

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

AT HYDERABAD.

O.A.No. 720 of 1989.

Date of Order 23-11-89

J. Shyam Dev

... Applicant.

Versus.

Union of India represented by
The Secretary to Government,
Department of Posts, New Delhi
and others.

... Respondents.

.....

For Applicant: Mr. K.S.R. Anjaneyulu, Advocate.

For Respondents: Mr. J. Ashok Kumar SC for Postal.

.....

C O R A M:

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

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

.....

(Judgment of the bench delivered by
Shri B.N. Jayasimha, HVC)

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The applicant is a Group D official in the Postal Department. He has filed this application against the order No. 294/Admn I/EC VII dated 10.3.1988 issued by the Deputy Director of Accounts, Postal.

2. The applicant states that he is working as a Group D official in the Postal Department in the RLO, Hyderabad. On 24.10.1985 a charge Memo was issued to him alleging that he used indecent and abusive language against the Accounts officer and also refused to take posting orders. An ^{inquiry} ~~inquiry~~ was held under CCS(CCA) Rules. ✓

3. The Deputy Director of Accounts (Postal) the Appellate Authority by his order 294/Admn I/EC VII dated 10.3.1988 set aside the order of punishment and

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remitted back the case to the Disciplinary Authority for conducting de novo proceedings from the stage of cross examination of prosecution witness No.1 and cross examination of documents titled Ex.No.3 .

Therefore the applicant submitted a representation to Member (Personnel) Postal Services Board, New Delhi on 25.10.1988 stating ~~that~~ inter alia that the appellate authority after setting aside the punishment cannot order a de novo enquiry and that it is repugnant to CCS(CCA) Rules. He issued a reminder to Respondent No.1 on 4.8.1989. The new enquiry officer appointed has postponed the inquiry as per his Memo dated 8.11.1988, ~~on~~ ⁱⁿ consideration that the representation made by the applicant to Member (Posts) is pending. The inquiry officer in his letter dated 5.9.89 directed the applicant to attend the inquiry on 22.9.89 and ^{informed him that} ~~an~~ ^{an} exparte inquiry will be held if he fails to attend. The applicant contends that he is being harassed by successive inquiries in violation of rules. Hence he seeks quashing of the de novo inquiry, ~~on~~ ^{and} the ground that the appellate authority having exercised power under Rule 27(2)(c). (1) i.e. having set aside the punishment order cannot order a de novo enquiry. ^{and} Instructions contained in DG P&T ND letter no.3/171/72 Disc I dated 9.2.73 makes it clear that rule 27(2)(C)(1) and (ii) do not empower an appellate authority to pass an order in which both the alternatives are ordered.

4. We have heard Shri K.S.R. Anjaneyulu, Learned Counsel for the applicant and Shri J. Ashok Kumar, Learned Standing Counsel for the Departement.

5. Shri Anjaneyulu, contends that the Rule 27(2) (c) & (ii) leaves no doubt that an authority setting

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aside the order of penalty cannot initiate denovo proceedings into the allegations against the applicant. There is no provision in the rules for denovo enquiry and therefore the order of the Appellate Authority is invalid. He also refers to DG P&T letter dated 9.2.73. Shri Ashok Kumar contends that when the Appellate Authority considers it necessary to remand the case to the Disciplinary Authority, for a fresh consideration, that authority necessarily has to set aside the order imposing the penalty. The instructions referred to by Shri Anjaneyulu, are to be read as to imply that the Appellate Authority cannot confirm the penalty and also remand the case. In all cases where a higher Authority reviews the orders passed by a Lower Authority and consider it necessary to remand the matter to the Original Authority for fresh consideration, it can only do so after setting aside the order under appeal. He also relies upon Rule 126 of P&T Manual Vol. II.

6. We have considered the above contentions Rule 27(2)(c) & (ii) of the CCS(CCA) Rules reads as follows:

" (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider-

(a) Whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) Whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass orders-

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(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case:"

The DG P&T instructions dated 9.2.73 reads as follows:

" (2) Need for clear and careful wording of appellate orders conforming to provisions of rule.-It has been noticed that orders issued by the authorities competent under CCS(CCA) Rules, 1965, including appellate authorities, are not carefully worded with the result that some technical defects creep in. The delinquent officials take advantage of these technical defects and have the said orders quashed."

The matter has been examined carefully in consultation with the Ministry of Law, Department of Legal Affairs, and it has been decided that henceforth all appellate/reviewing authorities should ensure to guard against the technical defects while issuing the appellate/review orders. In this connection, attention is invited to Rule 27(2)(c). In clause (i) it clearly envisages that the appellate authority shall pass orders confirming, enhancing and reducing or setting aside the penalty while while in clause (ii), as an alternative, it requires the appellate authority to remit the case to an authority mentioned therein with such directions as it may deem fit in the circumstances of the case. It is clear that Rule 27(2)(c) (i) and (ii) *ibid.*, do not empower the appellate authority to pass an order in which both these alternatives are ordered. The appellate orders should be quite clear and in conformity with the provisions contained in Rule 27(2)(c) and Rule 29 of CCS(CCA) Rules, 1965."

Rule 126 of P&T Manual Volume III reads as follows:

"(1) Effect of *denovo* proceedings.-When, on appeal, the appellate authority sets aside the punishment orders and remits the case for *denovo* trial, the original proceedings containing the charge-sheet are to be deemed as quashed unless the stage from which the retrial should be conducted is specified in the order. It would be open to the disciplinary authority to frame any other charge in addition to or in substitution of the original chargesheet subject to the condition that it is based on facts of the case as initially disclosed for taking departmental action against the Government servant."

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7. In considering the contention of Shri Anjanayulu, it will be necessary to notice the grounds urged by the applicant in his appeal submitted to the Appellate Authority: (Deputy Director of Accounts (Personal)).

He had urged:

" 1) A document cited by Prosecution was not permitted to be discussed in cross-examination of a Prosecution witness, who actually signed this Exhibit (P.EX No.3).

2) Despite the pendency of the bias petition at Reviewing Authority level, the Inquiry Officer Completed the proceedings.

3) The witness on behalf of the Prosecution was not allowed to be further cross-examined in the enquiry.

4) The earlier punishment, namely, postponement of increment by three years was already over by the time the fresh punishment was ordered with effect from 9-9-1987. In view of this date, the earlier punishment period, which was already completed, could not run concurrently with the present punishment."

The Appellate Authority consider these above grounds and in its order dated 10th March, 1988, passed the orders as below:

" The Inquiry Officer had relied on the past record of the petitioner and indicated that some punishment had been inflicted on him as brought out in P.EX No. 3 and the charged officer was not given the chance to explain his past record. It was already held that no material should be relied upon in a departmental enquiry without the charged officer having an opportunity of explaining it.

It was already held in past cases that it is an elementary principle that a person, who is required to answer a charge, must know not only the accusation but also the testimony, by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put forth such relevant questions by way of cross-examination as he desires. Then, he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect, throws the burden upon the person charged to repel the charge without first making it out against him. In this case, the documents were not allowed to be cross-examined and to this extent, the enquiry is defective.

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To:

1. The Secretary to Government, Department of posts,
New Delhi.
2. The Member (Personnel) Department of posts, New Delhi.
3. The Deputy Director of Accounts (postal),
office of the Director of Accounts, Postal, Hyderabad.
4. Shri D.V.B.Vasantharajulu, Inquiry officer, & Complaints,
Inspector, Office of senior superintendent of post offices,
Secunderabad division, Secunderabad.
5. One copy to Mr.K.S.R.Anjaneyulu, Advocate, 1-1-365/A,
Jawaharnagar, Sakaram, Hyderabad-500 380.
6. One copy to Mr.J.Ashok Kumar, SC for postal department,
CAT, Hyderabad.
- ~~7. One spare copy.~~

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Review at 11.30 hrs.
on 24/11/85

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Regarding the bias petition, it is to be stated that the Appellate Authority had considered the bias application in time and passed appropriate orders on the proceedings. As the Reviewing Authority, namely, Director of Accounts (Postal), is the Appellate Authority vide Government of India Instructions No.13 below Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, there is no scope for the official to represent that during the pendency of the bias petition, the Inquiry Officer completed the hearings.

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In view of these, it is felt that the orders already passed by the Disciplinary Authority should be set aside and the case should be remitted back to the Disciplinary Authority for conducting Denovo proceedings from the stage of cross-examination of prosecution witness no.1 and cross-examination of documents titled as P.EX No. 3. The undersigned, therefore, after considering all the aspects of the case, hereby, orders accordingly."

8. It will be seen from the above, the Appellate Authority having found that there was substance in the contention of the Appellant, remanded the case to the disciplinary authority for denovo proceedings from the stage of cross-examination of prosecution witness no.1 .

9. This is in accordance with Rule 126 of P&T manual. We are unable to accept the contention that in this case, both alternatives have been ordered. We agree with the Learned Standing Counsel that the DG P&T, instructions dated 9.2.73 are to be read to mean that they apply to a case, where an order is passed confirming the order of Disciplinary Authority and also remitting the case. While on considering the appeal, if the appellate authority finds that there were procedural irregularities and the matter has^{to} be remanded, he must necessarily set aside the order of the Disciplinary Authority before remanding the case.

10. In this view of the matter, we find the application has to be dismissed accordingly. No order as to Costs.

B.N. Jayasimha
(B.N. JAYASIMHA)
Vice-Chairman
tar/

M.S.
(J.N. MURTHY)
Member (J)
Dated: 23rd November, 1989
Deputy Registrar (D.S.)

- 7) The Dy.Registrar, Central Admn. Tribunal, Madras Bench, Tamilnadu Text Book Society Building, D.P.I.Compound, Nungambakam, Madras-600 005.
- 8) The Dy. Registrar, Central Admn.Tribunal, Calcutta Bench, CGO Complex, 234/4-ADC Bose Road, Nizam Palace, Calcutta-700 020.
- 9) The Dy.Registrar, Central Admn. Tribunal, Bombay Bench, CGO Complex, (CBD), 1st Floor, New Bombay-400 614.
- 10) The Dy.Registrar, Central Admn.Tribunal, Chandigarh Bench, SCO.No.102-103, Sector-34, Chandigarh.
- 11) The Dy.Registrar, Central Admn. Tribunal, Allahabad Bench, 23-A, Thorn Hill Road, Allahabad-211 001.
- 12) The Dy.Registrar, Central Admn.Tribunal, Guwahati Bench, Rajgarh Road, Off.Shillong Road, Guwahati-781 005.
- 13) The Dy.Registrar, Central Admn.Tribunal, Bangalore Bench, Commercial Complex (BDA), Indira Nagar, Bangalore-560 030.
- 14) The Dy.Registrar, Central Admn.Tribunal, Ernakulam Bench, Kandamkulathil Towers, 5th & 6th Floors, Opp.Maharaja College, M.G.Road, Ernakulam, Cochin-682 001.
- 15) The Dy.Registrar, Central Admn. Tribunal, Jabalpur Bench, CARVS Complex, 15-Civil Lines, Jabalpur, M.P.
- 16) The Dy.Registrar, Central Admn.Tribunal, Patna Bench 32-A, B.M.Enterprises, Shri Krishna Nagar, Patna-1.
- 17) The Dy.Registrar, Central Admn.Tribunal, Jodhpur Bench, C/o Rajasthan High Court, Jodhpur, Rajasthan.
- 18) The Dy.Registrar, central Admn., Tribunal, Ahmadabad Bench Navrang Pura, Near Sardar Patel Colony, Usmanpura, Ahmadabad.
- 19) The Dy.Registrar, Central Admn.Tribunal, Cuttak Bench, Dolmanti, Cuttak- 753 001.
- 20) The Dy.Registrar, Central Admn. Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi-110 001.
- 21) Sri Sanjeev Malhotra, All India Services, Law Journal 89, Hakikatnagar, Mal Road, New Delhi-9.
- 22) M/s. Eastern Book Com., 34, Lal Bagh, Lucknow.
- 23) M/s Delhi Law Times, 5355, Jawahar Nagar, Kolhapur Road, Delhi-7.
- 24) Sri Hasin Ahmad, Spl.Representative Reporter, A.I.R. Ltd., No.21-1-1964 & 65, Gandhi Bazar, Opp.High Court Bar Association, Hyderabad.
- 25) The Administrative Tribunal Reporter, Bhagat Singh Market 90, New Delhi-110 001.
- 26) Sri KBS Sarma, General Secretary, All India Equal Rights Association, E-58, HUDA, Residential Complex, Vanastalipuram, Hyderabad-661.
- 27) The Dy.Registrar (J), Central Admn. Tribunal, Hyderabad Bench, Hyderabad.
- 28) One copy to Library, CAT, Hyderabad Bench, Hyderabad.
- 30) Two spare copy/copies.

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Draft by: Checked by: Approved by:
D.R.(J)

Typed by: Compared by:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.

HON'BLE MR.B.N.JAYASIMHA: (V.C.)

AND

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

AND

HON'BLE MR.D.K.CHAKRAVORTY:MEMBER:(A)

AND

HON'BLE MR.J.NARASIMHA MURTHY:MEMBER(J)

DATED: 23-11-89.

ORDER/JUDGMENT

M.A./R.A./C.A./No. in

T.A.No. (W.P.No.)

O.A.No. 720/89

Admitted and (Interim) directions
issued.

Allowed.

Dismissed. ✓

Disposed of with direction.

M.A. Ordered.

No order as to costs

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