

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

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ORIGINAL APPLICATION NO.326/91

DATE OF JUDGEMENT: 10th June 1993

Between  
Ch Narayanacharyulu

.. Applicant

and

1. The Secretary,  
Min. of Defence,  
DHQ PO New Delhi-11.

2. The Chief of the Naval Staff,  
Naval Headquarters DHQ PO  
New Delhi-11.

3. The Flg.Officer Commanding-in-Chief  
Eastern Naval Command,Naval Base  
Visakhapatnam 530014

4. The Chief Staff Officer(P&A)  
Eastern Naval Command, Naval Base  
Visakhapatnam

.. Respondents

Counsel for the Applicant

:: Party-in-person

Counsel for the Respondents

:: Mr NRDevraj,Sr CGSC

CORAM:

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

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

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(Judgement of the Division Bench delivered by Hon'ble Shri  
T. Chandrasekhara Reddy, Member(Judl.))

This is an application filed by the applicant  
herein under Section 19 of the Central Administrative Tribunals  
Act to quash the order of dismissal of the applicant dated  
21.3.90 issued by the third respondent and to pass such  
other orders as may deem fit and proper in the circumstances  
of the case.

2. The facts giving rise to this OA in brief  
may be stated as follows:

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10/6/93

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH

AT HYDERABAD

O.A. No. 326/91  
T.A. No.

Dt. of Decision \_\_\_\_\_

Ch. Narayana charyulu Petitioner

Party - in service Advocate for the petitioner (s)

Versus

Flag Officer, C-in-C - Ene, Vizag Respondent.

Mr NR Denny Advocate for the Respondent (s)

CORAM

THE HON'BLE MR. A.B. WORTH MEMBER (ADM).

THE HON'BLE MR. T. CHANDRASEKHARA REDDY, MEMBER (J).

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circuisted to other Benches of the Tribunal?
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.)

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3. The applicant while working as UDC in Weapon Equipment Depot, Eastern Naval Command, ~~he~~ was transferred to the Headquarters Eastern Naval Command by <sup>the</sup> order dated 5.7.85 and ~~he~~ reported for his duties in the HQrs Eastern Naval Command on 8.7.85. On 10.7.85, he was suspended from service by the 2nd respondent herein. On 9.10.85, he was served with a charge memo under Rule 14 of the CCS(CCA) Rules 1965. Seven charges were framed as against the applicant. The first charge being that the applicant fraudulently omitted to publish his "leave not due" particulars for certain dates on which he had been granted leave. The second charge being that he fraudulently tampered with the second page of the leave order dated 12.1.84, substituted the same by another page to show as leave not due particulars granted to him, have been published whereas the same were not in fact published. The ~~ex~~ third charge being that he has demanded from one Mr Nookaraju, ASK a bribe of Rs.3000 for the purpose of removal of fraudulent entries in the service document of the said Mr Nookaraju. The fourth charge being that the applicant had unauthorisedly passed ~~an~~ official information pertaining to the alleged fraudulent entries of Sri K.Nookaraju to the Visakha Trade Union Council. The fifth charge being that the applicant has refused to accept the official letter dated 26.3.85 issued by the Officer Incharge, Weapon Equipment Depot, Visakha-patnam calling for the applicant's explanation for unauthorisedly passing ~~an~~ official information to Visakha Trade Union Council in regard to the service document of Bri K.Nookaraju. The sixth charge being that the applicant refused to receive warning letter dated 30.3.85 for using improper and ~~a~~ derogatory language in his representation dated 5.2.85. The seventh charge was that he was in the habit of refusing of official letters ~~and the instance cited were~~ dated 26.3.85 and 30.3.85. A regular Enquiry Officer was appointed to inquire into the said charges as against the applicant. The Enquiry Officer, after conducting inquiry

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passed against the applicant and bringing the applicant under deemed suspension. In view of the directions of this Tribunal in OA 171/89, the applicant was given opportunity to submit his objections to the enquiry report by the Disciplinary Authority and also to raise the contentions referred in para 6 of the judgment passed in OA 171/89. The applicant submitted his objections on 30.1.90. The applicant filed OA 103/90 against the deemed suspension order dated 5.1.90 as illegal. The applicant also filed OA 154/90 challenging the competence of the disciplinary authority to impose major penalty. Both the OAs were dismissed by this Tribunal. The 4th respondent imposed on the applicant, the penalty of dismissal from service as per his orders dated 21.3.90. The applicant questioned the said order of dismissal dated 21.3.90 by filing OA 303/90 contending therein that Article 309 and Article 311(2) and CCS/CCA rules are not applicable to ~~him~~ him who is a defence personnel. The applicant ~~also~~ raised the same ~~contending~~ raised in OA 171/89 in OA 303/90. All the contentions raised by the applicant were negatived for a second time vide judgment dated 8.3.91 passed in OA 303/90. In the said order dated 8.3.91, the Bench held ~~that~~ if the applicant was aggrieved of the dismissal order dated 21.3.90, the next course open to him was to appeal to the appellate authority which the applicant had not chosen to do so and ~~as~~ the applicant had not exhausted all the departmental remedies available to him before approaching this Tribunal even though the time limit for preferring an appeal was well over, directed the applicant, if he desired to prefer an appeal within 45 days from the date of receipt of order passed in OA 303/90 before the competent appellate authority. A direction was also given in the said order to the appellate authority to dispose of the appeal of the applicant within three months of receipt of such an appeal made within the time limited allowed to the applicant. The order passed in OA 303/90 also directed the respondents to give a personal hearing to the applicant if the applicant

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and the same. As against the orders passed in OA-303/90,  
the applicant preferred an appeal in Supreme Court instead of  
appealing to the competent appellate authority. The  
Hon'ble Supreme Court as per its order dated 25.9.92  
dismissed the SLP filed by the applicant. The present OA  
after dismissal of the said SLP by the Hon'ble Supreme Court,  
the applicant had preferred an appeal to the competent  
appellate authority on 12.10.92. This Bench was informed  
that the <sup>appeal</sup> said/was rejected by the <sup>authority</sup> competent as time barred.  
The present OA is filed to set aside the dismissal order dated  
21.3.90 passed by the 3rd respondent as already indicated above.

5. Counter is filed by the respondents opposing this OA.

6. We have heard Party-in-person and Sri NR Devraj, Standing  
counsel for the respondents.

7. The main argument on behalf of the respondents is  
that this OA is liable to be dismissed on the principles of res-  
judicata/constructive resjudicata. Now, the main question that  
has got to be decided in this OA is, whether this OA is  
hit by the principles of resjudicata in view of the judgement  
in OA ~~21~~ 171/89. The main contention of the applicant is,  
that the third respondent Flag Officer, Commanding-in-Chief  
Eastern Naval Command, Visakapatnam is designated as only  
appellate authority as per presidential orders dated 13.9.79,  
and ~~that~~, it is not open to the third respondent to exercise  
the powers of disciplinary authority and as such, the third  
respondent was not competent to pass orders of dismissal  
dated 21.3.90, as against the applicant.

8. As already pointed out, while narrating the facts  
of this OA, OA 171/89 was filed challenging the dismissal order  
dated 27.2.89. The very same pleas that were advanced in the  
earlier OA 171/89 have been advanced in the present OA 326/91  
also. Exhibit A4 to <sup>this</sup> OA (326/91) is the copy of the judgement  
passed in OA 171/89. As could be seen from para 6 of the judgement  
passed in OA 171/89, the ~~contentions~~ contentions that was raised  
was that the third respondent herein was not the competent authority  
to impose the punishment of removal from service, since he had been

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only with the powers of appellate authority as per Presidential order dated 13.9.79. The Bench that dealt the matter in OA 171/89 after referring to the decisions reported in AIR 1958 Calcutta 49 (Monmotha Nath Vs Director of Public Instruction) and AIR 1965 SC 1103 (State of Madras Vs G. Sundaram) and AIR 1982 SC 1407 (Sampuran Singh Vs State of Punjab) had ~~rejected~~ <sup>held</sup> the contentions of the applicant and had categorically that the third respondent was competent to pass the said orders of dismissal as against the applicant.

9. As already indicated, the Bench in OA171/89 after setting aside the dismissal order dated 27.2.89, remitted the matter back to the Disciplinary Authority for limited purpose of hearing the contentions of the applicant as narrated in para 6 of the Judgement in OA171/89. As could be seen from the para 6 of the judgement in OA171/89, it is clear that the applicant had raised the contentions that documents not originally cited were marked in evidence without giving him inspection, that the complaint of Nookaraju forming the subject matter was never furnished to him. He has also raised the plea that due to non-furnishing of the enquiry report that he had been denied reasonable opportunity. As already pointed out, the Enquiry Officer's report had been furnished to the applicant and the applicant had also submitted his objections to the Disciplinary authority. It is only after complying with the directions in OA171/89, that the order of dismissal dated 21.3.90 had been passed. As the present contentions raised by the applicant, namely 4th respondent herein was not competent to initiate disciplinary proceedings as against the applicant and that the third respondent was not competent to pass the order of dismissal as against the applicant, were the issues that were raised by the applicant in OA 171/89 also. As against the findings in OA 171/89 with regard to powers of 4th and 3rd respondents to initiate disciplinary proceedings and to pass order of removal as against the applicant, the applicant had not chosen to prefer an appeal to the Supreme Court. So, the said findings have become final. So, in view of

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of the findings in OA171/89, it has got to be held that the disciplinary proceedings initiated as against the applicant are valid in law and that the order of dismissal of the applicant by the third respondent is also valid in law and that the third respondent had every power to dismiss the applicant from service as a measure of punishment. Nodoubt, it is contended by the applicant that the said findings in OA 171/89 are erroneous. Even accepting for argument sake that the findings are erroneous, the erroneous findings also would bind the parties until they are set aside by a competent court of law. The fact that the applicant had not preferred an appeal as against the judgement in OA 171/89 as already pointed out is not in dispute. As the findings in OA 171/89 have become final it is not open for the applicant to raise the very same plea in this OA that had already been raised by him in OA171/89 with regard to the legality of the Disciplinary proceedings and the competence of the third respondent to impose the punishment of dismissal of the applicant.

10. It is contended on behalf of the respondents that this OA is not at all maintainable, in view of the judgement in OA 303/90. OA 303/90 was filed by the applicant for the following reliefs.

- (i) To quash the impugned order No.CE/9103/7 dated 21.3.90 under Article 311 of the Constitution based on the charge memo No.CE/9103/7 dated 9.10.85.
- (ii) To declare that Article 311, 309 and CCS(CCA) Rules, 1965 are not applicable to Defence Civilians based on the law declared by the Supreme Court vide their decision reported in AIR 1989 SC 662
- (iii) To order the respondents to restore the CDS (CCA) Rule 1952 particularly to Defence Civilians until new rules if any framed at a later date under Article 310 of the Constitution instead of allowing the respondents to follow the procedure under CCS(CCA) rules, 1965 which is declared as illegal by the Supreme Court.
- (iv) To quash the delegation of powers presently held vide order No.CP(L)/4035 dated 4.8.79 under Rule 9(1) of the CCS(CCA) Rules, 1965 in respect of Appointing Authorities and Ministry of Defence Order No.5(18) 79(D) Lab dated 13.9.79 issued under Rule 12(2)(a) of CCS(CCA) Rules 1965 in respect of Disciplinary authorities in view of the law declared by the Supreme

Court in a case reported in AIR 1989 SC 662 Supra regarding the non-applicability of Article 311, 309 and CCS(CCA) Rules, 1965 framed under Article 309 of the Constitution and also on the ground that those rules were framed after 8 years of the appointment of the applicant.

(v)

To declare that the suspension order No.CE/9103/7 dated 10.7.85, charge memo No.CE/9103/7 dated 9.10.85, Appointment of the Inquiry Officer vide order No.CE/9103/7 dated 30.11.85 and the appointment of the PO vide order No.CE/9103/7 dated 30.11.85 as illegal since the above orders were passed by the 5th respondent (in OA 303/90) who maintains no locus standi in case of the applicant as the applicant was working under a Captain of Command Supply Office and that the Captain also maintains competency of a Disciplinary authority to impose minor penalty on the staff working under the 5th respondent (in OA 303/90)

(vi)

To declare the action of the respondents 3 and 4 as violative of Article 141 of the Constitution of India since the impugned order was issued contrary to the law declared by the Supreme Court in the case reported in AIR 1989 SC 662 ; and

(vii)

to award suitable costs. "

11. It is also the contention of the applicant in this OA that he is not governed by the CCS(CCA) Rules which he has <sup>plea</sup> raised in OA 303/90 also. Dealing with the applicability of CCS(CCA) Rules, the Bench                      had held as follows; at page 11 of the Judgement in OA303/90.

"In this application, the main contention of the applicant is that he is not governed by Articles 309 and 311(2) of the Constitution and that the CCS(CCA) Rules, 1965 are not applicable to Defence Civilians. While advancing the arguments in the earlier petition, he had only urged that the documents were not supplied to him before the punishment order was given. In the earlier OA 171/89 he had not raised this legal issue of the applicability or otherwise of the CCS(CCA) Rules, 1965. We find from the Judgement dated 29.11.89 in OA 171/89 that the learned counsel for the respondents therein had raised this issue and argued that even if there infirmities in the conduct of the enquiry against the applicant, they did not matter since CCS(CCA) rules, 1965 ~~are~~ were not applicable to him. The respondents therein relied on the ground



that the rules framed under Artciles 309 and 311(2) of the Constitution were not applicable to the applicant. After dealing with this aspect in considerable detail, this Tribunal held:

"Civilians in defence sercies can claim the right to a reasonable opportunity whenever the provisions of Article 310 have not been invoked by application of the CCS(CCA)Rules. The rules framed and extended to such employees would be valid rules and are deemed to have been framed to subserve to the principle of 'audi alteram partem' and the equity clauses framed in the Constitution."

Summarising the whole issue vide para 11, this Tribunal had observed in OA 171/89,

"From the various cases cited as discussed in the proceeding paras, the following legal propositions would emerge in regard to the rights of civilian employees in the defence service:

- (i) these employees are not entitled to the benefits of Article 311 of the Constitution of India when their services are sought to be terminated under Art.310 of the Constitution. They cannot also claim rights similar of analogous to the rights conferred under Art.311 even by virtue of the service rules since the service rules must conform to the provisions of the constitution. Any rule which eradicates or limits the powers of the President/Governor under Article 310 would be ultra vires.
- (ii) The power under Article 310 can be exercised by any minister of officer under the rules of business framed either under the Article 77(3) or under Article 116(3) or in exercise of powers vested in them by rules framed in this behalf, that is, the pleasure of the President or the Governor can be exercised by a Minister/Officer on whom the President or the Governor confers or delegates the power.
- (iii) The right to opportunity by reason of applicability of the principles of natural justice is expressly excluded to defence employees and civilian employees in the defence services when their services are terminated exercising the ~~'pleasure doctrine'~~ 'pleasure doctrine' by virtue of Article 310 read with Article 311 of the Constitution of India.

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- (iv) Where the power under Article 310 of the Constitution has not been delegated by the President and the appointing authority/disciplinary authority seeks to remove such an employee, without affording him a reasonable opportunity, the exercise of such a power would be contrary to the rule 'audi alteram partem'/principles of natural justice and would be arbitrary and violative of Article 14 of the Constitution. The procedures prescribed by the Govt. in such cases viz., applying the CCS(CCA) Rules is a valid procedure and subserves or satisfies the test of audi alteram partem. Consequently, non-compliance of the rules in such case would be illegal and ultra vires of Article 14."

12. So, in view of the findings of this Tribunal in OA 171/89 and OA 303/90, the plea of the applicant that he is not governed by Article 309 and 311(2) of the Constitution and that the CCS(CCA) Rules are not applicable to the applicant falls to the ground, as the said findings have become final. So, none of the legal contentions raised on behalf of the applicant can be accepted in view of the earlier judgements passed in OA 171/89 and OA 303/90. As already pointed out, while narrating the ~~ex~~ facts giving rise to <sup>the G.A</sup> (OA 326/91) the applicant herein by Judgement dated 8.3.91 passed in OA 303/90 was permitted to prefer an appeal to the competent ~~authority~~ authority as against the dismissal order dated 21.3.90 passed against the applicant. The applicant had not chosen to approach the competent authority as permitted by this Bench within 45 days from the date of receipt of the order passed in OA 303/90. As already pointed out, the applicant preferred a Special Leave Petition in the Hon'ble Supreme Court of India against the judgement dated 8.3.91 passed in OA 303/90. The said SLP was dismissed by the Hon'ble Supreme Court as per its order dated 25.9.92. So, the Bench Judgement passed in OA 303/90 has become final. It is only after the dismissal of the SLP

9/10/92

on 25.9.92 that the applicant had preferred an appeal to the competent authority. We are informed that the said appeal had been rejected as time barred. As the applicant did not prefer an appeal to the competent authority against the dismissal order dated 21.3.90 as per the directions of this Tribunal, the liberty given to the applicant also automatically ceases, as he had chosen to appeal to the Supreme Court, as against the orders dated 8-3-91 passed in OA 303/90 and as the Supreme Court had not given any time to the applicant to prefer an appeal to the competent authority as against the dismissal order dated 21.3.90, certainly the appeal preferred by the applicant before the appellate authority on 12.10.92 had become time barred. So, as the appeal preferred by the applicant before the appellate authority, after dismissal of his SLP by the Supreme Court had become time barred, the dismissal order passed by the third respondents dated 21.3.90 had become final. So, in view of the facts and circumstances herein, to go into the merits of this case will be a futile exercise and so, we are not inclined to go into the merits of this case.

13. It is vaguely contended <sup>by</sup> ~~on behalf of~~ the applicant that the earlier OA171/89 had been filed as against the dismissal order dated 27.2.89, whereas, the present OA 326/90 is filed as against the dismissal order dated 21.3.90, ~~and as the present OA is filed on separate cause of action that this OA is~~ maintainable. ~~But~~ The fact that the applicant had also filed OA 303/90 for the very same relief he has asked for in this OA (326/91) cannot be forgotten. As a matter of fact, the ~~present~~ present (OA 326/91) OA303/90 and OA 171/89 are based on the same subject matter and the issues involved ~~were~~ are also the same.

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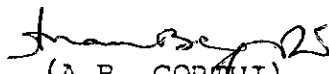
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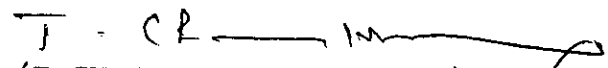
1. The Secretary, Ministry of Defence, DHQ PO, New Delhi-11.
2. The Chief of the Naval Staff, Naval Headquarters DHQ PO, New Delhi.— 11
3. The Flag Officer Commanding-in-Chief Eastern Naval Command, Maz Visakhapatnam.— 14.
4. The Chief Staff Officer(P&A), Eastern Naval Command, Naval Base, Visakhapatnam.— 14
5. One copy to Sri. Ch.Narayanacharyulu, (Party-in-Person), E/1 Pallava Park, Kancharapalem, P.O., Visakhapatnam.
6. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
7. One spare copy.
8. *one copy to Librarian.*

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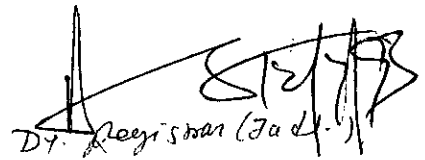
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Even accepting the contentions of the applicant that the dates of dismissal order in OA171/89 and in this OA are different, the judgement in the prior action, namely, in OA 171/89, operates as estoppel with regard to the matters in issue and points controverted upon the determination of which the finding of verdict was rendered. So, that being the position, it is not open for the applicant, to contend that the present OA is filed on a separate cause of action other than in OA 171/89 and, that, he has got a right to advance all the please raised in OA 171/89. As already pointed out, findings in OA171/89 operate as a bar to the present OA 326/91. It is not open for the applicant to raise the very same issues herein which were negatived by this Tribunal in OA 171/89. In the result, we see no merits in this OA and hence, this OA is liable to be dismissed and is accordingly dismissed leaving the parties to bear their own costs.

  
(A.B. GORCHI)  
Member (Admn)

  
(T. CHANDRASEKHARA REDDY)  
Member (Judl.)

Dated: 10-6-93 1993

  
Dy. Registrar (Judl.)

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O.A. 326/91

TYPED BY

COMPARED BY

CHECKED BY

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. GORTY : MEMBER (AD)

AND

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

AND

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

Dated : 10/6/1993

ORDER/JUDGMENT:

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

in

O.A. No.

326/91

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.

Central Administrative Tribu-  
DESPATCH

21 JUL 1993

HYDERABAD BENCH

12/9/93