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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

ORIGINAL APPLICATION No.487 of 1990

DATE OF JUDGMENT: 23rd OCTOBER, 1992

BETWEEN:

Mr. D.Venkateswara Rao .. Applicant

AND

1. The Accountant General (A&E)/  
Appellate Authority,  
Andhra Pradesh,  
Hyderabad.
  2. The Deputy Accountant General  
(Disciplinary Authority)  
office of the Accountant General (A&E),  
Andhra Pradesh,  
Hyderabad.
- .. Respondents

COUNSEL FOR THE APPLICANT: Mr. D.Venkateswara Rao,  
Party-in-person.

COUNSEL FOR THE RESPONDENTS: Mr. G.Parameswara Rao,  
Standing Counsel for IA&AD.

CORAM:

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

Hon'ble Shri C.J.Roy, Member (Judl.)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE  
SHRI C.J.ROY, MEMBER(JUDL.)

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed by the applicant herein claiming a relief to set aside the orders dt. 4-5-90 and 27-9-1989 of Respondents 1 and 2 herein as arbitrary, illegal and violative of the principles of natural justice and fundamental rights guaranteed to the applicant under Articles-14 and 16 of the constitution of India and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

2. The brief facts giving rise to this application are as follows :-

The applicant, who was appointed in the year 1965 as an U.D.C. in the office of the 1st Respondent, was placed under suspension by an order dt. 20-9-78. Thereafter on 6-12-78 a memo of charges was served on him. The applicant states that he was totally convinced with the enquiry officer Enquiry Officer was but the enquiry officer was biased against him and was bent upon finding guilty of the charges. The applicant made a number of representations seeking an opportunity to prove that the enquiry officer was biased. The 1st Respondent did not give any reply to any of the representations of the applicant. As the applicant was totally convinced that no justice will be done to him, he did not participate in the proceedings before the enquiry officer. The applicant alleges that with an ulterior intention, the 1st respondent reduced the subsistence allowance payable to the applicant by 50% attribu-

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ting the delay in finalising the disciplinary proceedings to the applicant. On the basis of the exparte enquiry report the disciplinary authority found the applicant guilty of charges and removed from service by an order dt.12-10-79. The appeal of the applicant was also rejected by the appellate authority on 12-5-90. Aggrieved by the same the applicant filed WP 1554/81 on the file of the High Court of A.P., which was transferred to this Hon'ble Tribunal and renumbered as TA 268/86. While disposing of the above said T.A., this Tribunal held that the disciplinary authority was biased against the applicant and set-aside the order of removal. This Tribunal, however left the matter open to the disciplinary authority other than the earlier disciplinary authority to consider the report of the enquiry officer and pass appropriate orders. The applicant was however continued under suspension and his request for enhancement of subsistence allowance, which was reduced to 50% was rejected by the 2nd Respondent. Aggrieved by the same, the applicant has filed OA 909/89 on the file of this Tribunal and the same is pending.

3. Thereafter the Respondents have passed the <sup>impugned</sup> order imposing the punishment of compulsory retirement on the applicant treating the period of suspension as not on duty under the Central Civil Service (Conduct) Rules, 1964, which are not applicable to the employees of the Audit and Account Service as per the applicant. It is further contended that the disciplinary authority had not to the facts and circumstances of the case applied its mind/while passing the order of compulsory retirement. The applicant states that the disciplinary authority ought to have seen that the enquiry was vitiated by violation of principles of natural justice, for the reason that the documents which were not marked as exhibits

are mentioned in the list of documents relied on by the enquiry officer to hold the applicant guilty of charges levelled against him. Moreover, the respondents 1 and 2 ought to have seen that there are rival complaints made against each other (i.e. between enquiry officer and the applicant) regarding the trivial matters and accordingly they ought to have exonerated the applicant from the said charges. ~~A copy of the explanation submitted to the~~ It is submitted that the disciplinary authority ought to have seen that the applicant was asked to submit his representation nearly ten years after the exparte enquiry ~~report~~ was made. Hence the applicant was denied of a fair and reasonable opportunity to make an effective representation by the disciplinary authority. The applicant submits that the 2nd respondent after passing the order dt.26-9-89 retiring the applicant compulsorily, passed another order dt.27-9-89 <sup>as not on duty, i.e.</sup> treating the period of suspension from 20-9-78 till the punishment of compulsory retirement. The order dt.27-9-89 treating the period of suspension as not on duty is passed after the applicant was ordered to be retired compulsorily from service Hence the said order is without jurisdiction. Hence the said order dt.27-9-89 is liable to be set aside. The applicant also contends that the punishment imposed is highly disproportionate to the gravity of offence and the respondents ought to have seen that the applicant does not deserve such serious punishment. Hence this application.

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4. The respondents filed a counter affidavit stating that the application is liable to be dismissed on the ground that the applicant has not exhausted the statutory remedy of 'Revision' against the order of the appellate authority.

5. The applicant was placed under suspension with effect from 20.9.1978 pending contemplation of disciplinary proceedings against him and a charge memo dated 6.12.1978 under Rule 14 of the CCS (CCA) Rules, 1965 was served on him on 9.12.1978. The applicant did not choose to submit any explanation to the charge memo. Later, an inquiry into the charges was ordered. He did not attend any of the hearings. Basing on the inquiry report, the penalty of removal from service was imposed on the applicant. Aggrieved by the penalty, the applicant filed W.P.No.1554/81 before the High Court of Andhra Pradesh which was transferred to this Tribunal and registered as T.A.No.268/86. The respondents in T.A.No.268/86 state that the Tribunal in its Judgment dated 20.4.1989 held that the enquiry report is not biased and however, ordered that it is open to the Disciplinary Authority other than Mr. Hariharan, the then Senior Deputy Accountant General (Admn.) to reconsider the inquiry report. The inquiry report was the subject matter of the T.A.No.268/86 which was adjudicated by the Tribunal. Hence, the applicant cannot question the findings of the inquiry.

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6. Keeping in view the observations of the Hon'ble Tribunal in T.A.No.268/86, the applicant was kept under deemed suspension with retrospective effect from 12.10.79, the date on which he was removed from service under Rule 10(4) of the CCS (CCA) Rules, 1965. Earlier, by an order dated 11.7.1989, his subsistence allowance was reduced by 50% as the delay in conclusion of the disciplinary proceedings was directly attributable to the applicant as he deliberately failed to cooperate with the inquiry by not attending the inquiry proceedings despite giving him several opportunities. The applicant filed a separate O.A.No.909/89 questioning the reduction of subsistence allowance by 50%. Therefore, he cannot raise this issue once again in the present O.A.

7. The Judgment of the High Court of Andhra Pradesh holding that the CCS (Conduct) Rules, 1964 are not applicable to the employees of the Indian Audit and Accounts Department has been stayed by the Hon'ble Supreme Court. The applicant did not avail himself of the opportunity of cross-examining the witnesses and the examination of the documents relied upon by the Inquiry Officer in arriving at his findings. It is stated that the Disciplinary Authority is not required to give any reasons while agreeing with the findings of the Inquiry Officer. The order dated 26.9.1989 of compulsory.

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retirement and the order dated 27.9.1989 relating to regularisation of period of suspension are independent of each other and a common application is not maintainable on different cause of action.

8. The Disciplinary authority before arriving at the decision took into account the material facts of the case which have a bearing on the charges framed against him and then passed the orders of compulsory retirement from service and also on regularisation of the period of suspension. In fact, the Disciplinary Authority took a lenient view while imposing the penalty of compulsory retirement. The Tribunal cannot go into the question of adequacy or otherwise of the punishment imposed on the applicant in view of the decision of the Hon'ble Supreme Court in "Parmananda Vs. State of Haryana and others (1989(2) SCC 177)". For the above reasons, the respondents state that the application is liable to be dismissed.

9. We have heard the applicant in person, Mr. D. Venkateswara Rao and the learned Additional Standing Counsel for the Respondents, Mr. G. Parameswara Rao. We have also perused the records produced by the learned Additional Standing Counsel for the Respondents.

10. During the course of the arguments, it was brought to our notice that the O.A.No.909/89 referred to in this application claiming enhancement of subsistence allowance to 75% of the pay, has been allowed vide the orders of the

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Tribunal dated 26.9.1991 directing the respondents to pay the subsistence allowance @ 75% of the pay from 12.10.1979.

11. The main contention of the applicant is that the Central Civil Services ~~(Conduct) Rules~~ ~~xxxxxxCentralxxxxxxAppealxx~~ Rules are not applicable to the employees of the Audit and Accounts Service and any disciplinary proceedings under the said rules will be without jurisdiction. This contention of the applicant is not tenable in view of the fact that the very same applicant had raised similar objection in Review Petition No.21 of 1989 in T.A.No.268/86 which was dismissed by this Tribunal on 27.6.1991 with the following observations:-

"By a Judgment dated 19.6.1991 in T.A.69/87 (C.Pullaiiah Vs. Accountant General, Andhra Pradesh II, Hyderabad) a Bench of this Tribunal (of which one of us viz., Shri D. Surya Rao was a Member) had held that the CCS (Conduct) Rules are applicable to Audit and Accounts Department employees under the control of the Auditor General of India. Detailed reasons had been given in the said decision as to why the said rules are applicable to the said employees. We see no reason to differ with the reasoning of a concurrent Bench in C.Pullaiiah's case."

12. The next contention of the applicant is that the enquiry was vitiated by the violation of the principles of natural justice since the disciplinary authority blindly agreed with the findings of the Inquiry Officer. He states



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that no reasons were given while agreeing with the findings of the Inquiry Officer.

13. The respondents denied this contention of the applicant and stated that the applicant did not participate in the inquiry. As per the directions of the Tribunal in T.A.No.268/86 dated 20.4.1989, the disciplinary authority other than Mr. Hariharan, the then Senior Deputy Accountant General (Admn.), had gone through the inquiry report, discussed the charges against the applicant and gave his findings while imposing the punishment of compulsory retirement against the applicant.

14. We have seen the records and perused the order of the disciplinary authority dated 26.9.1989. We are satisfied that the disciplinary authority and the Inquiry Officer are not biased. We are also satisfied with the conclusion drawn by the Inquiry Officer and the Disciplinary Authority. We do not feel appropriate to interfere with the findings of the Disciplinary Authority in view of the fact that the applicant himself had not taken part in the inquiry inspite of several opportunities given to him. His not participating in the inquiry is not the fault of the respondents. If the applicant participated in the inquiry, he will have claim to question the conduct of the inquiry if it is not properly done but the respondents have taken extra care to see that the notices are sent to him to all the known addresses to Bhimadole, Hyderabad and Visakhapatnam etc. Besides, the

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applicant though was present to draw his subsistence allowance on 2.4.1979, the day on which the inquiry was also posted, he did not care to participate in the inquiry. However, the inquiry report was the subject matter of the decision in T.A.No.268/86 dated 20.4.1989 in which all the points now raised by this applicant were already raised, discussed and disposed of and was held against the applicant. The point with regard to applicability of C.C.S.(Conduct) Rules to the Audit and Accounts Service was also decided in Review Petition No.21/89 in T.A.No.268/86 dated 27.6.1991. Therefore, these points cannot be raised now by way of a separate application which is hit by resjudicata.

15. That apart, no reasons need be given when the Disciplinary Authority agrees with the findings of the Inquiry Officer in view of the decision of the Hon'ble Supreme Court in "State of Madras Vs. A.R.Srinivasan (AIR 1966 SC 1827)". Their lordships held that, "reasons need not be given wherever the Government agrees with the enquiring Tribunal but in case of dissent by the Government with the findings, reasons should be given". In the present case, the Disciplinary Authority agreed with the findings of the Inquiry Officer while imposing the punishment of compulsory retirement against the applicant. Hence, we see no reasons to interfere with the punishment imposed on the applicant by the Disciplinary Authority.

16. The third contention of the applicant is that the punishment of compulsory retirement imposed on him and also

the order relating to the period of suspension as not on duty, are disproportionate to the gravity of the offence.

17. The Hon'ble Supreme Court, in "Union of India Vs. Parma Nanda (AIR 1989 SC 1185)" held that,

"The Administrative Tribunal therefore cannot interfere with the penalty imposed on a delinquent employee by the competent authority on the ground that the penalty is not commensurate with the delinquency of the employer. The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with the appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse."

Their lordships further held that-

"The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

18. Following the principles laid down by the Hon'ble Supreme Court in the case cited supra, we see no reason to interfere with the quantum of punishment imposed by the Disciplinary authority.

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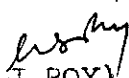
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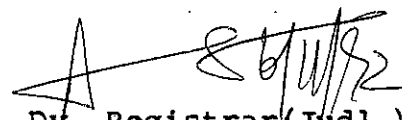
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18. In view of our findings supra, we see no merit in the application.

19. The application is accordingly dismissed with no order as to costs.

  
(R. BALASUBRAMANIAN)  
Member (Admn.)

  
(C.J. ROY)  
Member (Judl.)

  
Dated: 23rd October, 1992. Dy. Registrar (Judl.)

Copy to:-

1. The Accountant General (A&E)/Appellate Authority, A.P. Hyd.
2. The Deputy Accountant General (Disciplinary Authority) Office of the Accountant General (A&E), A.P. Hyderabad.
3. One copy to Sri. D. Venkateswara Rao, (Party-in-person), CAT, Hyd.
4. One copy to Sri. G. Parmeswara Rao, SC for IA&AD, CAT, Hyd.
5. One copy to Deputy Registrar (Judl.), CAT, Hyd.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR

AND

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

AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY:  
M(JUDL)

AND

THE HON'BLE MR.C.J.ROY : MEMBER(JUDL)

Dated: 23/10/1992

ORDER/JUDGMENT:

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

in

O.A.No.

487/90

~~T.A.No.~~

~~(wp.No)~~

Admitted and interim directions  
issued.

Allowed

Disposed of with

~~Dismissed~~

Dismissed

Dismissed

pvm