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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

* * *

O.A. 878/91.

Dt. of Decision : 10.12.93

Mohd. Ahmed

. . Applicant.

Vs

1. Surveyor General of India,
Govt. of India,
Dehradun.

2. Sri A.K.Sanyal, Addl.Surveyor,
General and Director, Survey
Training Institute, Survey
Training Institute, Uppal,
Hyderabad.

. . Respondents.

Counsel for the Applicant : Mr. Y.Venkata Sastry.

Counsel for the Respondents: Mr. N.V. Ramana, Addl.CGSC.

CORAM:

THE HON'BLE JUSTICE SHRI V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

DRD

J U D G M E N T

{ as per Hon'ble Sri R.Rangarajan, Member (Administrative) }

Applicant herein was an ex-M.T.Driver-cum-Mechanic ^Aand he under the respondents/~~served~~ in No.36 Party (STI). He was awarded the penalty of Compulsory Retirement by the proceedings dt. 16.6.1990. His appeal was also rejected by the appellate authority by order dt. 22.7.1991. Against the above orders of Disciplinary and Appellate Authority, the applicant filed this O.A. praying to set aside the above orders of Disciplinary and Appellate ^Aauthorities.

2. The ^Afacts of the case briefly ~~stated~~ are as follows:

(i) A charge sheet was issued to the applicant for his unauthorised absence from 25.8.1983 to 15.6.1984. As the charge sheet could not ^{be}/served on the applicant, holding of the enquiry was dispensed with by taking recourse to Rule 19(ii) of the CCS(CCA) Rules, 1965 and the penalty of removal from service was inflicted on him with effect from 16.6.1984. Aggrieved by the above order of removal, the applicant approached Andhra Pradesh High Court in Writ Petition viz. W.P.No.12371 of 1985 which was subsequently transferred to this Tribunal and renumbered as T.A.No.141 of 1986. This penalty was quashed by the Tribunal by its Judgment dt. 13.9.1986 on the ground that it was not a speaking order. The disciplinary authority, in pursuance of the directions of this Tribunal, passed speaking order dt. 30.10.1986 thereby removing the applicant from service. This order was successfully challenged before this Tribunal in O.A.No.506 of 1986 decided on 7.4.1988. In the Judgment dt. 7.4.1988, the Tribunal

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gave liberty to the disciplinary authority to issue a fresh charge sheet for unauthorised absence and gainful employment during such absence and thereafter to proceed according to law and decide the matter within three months. Consequent to the said Judgment, the applicant was served with a fresh charge-sheet dt. 17.5.1988 and was also placed under suspension with effect from 17.5.88. Departmental enquiry followed and the charge-sheet ended with award of penalty of compulsory retirement from service to the applicant. The appeal filed against the said orders by the applicant was also rejected by the appellate authority and hence this O.A. is filed.

3. Heard Sri Y.Venkata Sastry, learned counsel for the applicant and Sri N.V.Ramana, learned counsel for respondents. The learned counsel for the applicant assailed the validity of the penalty order of compulsory retirement ther/on several grounds. The main grounds which were agitated upr by the learned counsel for the applicant are discussed in the following paragraphs.

4. The first contention of the applicant's counsel is that the charges mentioned in the charge-sheet dt. 17.5.1988 are beyond the scope and ambit of the orders of this Tribunal passed in O.A.No.506/86. The Tribunal had directed the disciplinary authority to issue a fresh charge-sheet only for his unauthorised absence and gainful employment during such absence whereas the charge-sheet contained the articles of charge as indicated below:-

" Articles of Charge:

- (1) Remained absent unauthorisedly from his official duty, once for 259 days during 1980-81 and again for 296 days during 1983-84 and thereby violated Rule 25(2) of Central Civil Service (Leave) Rules, 1972.

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- (2) He had failed to maintain absolute integrity in official behaviour and action and thus violated Rule 3(1)(i) of CCS(Conduct) Rules, 1964.
- (3) He failed to maintain devotion to duty and thereby violated Rule 3(1)(i) and (ii) of CCS (Conduct) Rules, 1964.
- (4) He disobeyed his authorities and acted in a manner which was unbecoming of a Government servant, thus violated Rule 3(1)(iii) of CCS(Conduct) Rules, 1964."

5. The disciplinary authority had improperly included in the first article of charge the period of absence during 1980-81 though the said absence was regularised as 'Dies-non'. Inclusion of said charge is only to aggravate the accusation against the applicant with ulterior motives. It is further contended that there was no reference in any of the charges relating to the applicant for gainful employment during the period of absence.

6. A reading of the Judgment in O.A.No.506/86 would clearly indicate that the Tribunal gave no direction to the disciplinary authority, but only gave liberty to the said authority to issue a fresh charge sheet for unauthorised absence and gainful employment during such absence. If the disciplinary authority chooses only to issue charge sheet to the applicant for his unauthorised absence and not for gainful employment during such absence, it cannot be said that the disciplinary authority either acted improperly or violated the orders passed by the Tribunal.

7. In support of the contention of the applicant that the disciplinary authority ought not to have made a reference in the first article of charge about the previous spells of absence of the applicant during the year 1980-81, the

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learned counsel for the applicant has drawn our attention to Ramshai Vs. Board of Revenue for Rajasthan [1977(1) SLR 605] and the General Manager, Northern Railway Vs. Harbans Singh [1979(3) SLR 590]. In the case of Sri Ramshai, the past record of the delinquent employee was taken note of by the disciplinary authority without informing him and in view of this, the order of dismissal passed by the disciplinary authority was considered bad in law. In the case of Harbans Singh, it was said that the previous record of service and adverse entries which had not been conveyed to the delinquent employee and which also did not form the basis for framing the charges, were taken into consideration for inflicting the punishment and as such the said punishment was held to be illegal. The above two citations do not have any direct bearing in the present case. Further, a careful perusal of the enquiry proceedings would definitely reveal that the reference in regard to the absence during the year 1980-81 was made in the first article of charge merely for bringing to the notice of the Enquiry Officer the conduct of the delinquent employee as a whole and also to show that there existed a pattern as revealed through conduct. Therefore, it cannot be said that the reference to earlier absence in the article of charge in any way vitiated the enquiry proceedings.

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8. The contention that the charge-sheet has been altered when the enquiry was in progress is not sustainable as it is only a substitution of the words 'CCS (Leave) Rules' for "FR-SR". This was done with the knowledge of the applicant and hence we do not find it irregular.

9. The applicant demanded assistance of a Legal Practitioner to plead his case at the time of enquiry as he was an illiterate employee; but his request was refused by the authorities. The learned counsel for the applicant urged that the applicant was thus denied the reasonable opportunity to project his case properly before the Enquiry Officer. He relies on the Judgment rendered in Bhagatram Vs. State of Himachal Pradesh [1993(1) SLR 626] in support of his contention. We are unable to accept the said contention of the applicant's counsel, as,, in the above said case the permission for appointment of another Government servant for representing his case was only given to an illiterate Class-IV employee. The Bench further observed in that case that this provision should be strictly adhered to in respect of Class-IV employees during the enquiry. This observation is not applicable in this case. As per the relevant rule the delinquent employee in departmental proceedings is not ordinarily entitled to engage a Legal Practitioner. Rule 14(8)(a) of the CCS(CCA) Rules, 1965 is relevant in this context. The said rule is reproduced

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hereunder for convenience:

"The Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the Disciplinary authority is a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits;

Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the inquiry authority having regard to the circumstances of the case and for reasons to be recorded in writing so permits."

10. Further, it is also seen from the order dt. 16.6.1990 that the applicant defended the charges with the assistance of a defence assistant. It is not a case where either Presenting Officer or Enquiry Officer is a Law Graduate. In the circumstances, the respondents are justified in refusing permission to the applicant to engage a legal practitioner to present his case on his behalf.

11. Initially, when the respondents proceeded against the applicant, three witnesses were cited for prosecution. Whereas in the fresh charge-sheet dt. 17.5.1988 only one witness was mentioned. A large number of documents were relied upon for establishing the charges against the applicant. In view of this, it was stated on behalf of the applicant that he was denied due opportunity to cross-examine all the witnesses. The charge against the applicant being only of unauthorised absence, it is very well possible to establish the same by means of documentary evidence. It is the well

settled law that the strict and sophisticated rules of evidence do not apply to the departmental proceedings. If the department feels that the charge can be established on the basis of documents marked and witness(es) examined, there is no need to examine any other witness. Applicant herein had not made a request before the enquiry officer for summoning other witnesses referred to in the earlier charge-sheet for cross-examination. No material^{is} placed to show that if they are examined, they would speak against the charge-sheet. Thus, this contention is also not tenable.

12. The learned counsel for the applicant asserted that the disciplinary proceedings which should have been concluded within a period of 3 months as directed by the Tribunal in its judgment in O.A.No.506/86 took more than two years to complete the proceedings against the applicant. No doubt, enquiry proceedings went beyond stipulated time as given in the judgment. But some delay was due to the objections raised for applicant. Be that as it may, delay per se is not a ground for quashing the enquiry proceedings.

13. The learned counsel for the applicant elaborately contended that a careful examination of the enquiry proceedings would reveal the underlying bias on the part of the authorities concerned. At every stage of the proceedings, the respondents acted unfairly and unsympathetically. The respondents became unduly biased against the applicant because of his repeated approach to A.P.High Court and Tribunal in the past. The reference in the articles of charge to the previous spell of absence, the denial of assistance of a legal practitioner to the applicant, bursting time scheduled in conducting the enquiry and inflicting severe penalty of compulsory retirement on the applicant are all quoted as illustrative of the bias of the

of the respondents. Our specific attention, in this context was drawn to the fact that in case of another employee Mr. M.A. Sukoor, who also remained unauthorised^A absent for more than a year in ~~the year~~^A 1983-84, leniency was shown to him by awarding the penalty of stoppage of three increments for three years only. The unauthorised absence of the applicant in the year 1983-84 was^A only for 296 days whereas Sri M.A. Sukoor was absent^A almost 450 days. The applicant being an uneducated person was not able to face the enquiry properly like Mr. Sukoor, who was educated. The charges against the applicant was only for an offence which did not involve "moral turpitude." It was therefore argued, on behalf of the applicant that the penalty imposed on him was not only disproportionate with^L the gravity of misconduct, but also discriminatory. In this connection, the learned counsel for the applicant has drawn our attention to the case of Sri Bhagat Ram Vs. State of Himachal Pradesh and others [1983(1) SLR 626]. It was held in that case that the penalty imposed must be commensurate with the gravity of misconduct and that any penalty imposed disproportionate to the gravity of misconduct would be^A / violative of Article 14 of the Constitution of India. We find there is considerable force in the contention of the learned counsel for the applicant. The charges against the applicant and Mr. M.A. Sukoor are almost identical and they were dealt with by same authorities. The appellate authority in both the cases^A are one and the same^A and hence he should have considered the case of the applicant at par with that of Mr. M.A. Sukoor so as to ensure equity and equal dispensation of justice. The repeated approach of the applicant to A.P. High Court and Tribunal should not have swayed the authorities to view the misconduct of the applicant as very severe. The

fact that the applicant remained absent without leave in the past also should not have been given undue weightage for gravity of the charges because the said absence during the year 1980-81 was regularised fully. In this view of the matter, we consider that the penalty imposed upon the applicant is not only discriminatory but also disproportionate to the gravity of misconduct.

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14. In the result, we set aside the order dt. 16.6.1990 whereby the penalty of compulsory retirement was imposed on the applicant and also ^{an order of} the appellate authority rejecting the appeal of the applicant by orders dt. 22.7.1991. We further direct the respondents to reinstate the applicant in service. It is open to the disciplinary authority to ~~examine this case afresh and~~ award suitable penalty commensurate with the gravity of the charges keeping ⁱⁿ view ^{of} ~~our aforesaid~~ observations without being influenced by the averments made in the counter affidavit of this O.A. As the applicant has suffered because of suspension and subsequently by compulsory retirement we feel it just and proper to further direct the respondents to treat the period of suspension from 17.5.1988 till the date of compulsory retirement dt. 16.6.1990 as such, and the period of compulsory retirement from 17.6.1990 to the date of reinstatement as leave without pay. Further the period from 16.6.1990 till the date of reinstatement will not count for the purpose of seniority or for any other pensionary benefits.

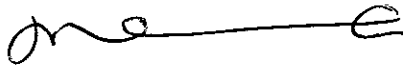
15. ^{As have to} The above directions ~~will~~ be complied within a period of two months from the date of receipt of this judgment. The respondents are at liberty to treat the period of suspension/

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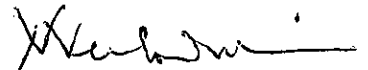
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absence before 17.5.1988 in accordance with the rules and governed by the directions, if any, given by this Tribunal in earlier T.A.No.141 of 1986 and O.A.No.506/86.

16. The O.A. is ordered accordingly. The parties will bear their own costs.




(R.Rangarajan)
Member(Adm.)



(V.Neeladri Rao)
Vice-Chairman

Dated 10-12-93


Deputy Registrar

Grh.

To

1. The Surveyor General of India,
Govt. of India, Dehradun.
2. Sri A.K.Sanyal, Addl. Surveyor,
General and Director, Survey Training Institute,
Survey Training Institute, Uppal, Hyderabad.
3. One copy to Mr.Y.venkata Sastry, Advocate
3-6-288/3 'Bhageerathi', Hyderguda, Hyderabad.
4. One copy to Mr.N.V.Ramana, Addl.CGSC.CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : 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 (J)

AND

THE HON'BLE MR. R. RANGARAJAN : MEMBER (A)

Dated: 10-12-1993

~~ORDER~~/JUDGMENT:

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

in

O.A.No. 878/91

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.

