

(184)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.359/91

Date of decision: 3-12-93

Between

Sk. Ahmed Basha

... APPLICANT

A N D

1. Head, Personnel & General Admn.,
Disciplinary Authority for
Group C employees,
SHAR Centre, Sriharikota,
Nellore District, A.P.
2. Controller, SHAR Centre,
Appellate Authority,
Sriharikota. Nellore Dist (AP)
3. Director, SHAR Centre,
Revising Authority,
Sriharikota. Nellore Dist.

... RESPONDENTS

Appearance:

For the applicant : Smt.T.Soubhagya Lakshmi, Advocate
For the Respondents : Sri V.Bhimanna, Addl.CGSC

CORAM:

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

The Hon'ble Shri R.Rangarajan, Member (Admn.)

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J U D G E M E N T

(As per Sri Justice V. Neeladri Rao, Vice-Chairman)

The applicant joined service in the Air Force in 1964 and worked there till 1973. He joined as Office Clerk-B in the Respondents' Institution i.e. SHAR Centre, Sriharikota on 24-3-1974. Charge-memo. dated 31-7-87 with the following charges was issued to him:

"Article of Charge-I"

That the said Sri Sk Ahmed Basha, Accounts Assistant-A, Finance & Accounts Division, under the influence of intoxicated drink behaved in a most unbecoming manner using unspeakable language in public on 13-5-87 at about 1225 hours. Sri Ahmed Basha picked up a quarrel with Sri T. Subramanyam, LVD and kicked him while pretending to shake hands with him. Sri Ahmed Basha had created a panic among the public in front of the Keepakam bus shelter inside the Range and behaved in a most unbecoming manner and thus violated Rule 3(1)(iii) and 22(A)(c) of CCS (Conduct) Rules, 1964.

Article of Charge-II

That the said Sri Sk Ahmed Basha, S.C.No.Y11282-6 Accounts Assistant-Ais in the habit of misbehaving in drunken state in public. He was involved in many such incidents in the past for which he was charge-sheeted for major penalties many times which also resulted in the award of penalties against Sri Ahmed Basha. In spite of many opportunities afforded to him to improve himself Sri Ahmed Basha has not shown any improvement and continues to behave in a manner unbecoming of a Government Servant. He has thus contravened the provisions of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964. "

After enquiry, order of removal was passed by the disciplinary authority on 3-6-88 by way of punishment. The appellate authority by order dated 14-9-88 modified it by way of compulsory retirement with effect from 3-6-88.

The same was confirmed by the revisional authority by order dated 29-10-88. Thereafter the applicant was paid

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Rs.15,000/- as terminal gratuity interms of Rule 10(1-A) of C.C.S. (Temporary Service) Rules, 1965, Rs.4,823/- towards leave encashment, Rs.1,236/- towards Provident Fund and Rs.1,230/- towards Savings Fund under Central Government Employees' Group Insurance Scheme, 1980.

As the applicant was not confirmed in the SHAR Centre, it is alleged for the respondents that the applicant is not entitled for consideration of his service in the Air Force for the purpose of pension, and as he was not confirmed he was not eligible for pension.

2. This O.A. was filed on 19-3-91 praying for consideration of his service in the Air Force for the purpose of pension and for confirmation of his service in ISRO and for quashing the order of compulsory retirement by way of punishment. But as more than one relief were claimed the reliefs in regard to the confirmation of his service and for consideration of his service in the Air Force for pension were deleted and thus, the relief was confined only in regard to the punishment of compulsory retirement.

3. The entire pleadings in the O.A. are in regard to the claims for confirmation ^{and} ~~for the relief of~~ ^{for} consideration in regard to inclusion of his service in the Air Force for the purpose of pension. No grounds were referred in the pleadings in the O.A. filed on 19-3-91 to challenge the order of punishment. When the O.A. has come up for consideration on 11-3-93 that is, shortly after one of us, viz. Vice-Chairman,

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joined in this Bench, the applicant started arguing his case in person. But when the grounds on which the order of punishment is challenged are not referred to in the O.A., we felt that it is a case where legal assistance is necessary for consideration of this O.A. and hence the applicant was asked to approach the Legal Aid Committee of the A.P. High Court. Then the Legal Aid Committee engaged Smt. T. Soubhaghyalakshmi, Advocate for conducting this case on behalf of the applicant. While she realised that it is not ^{possible} ~~proper~~ to argue the case without putting forth the grounds to challenge the order of punishment, additional affidavit was filed on 4-8-93 and then additional reply to the same was filed on 20-9-93.

4. The applicant made a representation dated 13-9-89 to the Chief Justice of India by sending it by post and by letter dated 17-10-89 the Assistant Registrar, Supreme Court informed the applicant that if so advised, ^{he} can approach the Registrar (Judicial) and Secretary, A.P. State Legal Aid and Advice Board, High Court of A.P. for legal aid and advice in the matter. But the applicant engaged one advocate and filed this O.A. on 19-3-91. One of the contentions raised for the respondents in the reply filed on 1-7-91 is that this O.A. is barred by limitation. While it is stated for the applicant that the delay in filing the O.A. is due to paucity of funds, it was pleaded for the respondents that as the applicant received Rs. 22,000/- and odd towards terminal benefits, the plea of want of

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funds for the delay in filing the O.A. cannot be accepted. But we feel that it is a fit case where the delay can be condoned as the applicant was under suspension from 14-8-87 and the applicant might have kept the amount received towards terminal benefits for the maintenance of his family. The fact that the advocate whom the applicant had engaged earlier had not come up to argue the case when this O.A. was called suggests that for want of funds the applicant might not have been in a position to pay the fee of the advocate.

5. It is not in controversy that there was an incident on 13-5-87 near Keepakam bus shelter inside the range of the SHAR Centre. While it is a case of Sri T. Subramanyam, an employee of the SHAR Centre who had given complaint on 13-5-87, that when the applicant was abusing the members of the Association who were on hunger strike nearby, Sri Subramanyam questioned the applicant and the latter on the pretext of shaking hands with him kicked him, the case of the applicant is that when the applicant was standing at the bus stop to go to some place he was asked to join the Association and when he refused, Sri Subramanyam assaulted him. The case of Sri Subramanyam who was examined as PW-8 in the enquiry was supported by PWs 1 to 6, and PW-7 did not support him and PW-9 stated that he could not recollect as to what transpired on 13-5-87. DWs 1 and 2 the two witnesses examined for the applicant stated that Sri Subramanyam was responsible for the incident which had taken place and the applicant

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did not kick Sri Subramanyam. The applicant stated before the enquiry officer that while ~~he~~ was embracing Sri Subramanyam, ^{he} (the applicant) raised his foot and it touched Sri Subramanyam and he did not assaulted him. The Enquiry Officer held that Charge-I was proved. The disciplinary authority after referring to the entire ~~xxxx~~ evidence accepted the findings given by the Enquiry Officer. He also ^{observed} ~~averred~~ that in view of the earlier incidents which were referred to in Charge-II ~~it is a fit case where~~ it is not in the interest of the Institution to continue the applicant and ~~an~~ accordingly order of removal was passed. As already observed the appellate authority modified it as compulsory retirement. [redacted]

6. It was urged for the applicant as under:

The ~~fact that~~ ^{fact} the complaint given by Sri Subramanyam in regard to the alleged incident on 13-5-87 was not registered by the police the same has to be held as false. As the applicant was not sent to a doctor to test as to whether he was in drunken condition, the version of the witnesses that the applicant was under drunken condition should nothave been accepted. When it was stated in the complaint that there were ladies at the bus stand there was no whisper by any of the witnesses ^{and no body was examined} and on that ground ~~itself the case~~ of Sri T. Subramanyam should have been rejected. There are discrepancies in the evidence of the witnesses who had spoken in support of the version of Sri Subramanyam and ~~there~~ ^{they}

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material discrepancies and as the applicant ~~was~~^{is} not
of the Association while the witnesses ~~are~~
~~version of~~ Sri Subramanyam are members of the
Association, they should be treated as hostile to the
applicant and accordingly the version of Sri Subramanyam
should not have been believed. There is nothing to
disprove the testimony of the defence witnesses and thus
it is a case where the version of the applicant has
to be believed. In any case the punishment of compul-
sory retirement is ^{unconscionable} ~~unconstitutional~~ and shocking.

7. It is not clear from the pleadings and the
arguments as to whether the police refused to register
the complaint given by Sri Subramanyam or whether after
investigation the charge-sheet was not filed. But in
either case it is not a bar to proceed with the disci-
plinary proceedings when the complaint filed
discloses misconduct on the part of the applicant.
It is not suggested to PWs 1 to 6 that they were not
at the bus stop at the time of alleged incident.
Merely because the witnesses are members of the
Association and the complainant (Sri Subramanyam) was
also a member of the Association while the applicant
was not a member of the same, it cannot be stated
that their evidence has to be rejected on that ground
alone. Of course, it is a matter for consideration
in assessing the evidence of those witnesses.

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8. The question as to ^{whether there} ~~where~~ is adequate evidence in support of the charge is not a matter for consideration in regard to an enquiry under Article 226 of the Constitution of India and as the power of this Tribunal is neither more nor less than ^{that of} the High Court in exercising power under Article 226 in such matters (vide Parmananda's case (AIR 1989 SC 1185)) it is not open to this Tribunal to consider as to whether the evidence adduced in support of the charge is adequate or not. But of course if there is no evidence in support of the findings that the charge is proved or if it is only based upon surmises or conjectures or that it is perverse it is a matter for consideration by this Tribunal. Of course, PW-7 (Sri G.V.Ratnam) stated that as per the advice of somebody he falsely stated against the applicant during preliminary investigation. But it might be a case where PW-7 was rescinding or ^{might have} ~~even PW-7 was not there~~ he stated falsely against the applicant in the preliminary enquiry. When either of the above two possibilities are there it cannot be ^{inferred} ~~referred~~ that even PW-1 to 6 are also falsely deposed for none of them stated that as per the advice of somebody they are speaking falsely against the applicant. PW-6 deposed to the effect that he had seen the applicant kicking Sri Subramanyam. Hence the plea in the additional affidavit of the applicant that PW-6 did not support the version of Sri Subramanyam cannot be believed. It cannot be stated

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that the evidence of PW-5 is unbelievable merely because he deposed that he did not see the family members of Sri Subramanyam. None of the allegations in the additional affidavit of the applicant in regard to the other witnesses do not go to the root of the case. It is not for this Tribunal to assess the evidence for it ^{it is} is not the appellate authority. The question as to whether the ^{females} ~~witnesses~~ were there and if so whether they include the family members of Sri Subramanyam are not material particulars for the charge is in regard to the abuse and assault of Sri Subramanyam. Hence the discrepancies pointed out are not in regard to the material particulars. Further the disciplinary authority relied upon the written brief of the applicant wherein he stated that "it was a friendly position of my embrace, my leg touching his belly" to believe the version of Sri Subramanyam. Hence in view of the material on record it can neither be stated that there is no evidence in support of the finding that ^{in regard to assault} the charge is proved nor it is a case that the said finding is ~~per~~ perverse. ^{The question as to whether applicant was in drunken condition is not of much impor-} Hence there are no grounds ^{-tance} to interfere with the finding in regard to the charge-I.

9. Article-II of the charge memo refers to the earlier ~~misconducts~~ on the part of the applicant. It has to be made clear that it is not an independent charge and if charge-I is not proved there is no need to refer to Article-II. If it is ^{not} referred to as an ~~aggravating factor and the same is not referred in the~~ charge memo, it would not be open to the disciplinary authority to refer to the same as ^a ~~aggravating~~ factor.

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10. The four instances referred to under Article-II are: (i) Censure was imposed as penalty by order dated 9-10-79 when on 1-8-79 the applicant went to the Canteen ~~accountant~~ in an intoxicating condition and abused the staff on duty in vulgar way and took ~~xx~~ two meal plates without giving meals tokens and threw the plates on the table; (ii) promotion was withheld for two years by order dated 25-6-84 as the applicant misbehaved with Sri C.P.Nagabasavaiah, an employee of SHAR Centre and his family on 12-5-82, 15-5-82 and 5-1-83; (iii) reduction of pay by two stages for a period of two years was ordered on 1-8-84 by way of punishment when the applicant entered the Finance & Accounts Division on 22-3-83 in a drunken condition and obstructed the staff from performing their duties and he also attempted to destroy the official records and caused damage to the office furniture and property; (iv) reduction of pay by two stages for a period of one year was also ordered when he threatened to finish Shri D.Anjaneyulu, an employee of SHAR Centre. The disciplinary authority observed as under in regard to the above four punishments.

"On review petitions filed by the applicant against these orders, the reviewing authority, after reviewing the case, took a lenient view and modified in the penalties and ~~orders~~ to afford one more opportunity to the applicant to reform himself."

11. Thus, ^{it} ~~it~~ is a case where the earlier acts of misconduct on the part of the applicant were proved.

In view of the said earlier misconducts, the order

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or compulsory retirement which was passed by the appellate authority in regard to the assault on an employee of the SHAR Centre by the applicant cannot be held as highly excessive. So we feel that there are no grounds even to interfere with the punishment.

12. But the pleadings in the Original O.A. and also the main arguments in this O.A. are in regard to the grievance of the applicant that he was not granted pension and he was not given the pensionary benefits without taking into consideration his earlier service in the Air Force. In fact, the very first relief claimed in the O.A. filed on 19-3-91 is in regard to the confirmation and pension by taking into consideration his service in the Air Force. This is a case where the applicant was ^{compulsorily retired} removed from service in 1983 that is, more than ^{five} six years back. It is unfortunate that when ^{some} a part of some other reliefs ^{were} was struck off from the relief portion in the O.A., the applicant was not advised to file separate O.A. in regard to the same. But as the pleadings in regard to the reliefs of confirmation and pension were not struck off, ^{howe} ~~there~~ ^{they} was traversed in detail in the reply filed on 1-7-91. So we feel that ~~instead~~ of driving the applicant to file a separate O.A. in regard to the said relief it is just and proper to advert to the same in this O.A. itself even though the reliefs in regard to the same were struck off in view of the office objections especially when the applicant was not properly advised in regard to the same. It is the case of the

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respondents that C.C.S. (Pension) Rules, 1972 (Pension rules for short) were made applicable to the employees of ISRO with effect from 1-4-75 and even by then the applicant was an employee of ISRO. Rule 2 of the Pension rules states that the said rule shall apply to "Government servants including civilian Government servants in the Defence Services appointed substantially to civil services." It is contended for the respondents that as the applicant was not confirmed, he cannot be treated as a government servant appointed substantially and hence he is not eligible for pension under the Pension Rules. But the relevant portion in the Government of India, Department of Personnel and Training O.M.No.18011/1/86-Est.(D) dt. 28-3-1988 is as follows:

- "(i) confirmation will be made only once in the service of an official which will be in the entry grade.
- (ii) Confirmation is delinked from the availability of permanent vacancy in the grade. In other words, an officer who has successfully completed the probation may be considered for confirmation.
- (iii) Since all the persons who complete probation in the first appointment will be declared as permanent, the present distinction between permanent and temporary employees for grant of pension and other pensionary benefits will cease to exist. "

(Vide Govt. of India's decision No.2, below Rule 2 of the Pension Rules, at page 2 of Swamy's Pension Compilation, 12th edition).

It is clear from clause (iii) referred to above that the distinction between permanent and temporary employees for grant of pension and other pensionary benefits ceased to exist. *from the date the above G.O. was given effect to.* As such the Pension Rules 1972 are applicable even in regard to temporary & employees that is, employees who are not confirmed, if they had requisite qualifying service. The compulsory retirement of the applicant

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To

1. The Head, Personnel & General Administration
Disciplinary Authority for Group C Employees,
SHAR Centre, Sriharikota, Nellore Dist.A.P.
2. The Controller, SHAR Centre, Appellate Authority,
Sriharikota. *Nellore Dist.*
3. The Director, SHAR Centre, Revising Authority
Sriharikota. *Nellore Dist.*
4. One copy to Mrs. T.Soughagya Lakshmi, Advocate, CAT.Hyd.
5. One copy to Mr.v.Bhimanna, Addl.CGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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had come into effect from the afternoon of 3-6-88 and thus the compulsory retirement is subsequent to 28-3-88 the date of the OM No.18011 referred to above. Thus, even though the applicant was not confirmed, the applicant is eligible for pension and pensionary benefits under the Pension Rules as he completed more than 20 years of service for his service in the Air Force also has to be reckoned for the purpose of pension.

13. Hence the respondents are directed to calculate the pensionary benefits payable to the applicant under the C.C.S. (Pension) Rules, 1972 and pay the balance amount after giving credit to the gratuity paid under Rule 10(1-A) of C.C.S.(Temporary Service) Rules, 1965,

~~The Respondents are further directed to pay the pension to the applicant from 4-6-88 and the amount of Rs.1843/-~~
(the amount due to the applicant from the Air Force authorities towards settlement of gratuity which was deposited by the applicant and returned to him on the ground that he was not entitled to the pensionary benefits

under the CCS (Pension) Rules). Respondents are further directed to pay the pension to the applicant from 4-6-88.
The arrears of pension carry interest at 12% per annum

from the respective dates. The balance that is payable towards gratuity also ^{carrying} carry interest at 12% per annum from the date on which the gratuity under Rule 10(1-A) of CCS (Temporary Service) Rules was paid. The order of compulsory retirement passed by the appellate authority and affirmed by the revisional authority is confirmed. The O.A. is ordered accordingly. No costs.

(R. RANGARAJAN)
MEMBER (ADMN.)

(V. NEELADRI RAO)
VICE-CHAIRMAN

Dated: 3rd day of December, 1993.

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13/12/93
Deputy Registrar (J).