965 ibid is extracted below:

"18. Common Proceedings

(1) Where two or more Government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

(2) Subject to the provisions of sub-rule(4) of Rule 12, any such order shall specify-

- i) the authority which may function as the disciplinary authority for the purpose of such common proceeding;
- ii) the penalties specified in Rule 11 which such disciplinary authority shall be competent to impose;
- iii) whether the procedure laid down in Rule 14 and Rule 15 or Rule 16 shall be followed in the proceeding."

5. From a perusal of the above rule, it is clear that the Competent Authority has the power to order common proceedings. If common proceedings are ordered what else would be done by the competent authority is also laid down in sub-rule(2) of Rule 18. The learned counsel for the applicant emphasised that the alleged misconduct involved not only him but the sub-ordinates who have also been chargesheeted and while the other 5 had been exonerated from the charges levelled against them, the applicant has been found guilty of two of the four articles of charge levelled against him.

Ans.

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If common proceedings had been held, he would also have been exonerated because the other five in this case according to him were exonerated. The applicant has placed on record the orders passed in the disciplinary proceedings initiated only against two of the remaining 5 officials. A copy of the enquiry report even in these two cases has not been placed on record to enable us to appreciate whether the evidence adduced in the enquiry in those two cases had any relevance to the enquiry as against the applicant. In the other 3 cases, he has not even placed on record the articles of charge that were levelled against them. However, from the material on record as stated above, it is clear that the articles of charges levelled against the applicant were substantially different than the article of charge shown to have been levelled against two of the remaining 5 officials. For example, article of charge no.II could not have been levelled against other 5 officials as it relates to the supervision which was to be and which was not exercised by the applicant in this matter. Similarly, article of charge no.I levelled against the applicant does not find any mention in the other two cases, as they directly or indirectly are not shown to be connected with the article of charge. In the two cases, there was only one article of charge. In the case of applicant, there were 4 articles of charge. In such a situation, we do not think it would be either be appropriate, or it could have been appropriate, or it was necessary in terms of the provisions of Rule 18 of the CCS(CCA) Rules, 1965 to order common proceedings. The enquiry officer appointed in the case of the applicant was different than the enquiry officer appointed in the other cases. In the absence of material on record before us, we cannot even say whether the documentary evidence and oral evidence cited in all the cases was the same. Further, the applicant has neither

averred in his OA nor has shown to us during the course of oral hearing as to whether not holding of common proceedings has caused prejudice to the applicant, and if so, in what manner. This aspect becomes more important in the light of the submission fairly made by the learned counsel for the applicant, ~~that~~ is not attaching the enquiry ~~held~~ held by the enquiry officer, so far as the applicant is concerned, either in regard to the observance of the prescribed procedure or as having violated any principles of natural justice. We are therefore, of the view that we cannot uphold the contention of the applicant that the disciplinary authority was bound in accordance with the provision of Rule 18 of CCS/CCA Rules to order common proceedings against all the six officials including the applicant and that, any prejudice has been caused allegedly in terms of miscarriage of justice to the applicant as a result thereof.

6. We may, next deal with the contention of the learned counsel for the applicant that ~~while~~ the other 5 officials ~~have~~ been exonerated of the charges levelled against them, ~~the~~ the applicant has been found guilty and punished ~~in spite~~ ^{in respect} of the charges that were found to be proved against him even though the gravamen of these two charges is substantially the same as the substance of the articles of charges levelled against the other 5 officials. He, herefore, sought to contend that there had been a miscarriage of justice in his case. However, we are not persuaded to uphold his contention for the simple reason that admittedly, there was separate enquiry, evidence adduced ^{was} separate, it was appraised by separate

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enquiry officers and decisions were taken by Disciplinary authorities on the merits of each case. If the evidence that was adduced in other enquiry or any finding thereon could not have been read against the applicant if the findings in the other cases had been adverse, it would be illogical to argue that the findings in the other cases be relied upon in this case as they are favourable to the applicant. The general proposition of law is that no enquiry can be held against a person at his back and on the basis of such an enquiry he cannot be punished. Therefore, evidence that was adduced in the enquiry against other officials cannot legally be used for arriving at a finding in the enquiry separately held against the applicant, and in which separate evidence was adduced. Therefore, the case of the applicant has got to be adjudged on the basis of the enquiry held in this case and on the basis of the evidence that was adduced in the enquiry in his case. The learned counsel for the applicant has not cited any judgement or rule or instructions to the effect that the finding in a separate enquiry, on a separate article of charge against a different person should be applied to another person against whom separate enquiry has been held and evidence has been adduced separately.

7. Learned counsel for the applicant rightly and fairly submitted that the enquiry held against the applicant cannot be said to be a case of 'no evidence'. He, however, drew our attention to the advice of the UPSC, wherein the commission had observed that no malafide has been established on the part of the applicant. If any malafide had been established against the applicant, presumably, the punishment imposed would have been significantly different and obviously severe than what has been imposed. The punishment imposed in this case is only with-holding of 2 increments and that

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also without cumulative effect. Even ~~xx~~ otherwise, the Tribunal is not competent to go into the quantum of punishment if the enquiry is held consistent with the rules and principles of natural justice have been observed and if there is evidence in support of the charges held proved. In this context, the decision~~x~~ of Supreme Court in AIR 1989 SC 1185 Parma Nanda Vs State of Haryana and others may be cited.

8. As regards the prayer of the applicant for promotion as Scientist/Engineer Gr!SD' with effect from the date of his selection by promotion with all consequential benefits, it may be mentioned that the applicant had earlier filed OA 553/90 in respect of his grievance of not having been duly considered for promotion from the year 1985. The said OA was disposed by a judgement dated 14.12.90 with the following directions:-

"In the light of the above, we direct the respondents to constitute a Review D.P.C. and to consider the case of the applicant as on 1985 for promotion as Scientist/Engineer 'SD' with reference to his Confidential report as of that date and the punishment imposed upon him in the disciplinary proceedings. In the event of the Review Committee not finding him fit, they will consider his case for successive years whenever a D.P.C. met and take into consideration the subsequent confidential reports on the applicant and consider his selection for those successive years. In the event of the applicant being found fit for promotion in any of the successive years, the punishment may be imposed in the promoted post. With this direction, the application is disposed of. There is no order as to costs."


Thereafter, the Union of India, filed CA in the Supreme Court (No.4703 of 1991) which was disposed of by an order dated 18.11.91. Vide this order, the appeal of the Union of India and others was allowed and the judgement of

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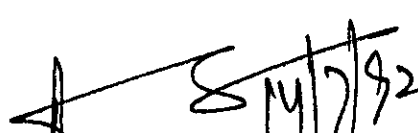
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of the Tribunal was set aside and the OA of the applicant before the Tribunal was dismissed. In view of this, he is not entitled to the relief of promotion as prayed for by him. However, after he has undergone the punishment imposed on him, his case would need to be considered by the respondents in accordance with the law and rules on the subject.

9. In the light of the fore-going discussions, this OA fails and ^{is} accordingly dismissed leaving the parties to bear their own costs.


(T.CHANDRASEKHARA REDDY)
MEMBER(JUDL.)


(P.C. JAIN)
MEMBER(ADMN)

 14/7/92

Dated: 24th June, 1992 Dy.Registrar(Judl.)

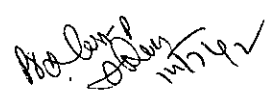
(Dictated in the open court)

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Copy to:-

1. Deputy Secretary, Department of Space Cauvery Bhavan, Kempegowda road, Bangalore, 009.
2. Controller, Indian Space Research Organisation SHAR Centre, Sriharikota, Nellore District, A.P.
3. One copy to Sri. Raja Gopal Reddy, advocate, No.1 Law Chambers, High Court buildings, Hyd-2.
4. One copy to Sri. N.Bhaskara Rao, Addl. CGSC, CAT, Hyd
5. Copy to reporters as per standard list of CAT, Hyd Ber
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