

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

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ORIGINAL APPLICATION NO.143 of 1991

DATE OF JUDGMENT: 29th July, 1993

BETWEEN:

Mr. M.Satyam

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Applicant

AND

1. The Director General,
Telecommunications,
New Delhi-1.
2. The Chief General Manager,
Telecommunications,
Andhra Pradesh,
Hyderabad.
3. The Superintendent, ^o
Telegraph Traffic,
Rajahmundry.

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Respondents

APPEARANCE:

COUNSEL FOR THE APPLICANT: Mr. TPV Subbarayudu, Advocate

COUNSEL FOR THE RESPONDENTS: Mr. N.V.Ramana, Addl.CGSC

CORAM:

Hon'ble Shri Justice V.Neeladri Rao, Vice Chairman

Hon'ble Shri P.T.Thiruvengadam, Member (Admn.)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN

While the applicant was working as Telegraphist, a charge memo dated 23.11.1981 was given. It was treated as a minor penalty disciplinary proceeding and the punishment of Cmésure was awarded by an order dated 7.1.1982. The Regional authority (3rd respondent) issued memo dated 17.6.1982 proposing to hold an inquiry against the applicant under Rule 14 of the Central Civil Services (Classification, Control and

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appeal) Rules, 1965 and appointed an Inquiry Officer. After the inquiry, the Director, ^{Telecom,} A.P. (North), Visakhapatnam passed the order reducing the pay ^{of applicant} by five stages for a period of three years by way of punishment (by an order dated 28.11.1986) and the same was confirmed by the appellate authority, and the Reviewing authority also did not interfere, by ^{the order} dated 3.11.1989 and the same is assailed in this OA.

2. The main contentions for the applicant are that:-

i) there is an infirmity in ~~xxx~~ issuing the memo dated 17.6.1982 without issuing a show cause notice;

ii) the memo dated 17.6.1982 indicates that the 3rd respondent issued the said memo on the basis of new material. The power under Rule 29 of the CCS (CCA) Rules, 1965 cannot be invoked on the basis of new material, and ^{hence the power under} the material on record does not warrant interference ^{and the} Rule 29 cannot be exercised.

iii) The authority who passed the order of Censure cancelled it, and he ~~xx~~ has no power to do it.

3. We will take up the last question first:-

^X The disciplinary authority who passed the order of Censure cancelled it in pursuance of the memo dated 17.6.82. In fact, it is not necessary for him to cancel it for, the ^{al} issuing of the memo dated 17.6.1982 by the 3rd respondent ie., the reviewing authority amounts to cancellation of the order of Censure. Hence, there is no need to advert to the question as to whether the disciplinary authority has power to cancel his own order, ^{and} for the order whereby he cancelled the order of Censure is inapplicable.

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4. Rule 29 of the CCS (CCA) Rules, 1965 reads as under:-

"29. (Revision):

(1) Notwithstanding anything contained in these rules-

(i) the President; or

(ii) the Comptroller and Auditor-General, in the case of a Government servant serving in the Indian Audit and Accounts Department; or

(iii) the Member (Personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Services Board and (Adviser (Human Resources Development), Department of Telecommunications) in the case of a Government servant serving in or under the Telecommunications Board); or

(iv) the Head of a Department directly under the Central Government, in the case of a Government servant serving in a Department or office (not being the Secretariat or the Posts and Telegraphs Board), under the control of such Head of a Department; or

(v) the appellate authority, within six months of the date of the order proposed to be (revised); or

(vi) any other authority specified in this behalf by the President by a general or special order,

and within such time as may be prescribed in such general or special order;

may at any time, either on his or its own motion or otherwise call for the records of any inquiry and (revise) any order made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed, but from which no appeal

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has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may-

(a) confirm, modify or set-aside the order; or

(b) confirm, reduce, enhance or set-aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order to or any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit;

(Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 11 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under Rule 14 has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14 subject to the provisions of Rule 19, and except after consultation with the Commission where such consultation is necessary):

Provided further that no power of (revision) shall be exercised by the Comtroller and Auditor General, (Member (Personnel), Postal Services Board, Adviser (Human Resources Department), Department of Telecommunications) or the Head of Department, as the case may be, unless-

(i) the authority which made the order in appeal, or
(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

(2) No proceeding for (revision) shall be commenced until after-

(i) the expiry of the period of limitation for an appeal, or
(ii) the disposal of the appeal, where any such appeal has been preferred.
(3) An application for (revision) shall be dealt with in the same manner as if it were an appeal under these rules."

^{Circumstances}
The rule does not refer to limitations under which the said rule can be invoked by the revisional authority and hence it cannot be inferred that the power under Rule 19 of the rules can be exercised only by looking into the material on record but not on the basis of the new material.

5. It is evident from the note under Rule 29 (A) of the CCS (CCA) Rules that it had become necessary to incorporate the same, for the revisional authority can interfere with the order of his sub-ordinate but he cannot set-aside, modify or alter ~~except~~ the order passed by him in exercise of the power of revision. Hence, Rule 29(A) of the rules was incorporated so as to enable the President to set-aside his own order if the circumstances warrant, on the basis of the new material placed before him. Hence, we feel that it is open to the revisional authority to exercise the power under Rule 29 of the Rules even in a case where it is necessary to do it on the basis of new material ^{when} only and ~~if~~ the material on record does not warrant interference.

6. But, when the inquiry on the basis of the charge issued to the applicant ended in the order of Censure and if it is intended to interfere, ~~as~~ it can be done only by issual of a show cause notice. But no such show cause notice was issued before the order as per the memo dated 17.6.1982 was passed in proposing to hold an inquiry against the applicant under Rule 14 of the CCS (CCA) Rules. In view of the same, the impugned order of punishment has to be set-aside.

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7. It is stated that the applicant retired from service in February 1991. Be that as it may, it is proper to leave it to the revisional authority to consider as to whether the rules permit about issusal of a show cause notice in exercise of power of revision under Rule 29, after retirement of employee and to further consider as to whether it is a case for ordering an inquiry against the applicant under Rule 14 of the CCS (CCA) Rules, the order in this OA will not be a bar for taking action in the matter.

8. In the result, the impugned order is set-aside and the question as to whether further action is necessary, is a matter for the 3rd respondent to consider by keeping in view the observations in this order. The refund if any has to be paid to the applicant in pursuance of this order within a period of three months from the date of receipt of the same.

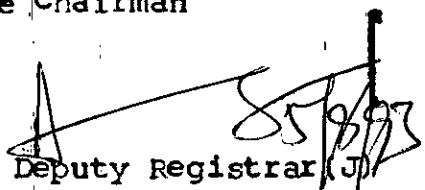
The OA is ordered accordingly. No costs.

(Dictated in the open Court).

P.T. Thiruvenkadam
(P.T. THIRUVENGADAM)
Member (Admn.)

V. Neeladri Rao
(V. NEELADRI RAO)
Vice Chairman

Dated: 29th July, 1993.


Deputy Registrar (J)

To
1. The Director General, Telecommunications, New Delhi-1.
2. The Chief General Manager, Telecommunications, A.P.Hyd.
3. The Superintendent, Telegraph Traffic, Rajahmundry.
4. One copy to Mr.T.P.v.Subbarayudu, Advocate, B-16, F-5
Krupanand Apartments, Safilguda, Hyd.
5. One copy to Mr.N.v.Kamana, Addl.CGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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P.V.M.*

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COMPARED BY

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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.GORTHY : MEMBER(A)

AND

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

AND

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

Dated: 29-7-1993

ORDER/JUDGMENT:

M.A/P.A/C.A.N.

in

O.A.No. 143/91

T.A.No. (W.P.)

Admitted and Interim directions
issued.

Allowed

Disposed of with directions

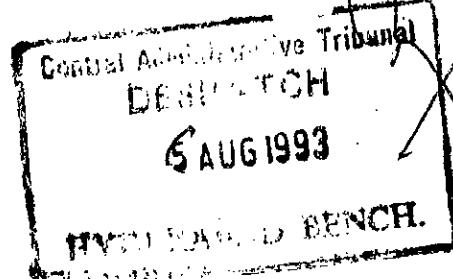
Dismissed

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered

No order as to costs.



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