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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION NO.881/91

DATE OF JUDGEMENT: 26th MARCH, 1992

BETWEEN

Sri P. Yadhav

.. Applicant

A N D

1. Secretary
Ministry of Home Affairs
Central Secretariate
New Delhi.
2. Assistant Director (Disciplinary)
Authority)
Sardar Vallabhai Patel National
Police Academy, Hyderabad
3. Dr. K.C.S. Reddy
Veterinary Officer
Sardar Vallabhai Patel National
Police Academy, Hyderabad .. Respondents

Counsel for the Applicant

Smt P.N. Venkateshwaru for
: Smt Thripurasundari

Counsel for the Respondents

: Sri N. Bhaskara Rao, Addl. CGSC

CORAM:

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

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

T - C. R.


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JUDGEMENT OF THE DIVISION BENCH  DELIVERED BY THE
HON'BLE SHRI T.CHANDRASEKHARA REDDY, MEMBER (JUD L.)

This application is filed by the applicant herein under Section 19 of the Administrative Tribunals Act to quash the disciplinary action that is being continued by the 2nd respondent as per the memo No.21025/84-Estt dated 30.11.1989.

The facts giving rise to this OA in brief are stated as follows:

1. The applicant herein was working as Syce at the Sardar Vallabhai Patel National Police Academy, Hyderabad. While continuing as Syce  it is alleged that on 26.2.1984 that the applicant resorted to violence causing internal and external injury to Filly No.7 that resulted in its death. So a regular Departmental enquiry was initiated against the applicant for violation of Rule 3.1(ii)&(iii) of Central Civil Services (Conduct) Rules 1964. According to the applicant the said disciplinary proceedings initiated against him are malafide and meant to deprive the applicant his bread who belongs to Schedule Caste.
2. The Department had initiated an enquiry against the applicant earlier alleging that he had given boiling water to horse No.32 and that, when questioned by the respondents, the applicant had answered arrogantly and left the place. In the said proceedings the applicant was removed from service and the applicant questioned the said removal by

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filing OA.No.361/86 before this Tribunal. This Tribunal had allowed the said OA after holding ~~the~~ the charges were proved and directed that the applicant should be reinstated within a month from the date of receipt of that order, but restricted that the applicant would not get any wages for the period from the date of removal till the date of reinstatement. Further two increments were ordered to be stopped without cumulative effect, without break in his service. It is one of the contentions of the applicant in this OA that he is not liable for disciplinary action in respect of any matter prior to his earlier removal from service under the theory of merger and double jeopardy.

Counter is filed by the respondents opposing this OA.

With regard to quashing of disciplinary proceedings at the outset, we may state that this Tribunal can interfere if it is shown that-

- i) either it is a case in which the institution or continuancy of proceedings amounts to abuse of process of the court, or
- ii) there is a legal bar against the institution of continuance of the proceedings, or
- iii) where the allegations made as against the govt. servant even if they are taken on the face value and accepted in its entirety do not constitute an actionable wrong or
- iv) there is no legal evidence in support of the charge.

The perusal of the charges that are framed against the applicant and other material that are placed before us including the statement of imputations as against the applicant

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as against the applicant would got to show that the applicant had allegedly caused injuries on the sensitive parts of the said horse and that the applicant had also caused allegedly serious injuries to the said horse on the other parts of its body. So in view of the said allegations made against the applicant, it is not possible for us to infer that this is a case where there is absolutely no evidence. Causing death of a horse by causing injuries is an act of rashness and negligence. Further, when such death is caused, the fact that ~~that~~ it also amounts to serious misconduct on the part of the concerned syce cannot be disputed. So in view of this position, we are unable to understand how the disciplinary proceedings initiated as against the applicant is an abuse of the process and are taken with the view to harass him.

With regard to the incident of giving boiling water to the horse preceding the present incident, the applicant seems to have been removed from service and as already pointed out, as against the removal order, the applicant had filed OA before this Tribunal and the said OA had been disposed as earlier referred to. The incident for which the applicant had been enquired and punished has got nothing to do with the present incident. These two incidents are in no way connected. These two incidents form two different transactions. So, it is open to the competent authority to order a enquiry seperately for each of the said incidents. Hence, the orders passed in OA.361/86 will not be any legal bar in our opinion to initiate the present disciplinary proceedings as against the applicant and in continuing the same against him.

We do not see any violation of the principles of natural justice or any rule or law in initiating disciplinary action against the applicant and continuing the same as

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against the applicant. So, in our opinion, the disciplinary proceedings that are initiated against the applicant have the full sanction of law.

Admittedly, the present incident is said to have taken place as early as 26.2.1984. But the departmental proceedings are initiated against the applicant on 30.11.89. So, in view of the delay in initiating disciplinary action as against the applicant, it is the contention of the learned counsel for the applicant that the proceedings are liable to be quashed. It is not every type of delay that will be fatal in initiating the disciplinary proceedings. If the delay in initiating the disciplinary proceedings is properly explained and which explanation is found to be acceptable to the Tribunal, the disciplinary proceedings can be allowed to continue. In this context, it will be pertinent to refer to page 2 of the counter filed by the respondents.

".....It is submitted that it is not true to say that the fresh Disciplinary Action was initiated at the instance of 3rd. Respondent. A charge sheet was framed against the applicant on 30th March, 1985 on receipt of the preliminary enquiry report from the Officer detailed for this purpose in connection with the death of Horse No.7 in the NPA Stables on 26.2.1984. However this charge sheet was not served on him on 30.3.1985 as he had already been removed from Govt. Service after a formal enquiry was conducted w.e.f. 6.4.1985 on account of a different charge sheet was kept on the dormant file and the same was served on him on 30.11.89 after his reinstatement on the directions of the CAT".

So from the above, it is quite evident that in view of the enquiry relating to the incident of giving boiling water to the horse, and in view of the removal of the applicant from service which was challenged by him ^{before} ~~on the file~~ of this Tribunal, the respondents seem to have not initiated disciplinary action with

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To

1. The Secretary, Ministry of Home Affairs, Central Secretariat,
New Delhi.
2. The Assistant Director (Disciplinary Authority)
Sardar Vallabhai Patel National Police Academy, Hyderabad.
3. One copy to Smt.S.Thripurasundari, Advocate, CAT.Hyd.
4. One copy to Mr.N .Bhaskar Rao, Addl.CGSC.CAT.Hyd.
5. One spare copy.

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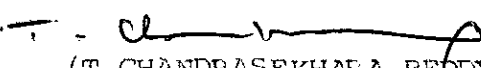
regard to the present incident. So, it cannot be said that the delay in this case is willful. So, the delay in initiating the disciplinary action against the applicant in our opinion, does not any way affect the disciplinary proceedings that are initiated against the applicant.

It is contended by the applicant at page five of the OA that the 3rd respondent who complained about the death of the horse on 26.2.1984 himself wrote the post-mortem report in his own handwriting to be just signed by the officer nominated to do the postmortem. It is the case of the applicant that the 3rd respondent had bias against the applicant and that no credence can be given to the Postmortem report which shows injuries on the said horse., in question that is dead.

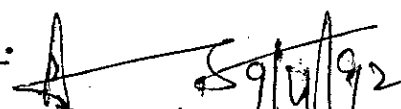
It is not open for this Tribunal in this inter-locutory proceeding to go in to questions of fact. It will be open for the applicant to take up the said issues before the enquiry officer and if required before the disciplinary authority. Due to the bias which the applicant alleges as against the third respondent, we are not prepared to quash the said disciplinary proceedings. We see no merits and hence, this OA is liable to be dismissed. But, before parting with this OA, we make it clear neither the enquiry officer, not the disciplinary authority shall not be influenced by any of the observations made in this OA in deciding the matter as against the applicant.

This OA is dismissed. The parties are directed to bear their own costs.


(R. BALASUBRAMANIAN)
Member (Admn.)


(T. CHANDRASEKHARA REDDY)
Member (Judl.)

Date: 26th March, 1992.


Deputy Registrar (J)

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TYPED BY 205

COMPARED BY

CHECKED BY

APPROVED BY

THE HON'BLE MR.

V.C.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

AND

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

AND

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

Dated: 26-3-1992.

~~ORDER~~ / JUDGMENT

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

O.A. No.

881/91

in

T.A. No.

(W.P. No.)

Admitted and interim directions
issued

Disposed of with directions

or Dismissed

Dismissed as withdrawn

Dismissed for Default.

M.A. Ordered/Rejected.

No order as to costs.

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Central Administrative Tribunal
DESPATCH
16-11-1992
HYDERABAD BENCH.

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