

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.883/91.

Date of Judgement : 16.3.1994

A.Gopala Krishna Rao .. Applicant

Vs.

1. Union of India, Rep. by its
Secretary, Dept. of Space,
Chairman, Indian Space
Research Organisation,
Anthariksha Bhavan,
New BHEL Road,
Bangalore, Karnataka State.

2. Director of SHAR Centre,
Dept. of Space, Govt. of India,
Sriharikota,
Nellore District, A.P.524124.

3. Head Personnel &
General Administration (B),
SHAR Centre,
Dept. of Space, Govt. of India,
Sriharikota,
Nellore District. .. Respondents

Counsel for the Applicant :: Shri G.Ramachandra Rao

Counsel for the Respondents:: Shri N.V.Raghava Reddy,
Addl. CGSC

C O R A M

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

Hon'ble Shri A.B.Gorthi : Member(A)

J u d g e m e n t

[As per Hon'ble Shri A.B.Gorthi : Member(A)]

The claim of the Applicant is for promotion to the post of Senior Heavy Vehicle Driver w.e.f. 2.4.85 when his juniors were so promoted.

2. The Applicant is working as a Heavy Vehicle Driver in the Transport Section of the SHAR Centre. In 1981, he was placed under suspension and a charge memo was served upon him alleging that he refused to perform duty as ordered by Shri P.Vijaya Mohan Reddy, Engineer(SD), TransportSection.

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In the departmental disciplinary enquiry that followed, 4 witnesses were examined against the Applicant, including Shri P.Vijaya Mohan Reddy and Shri T.Madhusudhan Rao. The Applicant was awarded the penalty of reduction to 3 lower stages of pay for two years. The said penalty was later set aside when the Applicant challenged it before this bench of the Tribunal in O.A.No.722/87. Consequently, the period of suspension from 9.2.81 to 30.6.81 was also directed to be treated as on duty.

3. In 1985, the Applicant became eligible for promotion to the post of Senior Heavy Vehicle Driver and his case for promotion was considered by a D.P.C. The result of the D.P.C. in respect of the Applicant was kept in a sealed cover. In any case, the D.P.C. found him unsuitable for promotion.

4. The case of the Applicant for Selection Grade was also considered by the D.P.C. ^{in 1984} and the Applicant was selected. The result of the D.P.C. was given effect to, though retrospectively, only after the penalty was finally set aside.

5. Learned Counsel for the Applicant assailed the validity of the D.P.C. proceedings held on 15/16.3.85 mainly on the ground that Shri T.Madhusudhan Rao and Shri P.Vijaya Mohan Reddy who were prosecution witnesses in the disciplinary enquiry against the Applicant were among the members of the D.P.C. In fact, the charge against the Applicant was that he refused to obey the lawful order of Shri P.Vijaya Mohan Reddy. Under the circumstances, it is contended by the learned counsel for the Applicant that the case of the Applicant could not have been fairly and impartially considered by the D.P.C.

6. Learned Counsel for the Respondents urged that the case of the Applicant was considered objectively by a duly constituted D.P.C. and that the allegation of bias cannot be founded. In support of his contention he stated that the earlier D.P.C. held in 1984 considered the case of the Applicant for Selection Grade and found him suitable. In both the D.P.Cs, Shri T.Madhusudhan Rao and Shri P.Vijaya Mohan Reddy were the members.

7. Admittedly, it was the order of Shri P.Vijaya Mohan Reddy that the Applicant was alleged to have disobeyed for which he was punished. There is also no dispute that in the departmental enquiry, both Shri T.Madhusudhan Rao and Shri P.Vijaya Mohan Reddy deposed against the Applicant. The short question for our consideration, therefore, is whether in the circumstances it can be said that the D.P.C. proceedings held in March, 1985 stand vitiated on the ground of bias.

8. Learned Counsel for the Applicant referred to two recent judgements of the Supreme Court. In V.Mahadevan & Ors. Vs. D.C.Aggarwal, 1993(II) ILJ 1157, it was noted that the Committee which interviewed the Respondent for promotion comprised of two of the persons against whom the Respondent had ^{filed} Contempt Petition in the High Court. Observing that the principles of fairness require that the two officials should not have sat in the Committee, the Supreme Court gave a direction for reconsideration of the plea for promotion.

9. In Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School & Ors. 1993 SCC (L&S) 1106, the Supreme Court having made extensive references to its earlier judgements set aside

the penalty of dismissal on the ground that the Inquiry Officer cannot be said to be free from bias because he had, in fact, appeared as a witness in the same enquiry. It is well settled that an administrative authority in making a decision affecting the service of a subordinate official must act not only fairly but also without the appearance of bias.

10. We are not convinced with the plea put forward by the learned counsel for the Respondents that as the D.P.C. with the same composition selected the Applicant for grant of Selection Grade in 1984, it cannot be said that the D.P.C. held in March, 1985 would be biased against the Applicant. It is not the question whether the D.P.C. was, in fact, prejudiced against the Applicant but the question is whether the Applicant had reason to apprehend bias on account of the participation of the two officials in the proceedings of the D.P.C. held for his promotion in March, 1985.

11. The test of likelihood of bias is based on the reasonable apprehension of a reasonable man. From the facts of the case now before us, it can be said that the Applicant had every reason to apprehend that the two officials who appeared as witnesses against him in the disciplinary enquiry would continue to be inimical towards him even during the deliberations of the D.P.C. It is in this sense that it is often said that justice must not only be done but must appear to be done.

12. In the result, we set aside the proceedings of the D.P.C. held on 15/16.3.85 so far as it pertained to the Applicant. A Review D.P.C. shall be held, as per rules, to reconsider the case of the Applicant for promotion

to the post of Senior Heavy Vehicle Driver. It is needless for us to clarify that in constituting the Review D.P.C. care will be taken to take note of our aforesaid observations in this order. Respondents shall comply with our directions within a period of three months from the date of communication of this order.

13. The application is ordered accordingly without any order as to costs.

A.B. Gorthi
(A.B.Gorthi)
Member (A).

V. Neeladri
(V.Neeladri)
Vice-Chairman

Dated: 16 March, 1994.

br.

Deputy Registrar
Deputy Registrar
ar(J)CC

To

1. The Secretary, Dept. of Space,
Chairman, Indian Space Research Organisation,
Union of India, Anthariksha Bhavan,
New BHEL Road, Bangalore, Karnataka State.
2. The Director of SHAR Centre,
Dept. of Space, Govt. of India, Sriharikota,
Nellore Dist. A.P.-124.
3. The Head Personnel & General Administration (B)
SHAR Centre, Dept. of Space, Govt. of India,
Sriharikota, Nellore Dist.
4. One copy to Mr. G. Ramachandra Rao, Advocate, CAT. Hyd.
5. One copy to Mr. N. V. Raghava Reddy, Adcl. CGSC. CAT. Hyd.
6. One copy to Library, CAT. Hyd.
7. One spare copy.

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5/11/94

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. E. GORTHY : MEMBER (A)

AND

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

AND

THE HON'BLE MR. R. RAMARAJAN : MEMBER
(ADMN)

Dated: 16-3-1994.

~~ORDER~~ JUDGMENT:

~~M.A./P.A./C.A.~~ No.

O.A.No.

T.A.No.

883/91

(W.F.No.)

~~Admitted and Interim Directions~~
issued.

~~Allowed.~~

~~Disposed of with directions.~~

~~Dismissed.~~

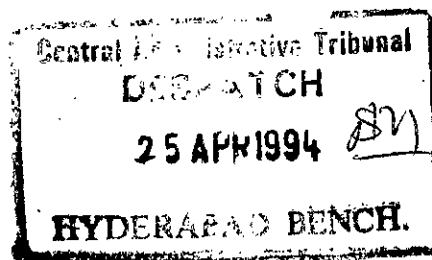
~~Dismissed as withdrawn.~~

~~Dismissed for Default.~~

~~Rejected/Ordered.~~

No order as to costs.

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