

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 70/90

DATE OF JUDGEMENT: 12-IV- 1993

Between

P. Rajaram .. Applicant

and

1. Union of India rep by the Secretary,
Min. of Communications, New Delhi.
2. Member(Personal)
Postal Services Board,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi-1.
3. Director of Postal Services (M&S)
A.P.N.R. O/o The Postmaster General
Andhra Pradesh Circle
HYDERABAD 1.
4. Superintendent of 'RMS'
'Z' Division
Hyderabad 1. .. Respondents

Counsel for the Applicant :: Mr T. Jayant

Counsel for the Respondents :: Mr NR Devraj, Sr.CGSC

CORAM:

HON'BLE SHRI A.B. GORTHI, MEMBER(ADMN)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

JUDGEMENT

[(As per Hon'ble Shri T. Chandrasekhara Reddy, Member(Judl.))]

This application is filed under Section 19 of the Administrative Tribunals Act, to set aside the impugned show cause notice dated 25.7.89 issued by the 2nd respondent as ~~reiterated by~~ ^{its} memo dated 31.10.89 and pass such other order or orders as may deem fit and proper in the circumstances of the case.

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2. Facts giving rise to this O.A. in brief, are as follows:

3. The applicant was appointed as Sorting Assistant in the Railway Mail Service on regular basis in 1978. He was confirmed in May, 1980. In September, 1980, a charge sheet was issued as against the applicant stating that, he had furnished wrong information with regard to his intermediate marks at the time of entering into the service. The applicant submitted his reply through proper channel denying the same. An Enquiry Officer was appointed and he conducted the departmental enquiry as against the applicant. Thereafter, on 13-9-1981, the 4th respondent passed an order as against the applicant reducing the applicant from the post of Sorting Assistant to that of Mail Guard in the pay scale of Rs.210-270 for a period of two years, on the basis of the report of the enquiry officer as against the applicant. The applicant did not prefer an appeal against the said order within the time limit of 45 days. While so, on 9-3-1982 the 3rd respondent passed an order which was received by the applicant on 12-3-1982 informing the applicant that he proposed to review the reversion order issued by the 4th respondent. This was followed by the order dt.23-3-82 which was received by the applicant on 26-3-82 directing the applicant to show cause why the penalty of reduction to the cadre of Mail Guard for a period of two years should not be modified to that of dismissal from service on the ground that penalty of reversion is not proportionate to the gravity of the offence committed. So the applicant herein filed WP No.2829/82 on the file of the High Court to quash the said show cause notice on the ground, that the said notice was issued beyond six months from the date, the Disciplinary Authority had passed the orders of punishment on the applicant.

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4. The said WP 2829/82 was transferred to this Tribunal under Section 29(1) of the Central Administrative Tribunals Act and was renumbered as TA 118/87. A Division Bench of this Tribunal as per its Judgement dt.11-8-1988 disposed of TA 118/87 with the following directions.

"In the light of the discussions in para-7 above, it would follow that the impugned order dt.23-3-82 issued by the 1st respondent/appellate authority is barred under Rule 29(1)(v) as the power of revision was exercised after six months of the date of the order of the disciplinary authority/ 2nd respondent. The application is accordingly allowed and the impugned order dt.23-3-82 issued by the 1st respondent is set aside. There will be no order as to costs."

5. After the said impugned order was set aside, the 2nd respondent, who is the Member of Postal Services Board issued separate show cause notice as per his memo dt.25.7.89 received by the applicant on 16.8.89, proposing to enhance the punishment of reduction imposed on him by the 4th Respondent as per his orders dt.13-9-81 to that of removal from service stating that the said penalty of reduction to a lower grade is not commensurate with the gravity of misconduct proved against him. Thirty days time was given to the applicant to submit his representation by the 2nd Respondent from the date of receipt of the memo. The applicant submitted his representation on 25-8-89 requesting the 2nd respondent to drop the said show cause notice for the reasons stated therein. But the applicant did not receive any orders in the matter. As the applicant apprehended that he may be removed from service as per the said show cause notice, the applicant filed OA 687/89 on the file of this Tribunal praying to set aside the show cause notice dt.25.7.89 on the basis of the grounds stated therein. But the said/was

OA 687/89

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dismissed at the stage of admission as per Judgement dated 14.9.89 with the following observations:

".....He has to wait for the final order based upon the show cause notice dated 25.7.89 before he can approach this Tribunal. Consequent to the issue of the show cause notice and the reply it is possible that further proceedings are dropped. At this stage, it cannot be said that the applicant is aggrieved by any order, let alone a final order. The application at this stage is clearly pre-mature and is accordingly dismissed. No order as to costs."

After OA 687/89 was dismissed on 14.9.89, the 2nd respondent herein vide his memo dated 31.10.89 (received by the applicant on 10.1.90) rejected his representation for dropping the show cause notice and directed the applicant herein to make a representation against the proposed enhancement of punishment of reduction to that of removal from service, so as to reach him not later than three weeks from the date of receipt of this Memo. It is the grievance of the applicant that there is no reference in the said memo with regard to the various grounds that had been raised by him in his representation dated 25.8.89, and, as such, the said show cause notice dated 31.10.89 directing the applicant to ~~not~~ make a fresh ^{Second respondent} proposal for enhancement of punishment is liable to be set aside. So, the present OA is filed by the applicant for the relief as already indicated.

- ✓ 6. Counter is filed by the respondents opposing this OA.
- ✓ 7. We have heard Mr TVVS Murthy for Mr T.Jayant counsel for the applicant and Mr NR Devraj, Standing Counsel for the respondents.

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8. The fact that the applicant, after passing SSC examination had studied intermediate is not in dispute in this OA. The applicant, as already pointed out got selected in the year 1978, under went training for two years and was posted as Sorter on regular basis since 1980. While so, the 4th respondent had issued a charge memo dt.18-9-80 under Rule 14 of CCS(CCA) Rules, alleging that the applicant had submitted Memorandum of marks for intermediate examination bearing Serial No.38707 (Regd.No.32068-E) as having passed intermediate examination Part-I English in December, 1974, so as to get undue benefit of addition of 7 (seven) bonus marks for passing intermediate examination eventhough he had not passed the said examination and thereby committed misconduct rendering him unfit and unsuitable for continuance in service and acted in a ~~mark~~ manner which is unbecoming of a Government servant thus contravening provisions of Rule 3(i)(iii) of CCS (Conduct)Rules, 1964. The applicant denied the said charges and an enquiry officer was appointed and a regular departmental inquiry was held in which one Sri NV Subbha Rao, Dy.Secretary Board of Intermediate was examined. The Enquiry Officer submitted his report to the Disciplinary Authority. Rest of the facts are narrated already.

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9. Admittedly, the applicant had been recruited as Sorting Assistant. The fact that the applicant is a direct recruit to the post of Sorting Assistant is also not in dispute. The punishment inflicted by the Disciplinary authority as per ~~his~~ ^{its} orders dated 13.9.1981, is that the applicant who is Sorting Assistant in the scale of Rs.260-8-300-EB-8-340-10-360-12-420-EB-12-480 should be reduced as Mail Guard in the scale of Rs.210-4-250-EB-5-270 with immediate effect for a period of ~~five~~ ^{four} years ~~the Applicant~~ and during the period of punishment, ~~he~~ should get the minimum of the scale of pay for mailguard.

10. Now the question before us is whether the punishment imposed on the applicant is legal. In AIR 1987 SC 1627 Hussain Sassansaheb Kaladgi Vs State of Maharashtra it is held that "A direct recruit to a post cannot be reverted to a lower post. It is only a promotee who can be reverted from the promotion post to the lower post from which he was promoted." Again, in another decision reported in AIR 1988 SC 271 Nydar Singh Vs Union of India it is held that "the penalty of reduction in rank of a Government servant initially recruited to a higher time-scale, grade, service or post to a lower time-scale, grade, service or post virtually amounts to his removal from the higher post and the substitution of his recruitment to lower post, affecting the policy of recruitment itself, and that the powers to reduce in rank by way of penalty can only be exercised in respect of those employees who were appointed by promotion to a higher post, service, etc." So, from the said decision, there cannot be any doubt about the fact that the said punishment inflicted on the applicant by the Disciplinary authority is unsustainable in law and

hence the said punishment that is imposed on the applicant is liable to be set aside. The impugned show cause notice of the 3rd respondent dt.25-7-89 as reiterated by his memo dt.31-10-89 calling on the applicant to submit his representation for the proposed enhancement of the punishment to be imposed on the applicant is also liable to be set aside as the same has ~~is~~ no legs to stand, when the punishment imposed on the applicant is liable to be set aside.

11. In AIR 1991 SC 471 Union of India Vs. Mohd. Ramzan Khan it is held as follows :

"Disciplinary inquiry is quasi-judicial in nature. There is a charge and a denial followed by an inquiry at which evidence is let and assessment of the material before conclusion is reached. These facts do make the matter quasi-judicial and attract the principles of natural justice. With the Forty Second Amendment, the delinquent officer is not associated with the Disciplinary inquiry beyond the recording of evidence and the submissions made on the basis of the material to assist the Inquiry Officer to come to his conclusions. In case his conclusions are kept away from the delinquent officer and the Inquiry Officer submits his conclusion with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the Disciplinary Authority. The report is an adverse material if the Inquiry Officer records a finding of guilt and proposes a punishment so far as the delinquent is concerned. In a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected."

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12. In the said decision, it is also held at Page 476 in para 15-

"Deletion of the second opportunity from the scheme of Art.311(2) of the Constitution has nothing to do with providing a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of inquiry in Art.311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges....."

As could be seen from the records, it is observed that the copy of the inquiry report had been furnished to the applicant along with the punishment order dated 13.9.81 of the Disciplinary authority (4th respondent herein) .. In view of the Supreme Court decision cited above, the applicant is entitled to represent against the findings of the inquiry report before the final orders are passed by the Disciplinary authority.

13. We have gone through the entire proceedings. The applicant had a fair deal in the matter of inquiry. No principles of natural justice are violated. The applicant had reasonable opportunity to meet his defence. We do not find any irregularity in the matter of conducting the inquiry. Having regard to the facts and circumstances of the case and in view of the aforesaid discussion, the OA is disposed of as hereunder:

14. In the result, we set aside the impugned order dated 13.9.1981 passed by the Disciplinary authority (4th respondent herein) reducing the applicant from the post of Sorting Assistant to Mail Guard. We also set aside the impugned showcause notice of the 2nd respondent dated 25.7.89 and reiterated by his memo dated 31.10.89 calling the applicant to submit his representation for enhancement of punishment imposed

by the Disciplinary authority from reduction to lower grade to that of dismissal from service. The matter is remitted back to the Disciplinary authority(R4) for the limited purpose, to afford an opportunity to the applicant to submit his representation if any, as against the findings in the inquiry report and then to pass appropriate orders in accordance with law. The directions in this order shall be complied by the respondents within two months from the date of communication of this order. No costs.

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(T.CHANDRASEKHARA REDDY)
Member(Judl.)

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(A.B. GORTHI)
Member(Admn)

Dated: 12 - IV - 1993

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Deputy Registrar(J)

To

1. The Secretary, Union of India,
Ministry of Communications, New Delhi.
2. The Member(Personal)
Postal Services Board, Dept.of Posts,
Dak Bhavan, Sansad Marg, New Delhi-1.
3. The Director of Postal Services(M&S)
A.P.N.R. O/o The Postmaster General
A.P.Circle, Hyderabad-1.
4. The Superintendent of 'RMS'
'Z' Division, Hyderabad-1.
5. One copy to Mr.T.Jayant, Advocate, CAT.Hyd.
6. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
7. One copy to Library CAT.Hyd.
8. One spare copy.

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10/10/93

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHI : MEMBER (A)

AND

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

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M (A)

Dated: 12-10-1993

ORDER/JUDGMENT:

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

in

O.A. No. 70/90.

T.A. No.

(W.P.)

Admitted and Interim directions
issued

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.

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