

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

DA No.68/91.

Date of Decision: 31.5.1991.

Smt.U.S.Jayalakshmi

....Applicant

Vs.

1. Union of India per Engineer-in-Chief, Army Headquarters, DHQ P.O., New Delhi - 110 011.
2. Chief Engineer, Southern Command, Engineers Branch, Pune-411 001.
3. Chief Engineer (Project), R&D, Picket, Secunderabad.
4. Garrison Engineer (P)(I) R&D Chandrayangutta, Hyderabad-500 005.

....Respondents

Counsel for the Applicant : Shri G.Ramachandra Rao

Counsel for the Respondents : Shri ~~E. Madan Mohan Rao~~ ^{N. Bhaskar Rao},
Addl.CGSC

CORAM:

THE HON'BLE SHRI B.N.JAYASIMHA : VICE-CHAIRMAN

THE HON'BLE SHRI D.SURYA RAO : MEMBER (JUDICIA)

contd... 1-A.

D. A. No.68/91

(Judgment of the Division Bench delivered by Hon'ble
Shri D.Surya Rao, Member (J)).

The applicant herein is now working as L.D.C., in the office of the Garrison Engineer (P)(I)R&D, Chandrayangutta, Hyderabad. She seeks to question the orders No.130806/1/R&D/726/EID dt.26.4.1990 passed by the second respondent imposing upon the applicant the punishment of reduction to the lower post of Lower Division Clerk and fixing ^{her} the pay at Rs.1,450/- in the time scale for a period of 3 years from the date of the order to be restored to the higher post of UDC with further directions that she will regain her original seniority in higher post of UDC and this period shall not count for earning future increments on restoration as U.D.C. The applicant also seeks to question the consequential order dt.20.11.90 passed by the appellate authority i.e., first respondent, confirming the order of the second respondent dt.26.4.'90. The applicant's case is that ^a the ^{charge}chargememo dt. 25.7.85 issued to her by the 3rd respondent alleging that the applicant was transferred to E.8 Section to E.I Section by an order No.92 dt.23.10.84 and that the applicant did not obey the orders and remained in E.8 Section. An Enquiry Officer was appointed by the 3rd respondent by an order dt.23.8.85 and the enquiry was held on various dates between 19.12.85 and 20.1.86. The Enquiry Officer thereafter submitted his report holding the applicant guilty of the charges. The second respondent thereafter imposed upon the applicant the punishment of dismissal from service. On her appeal the first respondent while setting aside the order of dismissal from service imposed the penalty of reduction to the lower post of L.D.C., at Rs.1,350/- in the time scale for a period of 3 years by an order dt.15.7.'86. An appeal was preferred but was rejected ^{by an order dt.27.2.87}. Thereafter the applicant preferred O.A. No.494/87 before the Central Admn. Tribunal aggrieved by the order dt.27.2.87. The Tribunal allowed the application

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on the ^{technical} ground that a copy of the Enquiry Officer's report was not furnished to the applicant before imposing the penalty. It was left open to the respondents to continue the disciplinary proceedings after giving an opportunity to assail the correctness of the Enquiry Officer's Report. The applicant alleges that after the judgement was pronounced the 3rd respondent issued a notice dt.5.1.1990 calling upon the applicant to make ^a any representation or submission to the disciplinary authority within 15 days of receipt of the said notice. The applicant had submitted her representation on 12.2.90 questioning the correctness of the charge and allegations, and findings of the Enquiry Officer. Thereafter the 3rd respondent asked the applicant to submit a revised representation in brief with an oral promise that the representation will be considered favourably if it is ^a in brief. Thereupon the applicant submitted a revised representation in brief on 26.2.'90. ^a Thereupon the second respondent passed the order dt.26.4.'90 imposing the same penalty as imposed in the order dt. ^{27.2.87} 26.4.90, viz., reduction in rank to the lower post for a period of 3 years. The applicant thereupon preferred an appeal to the first respondent which ~~was~~ was rejected by the first respondent by his order dt.20.11.1990. It is these orders dt.26.4.90 and 20.11.90 that are assailed in the present application on various ground as detailed in para 5 of the application.

2. On behalf of the respondents a reply has been filed denying ^{the} various contentions raised by the applicant. It is contended that ^{this was} no infirmity ^{in the disciplinary proceedings} was there ^{as} the applicant was given an opportunity as required and directed by this Tribunal in O.A. No.494/87. It is further alleged ^{after the news of the Tribunal in O.D. 494/1987} that action has been taken by the respondents to reinstate the applicant in service as U.D.C., It is contended that consequent upon the judgement of the Tribunal

in O.A. No.494/87, it was ordered that the applicant be reinstated to duty as UDC w.e.f.,13.4.'87. It is only thereafter that once again the case of the applicant was considered in the light of her representation to the Enquiry Officer's Report and that the penalty was imposed on her. It is therefore contended that there is no illegality in the action of the respondents.

3. We have heard the arguments of Shri G.Ramachandra Rao, learned counsel for the applicant and Shri Naram Bhaskar Rao, learned standing counsel for the Respondents. The first contention raised by Shri Ramachandra Rao is that after this Tribunal had allowed OA 494/87 leaving it open to the Respondents to continue the Disciplinary Proceedings after giving an opportunity to the applicant to assail the correctness of the enquiry officer's report, the Disciplinary Authority, namely Chief Engineer, Headquarters i.e. the 2nd Respondent had not ~~proceeded~~ proceeded to order further enquiry himself. Shri Ramachandra Rao in this contest seeks to refer to letter No.1061/2/USJ/97/EIC ^{issued to the applicant by the 3rd respondent R} dated 5-1-1990, wherein he states that since a copy of the Enquiry Officer's report is already with the applicant, ^{the} the Disciplinary Authority i.e. the Chief Engineer, Southern Command, Pune will take a suitable decision after considering the contentions raised by the applicant in her representation and that the applicant may make a representation to the Disciplinary Authority, Relying on this letter, Shri Ramachandra

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contends that the decision to hold a further enquiry has been taken by the Chief Engineer (Project) (3rd respondent herein) and not by the competent authority namely Chief Engineer, Southern Command, Pune. Shri Naram Bhaskar Rao, on the other hand contends that though in the letter dt.5-1-90, the 3rd Respondent has not mentioned that he is issuing the notice at the instance of the Chief Engineer, Southern Command, Pune, (2nd Respondent), in fact this notice is issued only pursuant to the directions of the Chief Engineer, Southern Command, Pune. To verify this, we have called for records and we find that the letter dt.5-1-90 is ^{issued by} consequent to a signal O.P.No.130806/1/RND/658/EID dated 4-1-90 issued by the 2nd Respondent i.e. the Chief Engineer, Southern Command, Pune. The purport of this message is that the case has been examined consequent on the decision of the Tribunal in OA 494/87, that as per the judgment of this Tribunal, the case has to be proceeded a fresh from the stage of version of the individual on the Enquiry Officer's report and that the individual (applicant) should submit her version on the Enquiry Officer's report already made available to her. It is issued by the Chief Engineer, Southern Command, Pune. It is clear from the above message by the 2nd Respondent to 3rd Respondent ^{that the} ~~decision~~ ^{decision} to continue with the enquiry from the stage of

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statement of the applicant and remarks on the Enquiry Officer's report is a decision of the 2nd Respondent.

Therefore there is no substance in the contention that the 2nd Respondent has not applied his mind in the matter.

4. The 2nd contention of Shri Ramachandra Rao is that the preliminary enquiry report was not furnished to the applicant and that prejudice has been caused to the applicant there by. We find that the prosecution never sought to rely on the preliminary enquiry report in the enquiry and as such the applicant has no right to call for the preliminary enquiry report. However, Shri Ramachandra Rao contends that in the preliminary enquiry report the allegations made by the applicant that she is being victimised have been upheld and that this was a vital piece of the evidence in her favour. For this purpose we had looked into the preliminary enquiry report. We find from a perusal of the record that the preliminary enquiry report does not uphold the allegations made by the applicant. On the other hand the report narrates that a person working in E-8 section (wherein the applicant Smt. Jayalakshmi had been working and from which she has been transferred) is required to work beyond office timings, that the applicant being a lady official, it is not advisable to make her to sit beyond office timings and that she has been transferred to the Administration side. The report goes on to say that there is no harm if the applicant is transferred to

another section. It is therefore clear that the contention that preliminary enquiry report upholds the allegations made by the applicant is wholly incorrect. On the other hand it upholds the prosecution cases ^{that} and she has been transferred to Administrative Section in her own interests. We therefore see no substance in the contention that this document ought to have made available to the applicant.

5. The next contention of Shri Ramachandra Rao is that the Disciplinary Authority has not applied its mind but mechanically imposed the same punishment as previously imposed by the Appellate Authority. We are unable to agree with this contention. The Disciplinary Authority has dealt with the various contentions sought to be raised by the applicant in her representation against assailing the Enquiry Officer's report and has given valid reasons for not agreeing with the said contentions. We find no infirmity in the order passed by the 2nd Respondent. The next contention of Shri Ramachandra Rao is that the Enquiry Officer's finding that there is wanton disobedience has not been established. The charge against the applicant is that she has been ordered to move to E-1 section from E-8 section on 23-4-1984, that she has not moved out but submitted an application on 30-4-84 to the Chief Engineer, Southern Command, Pune. The charge further goes on to recite that while her application is pending with the higher authorities, she should have handed over the charge by 3-12-1984, but she declined to do so. The charge further states that she has been asked by a memo

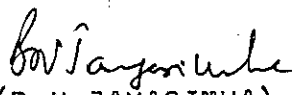
dated 16-4-1985 once again to move to the E-1 Section. This was followed by a further instructions dt.22-4-1985. To all these memos she went on repeating that she has represented her case to the higher authorities and did not give effect to the transfer order. It is in this contest that the enquiry officer held that there was wilfull disobedience of the transfer orders. Shri Ramachandra Rao contends that since she was waiting for the orders of the higher authorities on her representation, she had not moved to the E-1 section and this delay cannot be called as wilfull disobedience. We are unable to agree with ^{this} contention. Once an order of transfer has been passed, it is the duty of the employee to implement the same. If she is aggrieved by the said order, she can make a representation against the same but the fact that she has made a representation would not entitle the individual not to give effect to the transfer order. The employee has to carry out the transfer order and has to await the orders on the representation. This is the law as laid down by the Supreme Court in Gujarat Electricity Board Vs. Atmaram Sungomal Poshani (AIR 1989 SC 1433). The Enquiry Officer was therefore justified in holding that there was wanton dis-obedience. It is finally contended by Shri Ramachandra Rao that quantum of punishment is dis-proportionate to the offence committed. Shri Ramachandra Rao contends that applicant has as long back as 27-2-1987 been reverted to the post of LDC from UDC and that she has served out this punishment of reversion for three years. On 5-12-1989 the order

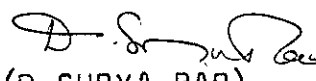
of reversion was set aside in OA 494/87. In view thereof the respondent ^{passed order} ~~thought passed~~ on 26-4-90 restoring the applicant back to the post of UDC retrospectively. He ^{however} contends that she was not in fact restored to the post of UDC. He contends that thereafter the applicant was again by the impugned order dt.26-4-90 reverted to the post of LDC for a period of three years from 26-4-90. Shri Ramachandra Rao contends that due to the earlier illegal order of 23-4-1987, the applicant had become ineligible for further promotion from UDC to the higher post for three years and that by the subsequent order dt.26-4-90, she has been further denied promotion to the higher post for a further period of three years from 26-4-90. Though the respondents have restored her salary as UDC with retrospective effect, she has in fact suffered reversion for six years. He contends that the Appellate Authority was duty bound to consider in appeal whether the punishment imposed is adequate or excessive and that the fact that the applicant had previously served out the punishment for three years (though later set aside) was a fact to be considered by the Appellate Authority in imposing the punishment once again.


6. We have considered the contentions raised on behalf of the applicant. There is no doubt that Rule 27(2) of the C.C.S(CCA) Rules requires an appellate authority to determine whether the punishment imposed is adequate, inadequate or severe. In

so far as severity of the punishment is concerned the appellate authority would have to apply its mind and reduce the same if the misdemeanour is a minor one and if the punishment meted out is ^{disproportionate} ~~unrelated~~ to the offence committed. The appellate authority would also have to reduce the punishment if the applicant is able to point out or establish that the punishment is too severe. In the instant case we do not think that the punishment of stoppage of increment is disproportionate to the offence committed. The applicant in the instant case has deliberately not carried out the order of transfer. She has pleaded before the disciplinary authority that the transfer was ordered to harass her which plea was not established. Hence the punishment imposed in the instant case cannot be deemed to be disproportionate to the offence committed. The next question is whether the applicant had raised before the Appellate Authority a plea or contention that the punishment is too severe. It is only then the Appellate Authority is called-upon to answer or determine this question. The applicant has not filed the appeal to enable us to verify whether such a plea has been raised. The order of the appellate authority does not disclose that she raised such a plea. Further her main grievance as now argued before us is that she was deprived her right for promotion for three years from 1987 that after the order was set aside, she was once again deprived of her right for promotion for a further period of three years from 26-4-1990. Before she

could raised this plea, she sought to establish that she would come within the zone of consideration for promotion within the next three years before 26-4-1993. It is only then that she can claim that some prejudice has been caused to her by the two orders namely 26-3-1984 and ^{the order dated} ~~that~~ subsequent order dt.26-4-1990. Since this aspect has not been duly established, we are unable to hold that any prejudice has been caused to the applicant because of the delay in implementation of orders of punishment. For the reasons given by us in the above paras, we find no merits in the application. The application is accordingly dismissed. No costs.


(B.N.JAYASIMHA)
Vice-Chairman


(D.SURYA RAO)
Member (J)

Dated: 31st May 1991 
Deputy Registrar(J)

TAVL/

1. The Engineer-in-Chief, Union of India,
Army Headquarters, DHQ P.O. New Delhi-11.
2. The Chief Engineer, Southern Command, Engineers Branch,
Pune - 1.
3. The Chief Engineer (Project) R&D, Picket, Secuncerabad.
4. Garrison Engineer (P) (I) R&D, Chandrayanagutta,
Hyderabad-5.
5. One copy to Mr.G.Ramachandra Rao, Advocate, CAT.Hyd.
6. One copy to Mr.N.Bhaskar Rao, Addl.CGSC.CAT.Hyd.
7. One spare copy.

pvm

11/11/92