

(71)

# Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 308/91.

Date of Decision : 21.2.92

~~Ex.No.~~

A.Ramachandra Reddy

Petitioner.

Shri T.Suryakaran Reddy

Advocate for the  
petitioner (s)

Versus

The Director of Postal Services, Hyderabad  
City Region, O/o the Chief Post Master General  
A.P.Circle, Hyderabad-500 001 & 2 others

Respondent.

Shri Naram Bhaskara Rao, Addl.Standing Counsel  
for Central Govt.

Advocate for the  
Respondent (s)

CORAM :

THE HON'BLE MR. R. BALASUBRAMANIAN, MEMBER (ADMN.)

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

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes.
2. To be referred to the Reporter or not ? Yes.
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 ? No
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)

HCJR  
M(J)

(72)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: HYDERABAD BENCH ::  
AT HYDERABAD.

O.A.No.308/91.

Date of Judgment: 21.2.1992

Between:

A. Ramachandra Reddy .. .. Applicant

Vs.

1. The Director of Postal Services,  
Hyderabad City Region, O/o the  
Chief Post Master General, A.P.  
Circle, Hyderabad-500 001.
2. The Senior Superintendent of Post  
Offices, Hyderabad South-East  
Division, Hyderabad-27.
3. The Chief Post Master General,  
A.P.Circle, Hyderabad-500 001. .. Respondents

For the applicant : Shri T.Suryakaran Reddy, Advocate.

For the respondents : Shri Naram Bhaskara Rao, Addl.  
Standing Counsel for Central Govt.

CORAM:

HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER (ADMN.)

HON'BLE SHRI C.J. ROY, MEMBER (JUDL.)

X JUDGMENT OF THE BENCH AS PER HON'BLE SHRI R.BALASUBRAMANIAN,  
MEMBER (ADMN.) X

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This application is filed by Sri A.Ramachandra Reddy  
against the Director, Postal Services, Hyderabad and two  
others under section 19 of the Administrative Tribunals Act.  
The prayer in this application is to quash the Memo.No.  
F.3-1/77-78 dated 31-3-1990 passed by the 2nd respondent  
imposing the punishment of compulsory retirement, and also  
the appellate proceedings No.St/16-HD/5/90 dt. 18/22-5-1990  
of the 1st respondent reducing the penalty to a reduction to  
the minimum of the scale for a period of 10 years.

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2. The applicant while working as a Postal Assistant was suspended vide Memo dated 9-5-1977. A police complaint was filed. The II Metropolitan Magistrate who tried the criminal case acquitted him on merits on 10-8-1981. However, through a Memorandum dt. 5-6-1982, the respondents issued a charge-sheet on the same charges on which he was acquitted by the Criminal Court. Questioning these proceedings the applicant filed a writ petition in the Hon'ble High Court of A.P. which was dismissed on 10-11-1983. He went in Writ Appeal in W.A.No.1094/83 which was disposed of on 20-12-1988. It was directed to the department to examine whether it was still expedient to continue the departmental enquiry against the applicant in view of the burning of Shalibanda Post Office and relevant records during an agitation. However, the respondents proceeded with the enquiry and a copy of the enquiry report dated 11-7-1989 was furnished to the applicant on 29-11-1989. The Enquiry Officer had held that the charge against the applicant could not be proved. The applicant submitted a representation thereto on 18-12-1989. Instead of dropping the proceedings against the applicant, the 2nd respondent imposed punishment by orders dt. 31-3-1990. Against this the applicant preferred an appeal which was disposed of by the 1st respondent vide his order dt. 18/22-5-1990 modifying the punishment order. Thereafter the applicant had filed a Review Petition to the Postal Services Board on 11-7-1990. This is yet to be disposed of and since more than six months have elapsed after he had submitted the Review Petition, now he has approached this Tribunal with the prayer indicated above.

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3. The respondents have filed counter affidavit and opposed the application. It is admitted that the Criminal Court acquitted the applicant on 10-8-1981 holding that the prosecution failed to prove the guilt of the applicant beyond reasonable doubt. It is, however, contended that since there was a prima-facie case, they decided to proceed against the applicant Under Rule-14 of the CCS(CCA) Rules, 1965. It is contended that the documents required by the applicant are not absolutely relevant to the case and hence the disciplinary authority decided to impose the punishment even though the documents required <sup>by the delinquent applicant</sup> could not be produced. It is also pointed out that his Review Petition is still pending disposal and the application is pre-mature.

4. We have examined the case and heard the rival sides. The three main issues before us are - (A) Competence of the disciplinary authority to issue punishment order; (B) The legal position when the disciplinary authority chooses to differ with the Enquiry Officer; and (C) whether full opportunities were given to the applicant to defend his case.

5. Regarding (A), the applicant has questioned the competence of the Senior Superintendent of Post Offices, Hyderabad South-East Division to impose the major penalty on him on the ground that he was only a Junior Time Scale Officer in Group-A, whereas the appointment orders were issued by a Senior Time Scale Officer in the year 1971. On the other hand, it is the case of the respondents that when the applicant was appointed in the year 1971 there was only a composite cadre of Group-A and there was no such

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distinction as Junior Time Scale and Senior Time Scale. This distinction came about subsequently. Therefore, according to them the Junior Time Scale Officer in Group-A is also successor to the appointing authority and can impose the penalty. We do not propose to go into this issue as we <sup>do not</sup> ~~don't~~ consider this necessary in *this case* in view of other factors available to decide the case as can be seen from the subsequent paragraphs.

6. Regarding (B), we have gone through the Enquiry Report. The Enquiry Officer was considerably handicapped by the fact that the enquiry which was commenced in April, 1983 nearly 7 years after the event on which the applicant was proceeded against, was discontinued for various reasons for a period of nearly six years and was <sup>again</sup> resumed ~~again~~ in April, 1989. Certain records which ought to have been preserved by the respondents carefully after the suspension in May, 1977, were destroyed in a riot in 1978. The only witness Sri M.A. Baig, the then S.P.M. <sup>who had</sup> retired ~~from~~ 7 years <sup>earlier</sup> ~~back~~ expressed bleak remembrance of any facts. His evidence is ~~of~~ not <sup>of</sup> much value. ~~valid~~. The enquiry officer felt that copies of Ledger Accounts without the original documents were of no material <sup>value</sup> ~~available~~ in a major penalty case like the one initiated against the applicant. He further observed that the department without producing the basic records such as S.B. Ledger, and List of Transactions (LOT) which were maintained by the Government servant in his own handwriting and initials ~~is~~ <sup>has</sup> also failed to produce any oral evidence during the enquiry. Therefore, in the absence of unimpeachable evidence during

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the enquiry, the charges framed against the Government servant <sup>were</sup> ~~was~~ held not proved. No doubt, a copy of the enquiry report was furnished to the applicant based on whose reply the disciplinary authority came to his own conclusions and after differing with the findings of the enquiry officer he imposed the penalty of compulsory retirement. It is also relevant in this context to recall the findings of the A.P. High Court in their Order dt. 20-12-1988 in W.A.No.1094/83. In that Writ Appeal, ~~it was~~ relying on a Judgment of the Hon'ble Supreme Court of India in AIR 1984 (SC) 626 - <sup>their</sup> Lordships directed the department to examine whether it was still expedient to continue the ~~departmental~~ enquiry when the delinquent official could not be shown the records which were stated by the respondents to have been burnt. But the department chose~~d~~ to go ahead with the enquiry and when the enquiry officer also came to the conclusion that the charge against the applicant was not proved, the disciplinary authority should have given sufficient opportunity to the applicant <sup>to state his case</sup> before ~~or~~ coming to <sup>any</sup> conclusion on the imposition of the punishment. No doubt, C.C.S. Rules permit the disciplinary authority to differ with the Enquiry Officer. But in such cases, the disciplinary authority should give an opportunity to the delinquent official by furnishing a copy of the Enquiry Report and also stating clearly as to why he differs with the Enquiry Officer. It is only on receipt of <sup>a</sup> reply from the delinquent official, based on the enquiry report <sup>along with the DA's views</sup> ~~and on~~ <sup>that</sup> ~~its perusal~~ the disciplinary authority should come to a conclusion about the imposition of the penalty. ~~Not before that.~~

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In a decision dt. 11-9-1986 in T.A.No.144/1986 before them the Jabalpur Bench of this Tribunal (ATR-1986(2) - CAT-577) held that "in such cases it would also be equitable that the disciplinary authority gives further opportunity of hearing to the delinquent official to explain his case." But, without giving an opportunity to the applicant to defend himself on his proposal to disagree with the Enquiry Officer, the disciplinary authority has come to his own conclusion although in the punishment order he has indicated in detail why he had disagreed with the Enquiry Officer. This, in our opinion, is not a correct legal position. He should have given complete reasons for disagreeing with the Enquiry Officer's report, ~~and then~~ <sup>the officials</sup> get his representation and then only come to a conclusion.

7. Regarding ~~issue~~ (C); The applicant wanted to peruse the ~~certain~~ records in original like the S.B.Ledger and List of Transactions (LOT). It is his <sup>that</sup> case ~~these~~ documents were essential. On the other hand, the respondents contend that these are not absolutely essential and that pass-book entries ~~alone~~ would suffice to establish the guilt on the part of the applicant. We find that the Enquiry Officer has ~~also~~ come to the conclusion that without these essential documents the connivance or involvement of the applicant in the fraud, they were investigating, could not be established. The A.P. High Court had also earlier pointedly indicated whether it would still be advisable for the respondents to go-ahead with the enquiry when they were not in a position to produce the essential records demanded by

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the applicant. We are conscious of the fact that the level of evidence required in a disciplinary case is not as much as in a criminal trial as seen from the observation of the Hon'ble Supreme Court of India "the disciplinary proceedings is not a criminal trial" the standard of proof required is that of preponderance of probability <sup>but</sup> not proved beyond doubt". (para-25 of the Judgment of the Hon'ble Supreme Court reported in AIR 1989 (SC) 1185). Nevertheless, in a major penalty case like this the fundamental documents required by the applicant to defend himself were not produced by the respondents. When a disciplinary case is initiated all connected documents should be preserved carefully. In this case investigations started much earlier and as early as in May, 1977 the applicant had been suspended. How the respondents left <sup>the documents</sup> ~~at~~ in such a position <sup>as</sup> ~~has~~ to be destroyed in <sup>a</sup> subsequent riot in 1978 is difficult to understand. In any case this document, which is considered essential by the applicant is also considered essential by the enquiry officer. We feel that denial of these documents <sup>amounts to</sup> ~~is~~ violation of principles of natural justice, <sup>in</sup> ~~in~~ that the applicant did not have adequate opportunity to deny the charge levelled against him.

8. We find that the case, apart from involving enormous delays (applicant was suspended in 1977 and it was only in 1983 that the enquiry was commenced) also shows disregard on the part of the respondents for essentials such as not giving an opportunity to the applicant to defend himself after indicating why the disciplinary authority decided to differ with the Enquiry Officer and also the inability of the respondents to produce the essential documents the applicant wanted to examine, to defend himself.

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9. Under these circumstances, we have to direct the respondents to treat the entire disciplinary proceedings as invalid. We, therefore, quash the punishment order inflicted by the 2nd respondent dt. 31-3-1990, and <sup>the</sup> ~~sub-~~ ~~sequently~~ appellate order of the first respondent dt. 18/22-5-1990. There is no order as to costs.

*R. Balasubramanian*  
( R. BALASUBRAMANIAN )  
MEMBER (A)

*C.J. Roy*  
( C.J. ROY )  
MEMBER (J)

Dated 21<sup>st</sup> February, 1992.

*A. S. 2/92*  
Deputy Registrar(J)

grh.

To

1. The Director of Postal Services, Hyderabad City Region,  
1 *R* O/o The Chief Post Master General,  
A.P.Circle, Hyderabad-1.
2. The Senior Superintendent of Post Offices, Hyderabad  
South-East Division, Hyderabad-27.
3. The Chief Post Master General, A.P.Circle, Hyderabad-1.
4. One copy to Mr.T.Suryakaran Reddy, Advocate  
16-11-741/D/57, Moosarambagh, Hyderabad.
5. One copy to Mr.N.Bhaskar Rao, Addl.CGSC.CAT.Hyd.Bench.
6. One copy to Deputy Registrar(J)CAT.Hyd.Bench.
7. Copy to All Reporters, as per standard list of CAT.Hyd.
8. One spare copy.

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Asst.  
25/12/92  
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TYPED BY  
CHECKED BY

COMPARED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. V.C.

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: 21-2-1992

ORDER/JUDGMENT:

Central Administrative Tribunal  
DESPATCH

31/3/92

HYDERABAD BENCH.

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

in

O.A.No. 308/91

T.A.No.

(W.P.No.)

Admitted and interim directions  
issued.

Allowed

Disposed of with directions.

Dismissed

Dismissed as withdrawn

Dismissed for Default.

M.A. Ordered/ Rejected

No order as to costs.

Dismissed

Signature