

# Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 941/89  
T.A.No. -

Date of Decision : 5<sup>th</sup> Feb. 1991


<u>V. Vijay Kumar</u>	Petitioner.
<u>Mr. K.S.R. Anjaneyulu</u>	Advocate for the petitioner (s)
Versus	
<u>Secretary to Govt. Min.of Defence, New Delhi and 3 others</u>	Respondent.
<u>Mr. N. Bhaskara Rao, Addl. CGSC</u>	Advocate for the Respondent (s)

**CORAM :**

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

THE HON'BLE MR. R. BALASUBRAMANIAN, MEMBER (ADMN.)

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 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)

  
(HJNM)

  
(HRBS)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT : HYDERABAD

O.A. No.941/89

Date of order: 19<sup>th</sup> Feb. 1991

Between

V. Vijay Kumar .. Applicant

Vs.

1. The Secretary to Government, Ministry of Defence, New Delhi.

2. The Engineer-in-Chief, Army Hqrs., DHO/PO, New Delhi.

3. The Chief Engineer, Southern Command, Pune.

4. Garrison Engineer, Air Force, Hakimpet, Secunderabad.

.. Respondents

Appearance

For the Applicant : Shri K.S.R. Anjaneyulu, Advocate

For the Respondents : Shri N. Bhaskara Rao, Addl. CGSC

..

Coram

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

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

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(Judgement of the bench delivered by Shri J.Narasimha Murthy, Hon'ble Member (Judicial))

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The petitioner in this application who was dismissed from service, has filed this application to call for the records resting with the case and declare the order of CE, SC PUNE in his memo No.130806/1/MZ/140/EID -dt.9.3.89 awarding the punishment of dismissal and also the order of the Engineer-in-Chief Army Hqrs., New Delhi in his Memo No.78655/860/89/EID dt.3.1.90 imposing the punishment of compulsory retirement as arbitrary, illegal untenable; and to reinstate the applicant with promotion to the grade of Supdt. E/M Gr.I as ordered in CESC,Pune letter No.1501/1/8/84/EIB (R-DPC) dt.9.7.85 with all consequential benefits including pay and allowances, increments and seniority.

The facts of the case are briefly as follows:

The applicant was appointed as Superintendent E/M Gr.II(permanent) in MES on 30.8.1977 and completed 12 years of service without any adverse remarks. While so the Garrison Engineer, Air Force, Hakimpet, Secunderabad by his memo dt.15.5.87 issued memo dt.15.5.87 issued memorandum of charges under rule 14 CCS (CCA) Rules. The applicant pleaded not guilty. Since the memorandum of charge and imputations were not signed by the GE (AF)

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mjs

the same were returned as desired by GE (AF) in his memo No.103/VVK/118/E1 dt.23.5.87. The GE (AF) vide his memo dt.17.7.87 directed the applicant to attend court of Inquiry on 28.7.87. It was stated in the said order Sri Anand Prakash was the Enquiry Officer and K.P.Srinivasan was the Presenting Officer to whom copies were marked. As it stood thus, the officiating Chief Engineer, Madras Zone, issued memo dt.24.7.87 appointing Sri K.C. Shanker, ASU, Office of CE MZ Madras as I.O., The GE (AF) Secunderabad was disciplinary authority who issued the charge memo and also appointed IO and PO. The officiating Chief Engineer, Madras Zone has no jurisdiction to appoint I.O as he is not the disciplinary authority that issued the charge memo. Therefore the appointment of Sri Shanker as I.O., is illegal, inoperative and invalid. The proceedings conducted by Sri Shanker as I.O., are vitiated and the punishment based on vitiated proceedings is liable to be set aside on this ground alone. There is no cancellation of appointment of Sri Anand Prakash, I.O and also Sri K.C. Shanker was appointed as I.O., by Offg. CE, Madras Zone. It may be seen that when Ananda Prakash was appointed as I.O., the applicant submitted his representation dt.9.10.87 clearly pointing out that the appointment of Ananda Prakash has not been cancelled by the G.E., Secunderabad. The same was also confirmed by the G.E., Secunderabad on 12.10.87. There is no provision in

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Rule 14 for preliminary Inquiry after charge memo is issued. The same is illegal. The applicant immediately submitted his representation dt.25.11.87. The said I.O., Sri K.C. Shanker conducted the proceedings of preliminary hearing on 14.12.87. The applicant pleaded not guilty and submitted that preliminary inquiry should have been conducted before issue of charge sheet to arrive at the conclusion that a prima-facie case exists or not. In the instant case no preliminary enquiry was conducted as is evident from I.O. order dt.6.11.87. There cannot be any preliminary enquiry after charge memo is issued. The disciplinary authority who has issued the charge sheet alone has to appoint an I.O., Therefore the appointment of Sri S.K Mahajan as I.O., is invalid, inoperative and illegal. The signature of the applicant was not obtained on the proceedings and these proceedings were not recorded in the presence of the applicant. The applicant submitted a representation to the I.O., on the same day i.e., on 12.9.88. Moreover the report of the I.O., was also not furnished to the applicant before the disciplinary authority imposed penalty, the applicant has no opportunity to pointout the irregularities and illegalities to the disciplinary authority that is fatal to the case and so the petition has to be allowed on that ground alone.

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The respondents have filed a counter denying all the petition contents. Immediately after the issue of memorandum of charges to the applicant Enquiry Officer and Presenting Officer i.e., Sri Ananda Prakash and K.P. Srinivasan were appointed. But due to receipt of posting order to Sri K.P. Srinivasan, P.O., and pre-engagement of other officers including few involved with the case as witnesses, no officer was left for detailment. In such circumstances, the C.E., Madras Zone, Madras was requested to nominate one officer to deal with the case as I.O.. Subsequently, the request was considered by the CE, Madras Zone and accordingly Shri K.C. Shanker, was nominated as I.O., to inquire into the case. Due to some administrative reasons, the enquiry was not completed and subsequently the orders were cancelled by the C.E., Madras Zone. Although the appointment of E.O., issued by the G.E., Secunderabad was not cancelled but the same was superceded by issuing of a fresh order by CE, Madras Zone. Hence contention of the applicant is not correct. The preliminary enquiry was held only for the purpose of collection of facts in regard to the conduct and work of the Govt. servant. The proceedings conducted by the officer is in order and progressed strictly as per the rules. The proceedings on 12.9.88 were conducted as per the daily order sheet which were signed by the Inquiry Officer and Presenting



Officer . The Enquiry Officer never threatened the petitioner stating that he will conduct an ex-parte enquiry. The Enquiry Officer has correctly made the enquiry. The disciplinary authority based on the evidence and the enquiry report imposed penalty and it is not necessary to give the Govt. Servant an opportunity to represent on the penalty proposed to be imposed. The act of the disciplinary authority in imposing the penalty is strictly as per the rules. According to the respondents the enquiry was done as per the rules and the punishment was given basing on the enquiry report and there are no irregularities in the enquiry report and in awarding the punishment. For the reasons stated the petition has to be dismissed with costs.

The petitioner has filed a rejoinder contending almost all the facts stated in the petition.

We have heard Shri K.S.R.Anjaneyulu, learned counsel for the applicant and Shri Naram Bhaskara Rao, learned Standing Counsel for the respondents. Apart from the other contentions raised in the petition the counsel for the petitioner relied upon the Supreme Court decision in

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from revising the proceedings and continuing with it in accordance with law from the stage of supply of the inquiry report in case where dismissal or removal was the punishment.

The application is accordingly allowed. There will be no order as to costs.

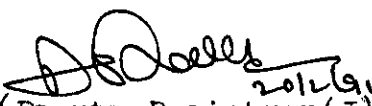


(J. NARASIMHA MURTHY)  
Member (Judl.)



(R. BALASUBRAMANIAN)  
Member (Admn.)

Dated: 19<sup>th</sup> February, 1991.

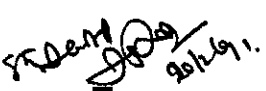
  
Deputy Registrar (J)

To

1. The Secretary to Government,  
Ministry of Defence, New Delhi.
2. The Engineer-in-Chief, Army Hqrs,  
DHQ/PO, New Delhi.
3. The Chief Engineer, Southern Command, Pune.
4. The Garrison Engineer, Air Force,  
Hakimpet, Secunderabad.
5. One copy to Mr. K.S.R. Anjaneyulu, Advocate, CAT. Hyd. Bench.
6. One copy to Mr. N. Bhaskara Rao, Addl. CGSC. CAT. Hyd. Bench
7. One copy to Mr. J. Narasimha Murthy, Member (JUDL) CAT. Hyd.
8. One copy ~~xxxxxx~~ spare.

pvm

Mvs/sn

  
20/2/91.

ASR

(8)

CHECKED BY 502  
TYPED BY 20/2/91

APPROVED BY  
COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR. B. N. JAYASIMHA : V.C.  
AND

THE HON'BLE MR. D. SURYA RAO : M(J)  
AND

THE HON'BLE MR. J. NARASIMHA MURTY : M(J)  
AND

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

Dated: 19-2-1991.

ORDER / JUDGMENT:

M.A./R.A./C.A. NO.

in →

P.A. No.

W.P. No. -

O.A. No. 961/89

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.

Central Administrative Tribunal  
**DESPATCH**  
22 FEB 1991  
HYDERABAD BENCH

20/2/91