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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION No. 358/91

DATE OF JUDGEMENT: 27-4-94

Between

K.Chinnaiah

.. Applicant

and

1. The Secretary,
Min. of Communications
New Delhi.

2. Director of Postal Services
Hyderabad Region
Hyderabad-1.

3. Sr.Superintendent of Post Offices
Nizamabad Division
Nizamabad

.. Respondents

Counsel for the Applicant :: Mr. T. Jayant

Counsel for the Respondents :: Mr. N.R.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(J)}X

This is an application filed under Section 19 of the Central Administrative Tribunals Act to set aside the punishment order passed by the 3rd respondent as per his memo dated 9.3.89 as modified by the 2nd responde who is the appellate authority as per his order dated 26.3.90 and direct the respondents to regularise the period of suspension from 8.3.85 to 8.3.89 as duty for all purposes.

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2. Facts so far necessary to adjudicate this OA in brief, are as follows:

3. The applicant was working as a regular Postal Assistant in the Nizamabad Head Post Office in the year 1985. While so, on 4.3.85, the applicant was deputed to ~~the Savings Bank Counter~~, as the regular incumbent was on Casual Leave for that day. The applicant drew a sum of Rs.10,000/- as advance, from the Treasurer in the usual manner in order to work at the Savings Bank counter, and thus came into ~~the custody of~~ custody of Rs.10,000/- on 4.3.85. He drew the said amount of Rs.10,000/- in Rs.100/- denomination and kept the bundles in the counter. According to the applicant, within few minutes, the said amount was missing. The applicant immediately reported the ~~a~~ matter to all concerned including the local Police. The local police investigated the case ^{and} referred the case as undetectable.

4. The applicant was placed under suspension on 6.3.85 as a departmental inquiry was contemplated against him and he was served with a charge memon 28.5.85 under Rule 14 of CCS(CCA) Rules, 1965. A regular Enquiry officer was appointed to conduct the inquiry. The enquiry officer submitted his report to the Disciplinary Authority and the Disciplinary authority accepted the findings of the Enquiry Officer and awarded the penalty of 'Reduction of pay' by one stage in the time scale for a period of three years from 10.3.89 without any cumulative effect and also ordered recovery of Rs.10,000/- from the applicant's pay in 34 monthly instalments. ~~Aggrieved~~ Aggrieved by the orders of the Disciplinary authority, the applicant preferred an appeal to the 2nd respondent. The appellate authority i.e. Director of Postal Services

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Hyderabad as per his orders dated 26.3.90 while confirming the findings of the Disciplinary Authority modified the penalty by reduction of pay by one stage i.e. from Rs.1000/- to Rs.975 for a period of three months w.e.f. 10.3.89 without cumulative effect on his earning of increments either during the period of reduction or thereafter. Thus the recovery of Rs.10000/- was confirmed by the appellate authority even though there was reduction in the punishment that was imposed by the Disciplinary authority as against the applicant.

5. It is the case of the applicant that the period of suspension of the applicant from 8.3.85 to 8.3.89 is liable to be treated as duty and that, he is entitled for pay and allowances for the entire suspension period of suspension. Hence, the present OA is filed for the above said relief(s).

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.

8. The following contentions are raised on behalf of the applicant.

- i) The applicant had been denied reasonable opportunity during the inquiry without the assistance of his nominated defence counsel.
- ii) The punishment order passed by the 3rd respondent imposing two penalties namely postponement of increment and recovery of Rs.10,000/- is not valid.
- iii) The respondents are not justified in not treating the period of suspension as duty and treating the suspension period as suspension.
- iv) The inquiry is vitiated as the order of the Disciplinary Authority and Appellate Authority are not speaking orders.

Disciplinary Rules usually provide that a Government servant can take the assistance ~~of~~ ^{of} ~~of~~ ^{of}

- a) Any other Government servant posted in any office either at his headquarters or at the place of inquiry OR
- b) Any other Govt. servant posted ~~any~~ at any other station - if the Enquiry Officer permits OR
- c) Any Lawyer
Provided-
 - i) If the presenting officer is a lawyer
 - ii) If the Enquiry Officer permitsOR
- d) A retired Government servant subject to the conditions specified by the President from time to time by general or special order in this behalf.

Of course, it is needless to point out the Rule providing for legal assistance is mandatory rule. It regulates the guarantee given to a Government servant under Article 311. Many of the Government servants by and large have no legal ~~claim~~ ^{claim}. In view of this only a Government servant is being provided ~~with~~ ^{with} a defence Assistant to defend in departmental inquiries ~~where~~ where major penalty charge sheets are issued. Admittedly, in this case, as against the applicant, a major penalty charge sheet under Rule 14 of CCS(CCA) Rule had been issued.

9. Even though it is contended on behalf of the applicant that he had been denied reasonable opportunity by not providing him the defence assistant of his choice, on behalf of the respondents, it is contended that the respondents have not at all denied the assistance of a defence assistant to the applicant during the departmental inquiry. As could be seen, the applicant had requested the assistance of one M. Mohan Rao who was working as Sub-Postmaster at Santhapeta ~~at~~ ⁱⁿ Ongole District. The respondents have rejected the request

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of the applicant to provide him the assistance of said Mohan Rao as defence assistant as he was working in a far away place. When the applicant requested for the services of the said Mohan Rao, the respondents appraised him of the Rule position as contained in Rule 14(8) of CCS (CCA) Rules which provides ^{that a} Government servant may take the assistance of another Govt. servant posted at his HQrs or at the place where the inquiry is held. The respondents had further suggested ^{to} the applicant to suggest the names of any person serving in Nizamabad District or in any of the neighbouring districts viz., Adilabad, Karimnagar Nanded, Medak, Ranga Reddy and Hyderabad. But the applicant had been adamant and pressing his demand for appointment of the said Mohan Rao for his defence. So, in view of the adamant attitude of the applicant in pressing for the said Mohan Rao to defend him, there was no other alternative for the respondents ^{except} to proceed with the inquiry. So, the respondents have proceeded with the inquiry and the Enquiry officer, as already pointed out, had submitted his report. In view of the act of the applicant in not naming any defence assistants that would be available to him in the above said places namely, Nizamabad, Adilabad, Karimnagar, Nanded, Medak, Rangareddy and Hyderabad, it cannot be said that the applicant had been denied the help of a defence assistant and there by a reasonable opportunity to defend him ^{self} in the said inquiry.

10. It is not in dispute that the applicant became entrusted with the sum of Rs.10,000/- on 4.3.85, on which date, the applicant had ~~worked~~ been asked to work in the SB Counter. The applicant's case is that he left the said amount in the counter itself where he was working and that the same ^{was found} missing.

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Only two inferences can be drawn in this case. The first inference is negligence of the applicant. The applicant was not expected to leave the counter keeping it open. Leaving the counter without properly securing the said cash, amounts to negligence on the part of the applicant, which negligence is certainly culpable under law. The other inference that can be drawn in this case is that the applicant, who was in possession of the said sum of Rs.10,000/- had committed theft of the same and to escape from any possible action that may be taken that he had woven the story of somebody stealing the said amount in his absence, which, according to the applicant, was left at the counter itself. In view of the admitted facts in this case, the said defence assistant, Sri Mohan Rao could have hardly helped the applicant. It was not a case where evidence was recorded with reference to accounts and the applicant required the services of a trained person for cross examination of the witnesses. Absolutely, there is no legal complexity in this case. We do not therefore accept the contention of the applicant that the applicant had been denied of the reasonable opportunity, to defend himself in the said inquiry.

11. So far the second contention is concerned, it is not in dispute that the applicant had been imposed the punishment of reduction of pay by one stage and also recovery of the said amount of Rs.10,000/- in monthly instalments. Normally, there will be no need for two penalties at one time but the penalty of recovery from the pay of the whole or part of any pecuniary loss caused by an official by negligence or breach of

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order can be imposed along with other penalties. Para 108 of the P&T Manual Vol.III also lays down that in addition to the penalty of recovery, technically there is no bar to impose any statutory penalty if the circumstances so justify. So, in view of the facts and circumstances of the case, it cannot be said in view of the said Para 108 of P&T Manual Vol.III that competent authority had no power to pass the above said penalties on the applicant. In this context, it will be pertinent to refer to a recent decision of the Central Administrative Tribunal Bangalore Bench reported in 1993(3) ASLJ CAT 557 - VV Ballurgi Vs Supdt. of Postoffices and another. In the said case, the penalty of withholding an increment for one year was ordered along with a ~~xxx~~ direction to recover Rs.9,000/- from the applicant therein. The applicant therein contended that plurality of penalty cannot be levied for the same charge. The Bangalore Bench held that "If there had been a plurality of penalty, it only reflected on the severity of the misconduct", and dismissed the application. The above cited decision will apply on all fours to the facts of this case. As already pointed out, Para 108 of the P&T Manual Vol.III also permits the imposition of any statutory penalty in addition to the penalty of recovery ~~xx~~ if the circumstances so justify.

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In view of the R&T instructions contained in P&T Manual Vol.III and CAT Bangalore Bench decision, it is not open for the applicant to contend that the above two penalties cannot be imposed on the applicant. We are satisfied that the penalties imposed on the applicant in view of the facts and circumstances of the case are legal and valid and so the said contention of the applicant that the punishment order imposing two penalties is not valid.

12. It is the contention of the learned counsel for the applicant that for the suspension period from 8.3.85 to 8.3.89 that the applicant is entitled to be paid full pay and allowances. As already indicated, the appellate authority had passed orders on 26.3.90, modifying the order of the disciplinary authority by reducing the pay of the applicant by one stage from Rs.1000/- to Rs.975 in the scale of Rs.975-1660 for a period of three months with effect from 10.3.89 without cumulative effect. The penalty of reduction lower stage in the time-scale of pay for a specific period with further directions as to whether or not the Government servant will earn increments of pay during the period ^{of} such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of pay and not adversely affecting the pension of the applicant is a minor punishment as per Govt. of India, Deptt. of Personnel & Training Notification No.11012/4/86-Estt.(A) dated 13.7.90, which is inserted in Rule 11 of CCS(CCA) Rules, 1965.

Prior to this instruction, the reduction to a lower stage in the time-scale of pay for a specified period with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay ^{was} ~~is~~ a ~~major~~ penalty under CCS (CCA) Rules, 1965 under Rule 11. The competent authority in this case had imposed the above penalty prior to the issue of Deptt. of Pers. & Trg. Notification dated 13.7.90. So, it is quite evident that the applicant had been inflicted with a major penalty in view of his misconduct. ~~Under~~ FR 54(B) deals with the case where a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement including premature retirement while under suspension. The said Rule stipulates that the authority competent to order reinstatement shall consider and make a specific order-

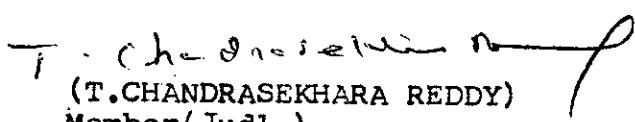
(a) regarding the pay and allowances to be paid to the Govt. servant for the period of suspension ending with re-instatement or the date of his retirement (including premature retirement) as the case may be; and


(b) whether or not the said period shall be treated as a period spent on duty.

As could be seen, from Clause (3) of FR 54(B), a Government ^{under suspension} servant shall be entitled for full pay and allowances only where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified. As the applicant herein had been punished for his alleged misconduct with major penalty, it cannot be said that the suspension period of the applicant was unjustified. So as the suspension of the applicant is fully justified

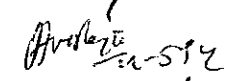
in this case, the applicant, will not certainly be entitled for full pay and allowances as claimed by him.

13. We have gone through the entire material. The Enquiry Officer had given a reasoned report. The Disciplinary Authority had accepted the findings of the Enquiry Officer and had passed the orders dated 9.3.89. We have gone through the orders of the Appellate Authority dated 26.3.90 confirming the findings of the Disciplinary Authority. Both the Disciplinary Authority, as well as the Appellate Authority having applied their minds to the facts of the case, have passed speaking orders. So, the applicant having been prejudiced in any way cannot be accepted as the orders of the Disciplinary Authority as well as Appellate authority are speaking orders. So, 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.


(T.CHANDRASEKHARA REDDY)
Member(Judl.)


(A.B. GORTHI)
Member(Admn)

Dated: 27-4-1994


Deputy Registrar(Judl.)

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Copy to:-

1. The Secretary, Min. of Communications, New Delhi.
2. Director of Postal Services, Hyderabad Region, Hyd-1.
3. Sr. Superintendent of Post Offices, Nizamabad Division, Nizamabad.
4. One copy to Sri. T.Jayant, advocate, CAT, Hyd.
5. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
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