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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 909/89
~~T.A. - No.~~

198

DATE OF DECISION 26th September, 1991.

D. Venkateswara Rao Petitioner

Shri C.V. Mohan Reddy Advocate for the Petitioner(s)

Versus

Accountant General I, AP, Hyd & another Respondent

Shri G. Parameshwar Rao Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J. NARASIMHA MURTHY : MEMBER (JUDICIAL)

The Hon'ble Mr. R. BALASUBRAMANIAN : MEMBER (ADMINISTRATIVE)

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

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MGIPRRND-12 CAT/86-3-12-86-15,000

(JNM)
M(J)

(RBS)
M(A)

(49)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

G.A.909/89.

Dt. of Order: 26.9.1991.

D.Venkateswara Rao .

.....Applicant

vs.

1. Accountant General-I,
A.P.Hyderabad.
2. Dy.Accountant General,
(Disciplinary Authority),
AP, Hyderabad.

.....Respondents

- - - - -

Counsel for the Applicant : Shri C.V.Mohan Reddy

Counsel for the Respondents : Shri G.Parameshwar Rao,
Standing counsel for Audit &
Accountant General

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CORAM:

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

THE HON'BLE SHRI R.BALASUBRAMANIAN : MEMBER (A)

(Judgment of the Division Bench delivered by
Hon'ble Shri J.N.Murthy, Member (J)).

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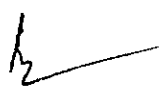
It is a petition filed for a relief to issue a direction declaring the action of the 1st Respondent in not enhancing the subsistence allowance payable to the applicant from 12-10-79 to 75% of the salary payable to him and in not paying the subsistence allowance on the basis of the revised scales of pay is arbitrary, illegal, contrary to the Fundamental Rule 53.

The facts of the case are briefly as follows :-

The applicant was appointed in the year 1965 as an UDC in the office of the 1st Respondent. On 20-9-1978,

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he was placed under suspension. Thereafter, on 6-12-78 a charge memo was served upon him. The applicant was under bonaride belief that the Enquiry Officer was biased against him. The applicant addressed several letters to the 1st Respondent seeking an opportunity to prove that the Enquiry Officer was biased against him, but there was no reply to any of the letters and such an opportunity was not given to the applicant. In these circumstances, he did not participate in the proceedings before the Enquiry Officer. The Respondents reduced the subsistence allowance payable to the applicant by 50% holding that the delay in finalising the disciplinary proceedings was attributable to the applicant. Exparte proceedings were held against the applicant and the Enquiry Officer found the applicant guilty of the charges levelled against him. The said enquiry report was considered by the Disciplinary Authority, Sri Hariharan, who found the applicant guilty of the charges. Aggrieved by the same, the applicant urged that the then Disciplinary Authority was biased against him, the Appellate Authority confirmed the findings and punishment imposed by the Disciplinary Authority. Aggrieved by the same, the applicant filed WP 1554/81, which was transferred to this Tribunal and numbered as TA 268/86. The Tribunal by its order dt.20-4-1989 allowed TA 268/86 on the ground that the then Disciplinary Authority, Sri Hariharan, was biased



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against the applicant. It is therefore contended that the delay in finalising the proceedings is not due to the applicant but due to the attitude of the Respondent in not changing the Enquiry Officer inspite of the fact that the applicant had represented several times to the Respondents that the Enquiry Officer is biased against him. So the Respondents are not increasing the subsistence allowance of the applicant from 12-10-1979 and increased only from 29-4-1989. It is further contended that the respondents failed to see that the delay in finalising the disciplinary proceedings atleast from 12-10-79 cannot, by any stretch of imagination, be attributed to the applicant but is entirely due to the fault of the respondents. So he filed this petition for the above said relief.

A counter has been filed on behalf of the Respondents that the applicant while he was working in the office of the Accountant General, Andhra Pradesh-II, was placed under suspension with effect from 20-9-78 as disciplinary proceedings were contemplated against him. He was issued a charge memo dt.6-12-78 under Rule 14 of the CCS(CCA) Rules, 1965, he did not choose to submit any explanation to the charge memo. The Disciplinary Authority then having ordered an enquiry into the charges framed against him, appointed an inquiry officer for the purpose. Inspite of being given several opportunities, the applicant did not participate in the enquiry. In his two letters dt.20-4-79 and 29-5-79 addressed to the Accountant General, AP-II, the

applicant requested for change of the Inquiry Officer on the ground that he was biased against the applicant. The Disciplinary Authority considered the request, but found that the allegation against the Inquiry Officer was without any foundation and he, therefore, rejected the same. The applicant was informed about the above decision on 21-4-79 and 13-6-79. Again the applicant submitted a representation dt.21-6-79 reiterating his request for change of the Inquiry Officer. As no fresh grounds were made out, it was felt that no reply need be given to him. The Inquiry Officer having set the delinquent official ex-parte, completed the inquiry and submitted his report on 3-8-79. According to the findings of the enquiry, the five charges framed against the applicant were held as proved. The Disciplinary Authority having concurred with the findings of the inquiry officer, imposed the penalty of removal from service with effect from 12-10-79. As the applicant failed to co-operate with the enquiry authority and the prolongation of the suspension period was directly attributed to him, the subsistence allowance for the period from 7-8-79 to 12-10-79 was reduced by 50%. It is further submitted that the applicant was kept under suspension and during the period of suspension from 12-10-79 ~~was paid immediately before he was removed from service~~ to 19-4-89 i.e. the date of removal from service, applicant was paid subsistence allowance equivalent to the amount

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rest

he was paid immediately before he was removed from service, since the conditions that were existing prior to 12-10-79 have in no way changed. The representation dt.11-9-89 submitted by the applicant for increase in the subsistence allowance from 25% to 75% till 19-4-89 and 50% to 75% from 20-4-89 onwards, has been rejected by the appellate authority in proceedings dt.17-10-89. With these contentions Respondents pray to dismiss the application with costs.

We have heard Shri C.V.Mohan Reddy, learned counsel for the applicant and Shri G.Parameshwar Rao, learned standing counsel for the Respondents. According to the applicant he is entitled to 75% of the subsistence allowance from 12-10-79. That allowance was not paid to him while he was under suspension. For not paying the subsistence ^{allowance} by 75% of the salary the Respondents say that the delay ^{was} /caused in conducting the enquiry on account of the applicant so the period of suspension was prolonged and so the Respondents say that the applicant is not entitled to 75% of subsistence allowance of the salary.

In this case when the enquiry officer was appointed, the applicant made representations that the Enquiry Officer was biased against him and he wants that enquiry officer should be changed. Repeated requests were made but the ~~enquiry officer~~ Respondents have not changed the Enquiry Officer. For not changing the Enquiry Officer, the applicant could not co-operate with the enquiry. ^{that} If enquiry is conducted, it will go against to the applicant only. In this connection

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the delay has taken place. It is not the fault of the applicant. For not changing the Enquiry Officer when he made representations, the applicant could not cooperate with the Enquiry Officer in conducting the enquiry. That there was bias ^{was} also held out in T.A.No.268/86. Hence, it was the insensitivity of the respondents that was the cause for the delay. So, we direct the respondents to pay the applicant the subsistence allowance at the rate of 75% of his salary payable to him. The applicant is entitled to get the 75% of subsistence allowance from 12.10.1979 onwards. The amount due to him should be paid by the respondents within two months of receipt of this order. Accordingly the application is allowed with no order as to costs.

MS

(J.NARASIMHA MURTHY)
Member(Judl.)

R. Balasubramanian

(R.BALASUBRAMANIAN)
Member(Admn.)

Dated: 26th September, 1991. Registrar

To

1. The Accountant General-I, A.P. Hyderabad.
2. The Dy. Accountant General, (Disciplinary Authority),
A.P.Hyderabad.
3. One copy to Mr.C.V.Mohan Reddy, Advocate
Advocates Association, High Court of A.P.Hyderabad.
4. One copy to Mr.G.Parameswara Rao, SC for A.G. CAT.Hyd.
5. One spare copy.

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avl/vsn

6/10/91
21/10/91

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11/10/91

TYPED BY
CHECKED BY

COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.

V.C.

AND

THE HON'BLE MR.

M(J)

AND

THE HON'BLE MR. J. Narasimha Murthy M(J)

AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

DATED: 26-9-1991

ORDER / JUDGMENT:

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

in

O.A.No.

909/89

T.A.No.

(W.P.No

)

Admitted and Interim directions
Issued.

Allowed.

Disposed of with direction

Dismissed.

Dismissed as withdrawn

Dismissed for Default.

M.A. Ordered/Rejected

No order as to costs.

