

99

# Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

CP 99/91 in

O.A. No. 469/90

T.A.No.  
xxxxxx

Date of Decision : 2-1-1992

Mr. Mir Rahmat Ali

Petitioner.

Mr. S.D.Kulkarni

Advocate for the  
petitioner (s)

Versus

Mr. A. Vemulingam, DE, TAX, Telephones and another Respondent.

Mr. NR Devaraj, & Addl. CGSC

Advocate for the  
Respondent (s)

**CORAM :**

THE HON'BLE MR. R.Balasubramanian, Member (Admn.)

THE HON'BLE MR. T.Chandrasekhar Reddy, Member (Judl.)

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)

HRBS  
M(A)

T - C - R  
HTCR  
M(J)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE  
SHRI T.CHANDRASEKHAR REDDY, MEMBER (JUDL.)

This contempt petition is filed by the petitioner herein against the 1st and 2nd respondents herein to punish them for contempt of court in not paying the arrears of pay due to the applicant. A few facts have got to be stated for appreciating the question and controversy and we accordingly state the required facts for adjudication of this contempt petition:-

The 2nd respondent which is the disciplinary authority issued a charge sheet under Rule 14 of CCS(CCA) Rules, 1965 on 4.1.1983 as against the applicant for his unauthorised absence from duties with effect from 10.11.1981 and contravening the provisions contained in Rule 3(1)(ii) of CCS (Conduct) Rules, 1964. As the petitioner did not make appearance before the Inquiry Officer inspite of his efforts, the Inquiry Officer conducted an exparte inquiry and sent his report to the disciplinary authority. Based on the Inquiry Report and other material available on record, the disciplinary authority passed orders dated 15.9.1983 removing the applicant from service with immediate effect. The applicant preferred an appeal on 19.12.1983 which was considered by the appellate authority ~~which~~ <sup>and</sup> set-aside

(21)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

CONTEMPT PETITION NO.99 of 1991

IN

O.A.NO.469 of 1990

DATE OF JUDGMENT: 2-1-1992

BETWEEN:

Mr. Mir Rahmat Ali ..

Applicant

AND

1. Mr. A.Vemulingam,  
Divisional Engineer, TAX,  
Telephone Bhavan,  
Hyderabad-4.

2. Mr. J.Balakrishna,  
Dy. General Manager (Operations),  
South Hyderabad Telecom District,  
Hyderabad-1. ..

Respondents

COUNSEL FOR THE APPLICANT: Mr. S.D.Kulkarni

COUNSEL FOR THE RESPONDENTS: Mr. N.R.Devaraj, Addl. CGSC

CORAM: Hon'ble Shri R.Balasubramanian, Member (Admn.)

Hon'ble Shri T.Chandrasekhar Reddy, Member (Judl.)

T - C - R - P

contd....

the applicant filed O.A.No.469/90 before this Tribunal in the month of June 1990 with a prayer to quash the order of removal. The Tribunal allowed the said OA 469/90 as per its Judgment dated 3.4.1991 on the following terms:-

"In the result, the application is allowed and the order of the disciplinary authority is set-aside. However, it is clarified that this decision will not preclude the disciplinary authority from re-starting the proceedings and continue them in accordance with law from the stage of supply of the enquiry officer's report."

It is the contention of the applicant that as this Tribunal had set-aside the order of removal on 3.4.1991 that the applicant must be deemed to be ~~max~~ in service with effect from 25.4.1985 and so he is entitled to arrears of salary etc. So, it is the case of the applicant herein, as the said arrears are not paid that it amounts to disobedience of the orders of the Court and that the respondents would become liable for action for contempt of this Court.

3. The material before this Tribunal discloses that the applicant was placed under deemed suspension with effect

(22)

the punishment order dated 15.9.1983. The applicant was reinstated with effect from 9.2.1984. As per the appellate order dated 27.1.1984, De-novo proceedings ~~from the stage of inquiry~~ were initiated and the disciplinary authority ~~has~~ proceeded with the appointment of the Inquiry Officer and Presenting Officer as per the orders dated 18.9.1984. A copy of the said order dated 18.9.1984 was sent to the applicant. Even though the inquiry was postponed to different dates under intimation to the applicant, the applicant did not attend on all the above dates. ~~So~~ the 2nd time also, the inquiry was held ~~ex parte~~. The disciplinary authority passed orders of removal of the applicant from service as per the order dated 25.4.1985. While so, the applicant seems to have submitted an application dated 3.4.1985 requesting for voluntary retirement on the ground that he had no intention to continue in service. It is not necessary for us to go into this question of voluntary retirement of the applicant for deciding the question ~~of~~ controversy.

2. As against the order of removal dated 25.4.1985, the applicant submitted an appeal to the ~~appellate~~ authority on 11.9.1985. The appellate authority went through the entire case and the disciplinary proceedings and rejected his appeal as per orders of the appellate authority dated 27.12.1988. Subsequent to the orders of the appellate authority that were passed confirming the order of the disciplinary authority removing the applicant from service

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contd

4. As already pointed out, the material before us discloses that the applicant had absented unauthorisedly from 1.3.1984 and was removed from service with effect from 25.4.1985. So far, the period for his unauthorised absence as can be seen from the orders passed by the respondents has been treated as "Dies Non" <sup>As on 2-9-91</sup> ~~by the orders of the respondents dated 28.9.1991~~. Once the period is treated as "dies non", it will not count as duty for any purpose. The facts that the competent authority had the power to pass such orders of "deemed suspension" and "dies non" on the concerned parties cannot be doubted. Any how, if the applicant ultimately succeeds and exonerated by the competent authority of the charges framed against him, automatically, the applicant would become entitled <sup>& in accordance with Law</sup> for all the pay and allowances. But, nevertheless, the competent authority had acted under the relevant rules and within its powers in treating the said period as "deemed suspension" and "dies non", we do not find any illegality as having been committed by the competent authority. We do not see any disobedience on the part of the respondents in implementing the orders of the Tribunal dated 3.4.1991 passed in OA 469/90. There is no merit in the contempt petition and this contempt petition is liable to be dismissed and according <sup>ly</sup> we dismiss the same. In the circumstances of the case, we order the parties to bear their own costs.

R.Balasubramanian  
(R.BALASUBRAMANIAN)  
Member(Admn.)

T.Chandrasekhar Reddy  
(T.CHANDRASEKAR REDDY)  
Member(Judl.)

Dated: 2-1-1992

D.Y. Registration No. 85/19

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on date was from 3.4.1991/which/the Judgment/passed by the Bench in OA 469/90. In this context, it will be worthwhile to extract Rule 10(4) of the CCS (CCA) Rules which reads as follows:-

"Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set-aside or declared or rendered void in consequence of or by a decision of a Court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case."

So, in view of the said rule, keeping the petitioner under deemed suspension with effect from 3.4.1991 which/the date of setting aside the removal order of the applicant, is completely in accordance with law.

T. S. N.

contd...

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Copy to:-

1. Sri A.Vemulingan,  
Divisional Engineer,  
Tax Telephone Bhavan,  
Saifabad,  
Hyderabad-4.
  2. Sri J.Balakrishna,  
Deputy General Manager(Operations)  
South Hyderabad Telecom District,  
Hyderabad-500 001.
  3. One copy to Shri. S.D.Kulkarni advocate,  
99, P&T Colony, Trimulgherry, Sec-bad.15.
  4. One copy to Shri. N.R.Devraj, Addl. CGSC, CAT, Hyd.
  5. Copies to all reporters   as per  
standard list of C.A.T. Hyderabad Bench, Hyd.
  6. One spare copy.
  7. ~~One copy to Dy. Asstt. Commr.~~

R Sm ✓ -

C.P. No. 99/91

in  
O.A. No. 469/90

~~100~~  
TYPED BY

COMPARED BY

CHECKED 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. R. BALASUBRAMANTAN :M(A)

AND

THE HON'BLE MR. T. Chandra Sekh Rddy

M(J)

DATED: 2/1/1992

ORDER/ JUDGMENT: ✓

M.A./R.A./O.A. No. 99/91

in

O.A. No.

469/90

T.A. No.

(W.P. No. \_\_\_\_\_)

Admitted and Interim directions  
Issued.

Allowd.

Disposed of with directions

C.P. Dismissed. ✓

Dismissed as withdrawn.

Dismissed for Default.

M.A. Ordered/Rejected

No order as to costs. ✓

pvm

