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CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.1124/91

Dt. of decision: 11-11-1993.

Between:

Sri M. Moses .. Applicant

and

1. Director, Telecom,
Tirupathi

2. Telecom Dist. Engineer,
Nellore.

.. Respondents

Appearance:

Counsel for the applicant: Sri K. Sudhakar Reddy

Counsel for the respondents: Sri N.R. Devaraj *Sr. C.G.S.*

Coram:

Hon'ble Sri A.B. Gorthi : Member (Admn.)

Hon'ble Sri T. Chandrasekhar Reddy : Member (Judl.)

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C.A.No.1124/91

Dt. of decision: 11-11-93

Judgement of the Division Bench delivered by
Hon'ble Shri T. Chandrasekhara Reddy, Member (Judl.).

This is an application filed by the applicant herein under Sec.19 of the Administrative Tribunals Act to set aside the memo issued by the appellate authority dt.21-5-90 reducing the pay of the applicant as a measure of penalty by 3 stages from Rs.900/- to Rs.825/- in the time scale of pay for a period of 3 years w.e.f. 1-5-1989.

2. The applicant herein at the relevant time was working as "Line Man" Phones at Sullurpet, Nellore district. A major penalty charge sheet was issued as against the applicant under Rule 14 of CCS (CCA) Rules, 1965 as per the proceedings dt.30-8-85 by the competent authority alleging (1) that the applicant misbehaved with the Telecom District Engineer, Nellore who was on inspection at Sullurpet on 15-6-1985, (2) that the applicant misbehaved towards one P. Hazrathaiah, Jr. Telecom Officer, Sullurpet on 9-7-1985. Contemplating the departmental action as against the applicant, the applicant was kept under suspension as per the orders dt.18-6-1985 issued by the competent authority. The applicant seems to have repented for the alleged misbehaviour towards the Telecom District Engineer on 15-6-85 and towards P. Hazrathaiah, Jr. Telecom Officer on 9-7-85 and tendered an apology. Due to the repentence of the applicant and for the apology which the applicant tendered unconditionally, the applicant was reinstated into service by the competent authority as Line Men w.e.f. 16-8-85 after ~~revoking~~ the suspension order dt. 18-6-1985. The

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applicant was transferred to SDOP, Nellore on 22-7-1987.

3. For the alleged charges framed against the applicant to which a reference is already made, a regular enquiry was conducted. The enquiry was completed on 13-10-88 after 7 sittings. During the course of the enquiry the enquiry officer examined witnesses that would speak with regard to the incidents mentioned in the charge sheet that was issued as against the applicant. The enquiry officer gave his report dt. 9-1-1989 holding that both the charges levelled against the applicant were proved, and submitted the same to the disciplinary authority. The disciplinary authority after taking into consideration the entire material before it, accepted findings of the enquiry officer and held the charges as against the applicant had been proved. The disciplinary authority passed orders as a measure of penalty for the grave misconduct of the applicant by reducing his pay by 5 stages from Rs. 900-825 for a period of 6 years w.e.f. 1-5-89. On appeal preferred by the applicant, the said punishment was modified to 3 years from 6 years as per the orders of the appellate authority dt. 21-5-90. So, the applicant has filed this OA to quash the orders of the appellate authority dt. 21-5-90 as already indicated above.

4. Counter Affidavit is filed by the respondents opposing this O.A.

5. In the counter affidavit, as the respondents, it is maintained that both the charges levelled against the applicant proved. It is further contended that the applicant was afforded every reasonable opportunity in the said enquiry and that no principles of natural justice were violated. It is further maintained that the applicant had totally violated the conduct rules and that the conduct

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of the applicant towards his superiors was unbecoming as a government servant. The penalty awarded to the applicant is not at all excessive. So, it is maintained on behalf of the respondents that this O.A. is liable to be dismissed.

6. We have heard in detail Mr. K. Sudhakar Reddy, Advocate for the applicant and Mr. N.R. Devraj, Standing Counsel for the respondents.

7. It is the contention of the learned counsel for the applicant that a copy of the enquiry report had not been furnished to the applicant by the disciplinary authority before the disciplinary authority inflicted the punishment reducing the pay of the applicant by six stages for a period of three years in the time scale of Rs.900-825 and by non-furnishing of the copy of enquiry report by the disciplinary authority and in not affording an opportunity to the Applicant to make representation as against the findings given by the enquiry officer in his report, are violative of the Principles of Natural Justice and so the impugned order passed by the appellate authority reducing his pay was liable to be set aside. Furnishing of the copy of the enquiry report arises in cases where a government servant is dismissed, removed or compulsorily retired as a measure of punishment. Even though, major penalty charge sheet had been issued as against the applicant none of the three punishments as indicated above namely dismissal, removal or compulsorily retiring the applicant are inflicted on the applicant. So, the applicant does not have a right for a copy of the enquiry report before the disciplinary authority passed final orders on the applicant awarding him the said punishment. Hence the contention of the learned counsel for the applicant cannot be accepted.

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8. It is the contention of the applicant's counsel that as the applicant had given unconditional apology for the alleged misbehaviour and on accepting his apology the suspension had been revoked, that there was no justification on the part of the respondents in initiating the disciplinary proceedings and in punishing the applicant. For repentance shown by the applicant the respondents had taken a decision to revoke the suspension order dt. 16-6-85 passed against the applicant. The respondents had never choose to drop the disciplinary proceedings. We do not find from the records shown to us that the competent authority as having taken decision to drop the disciplinary proceedings as against the applicant. So, in view of the serious misconduct of the applicant of the applicant in threatening the above said two officers viz., the Telecom District Engineer, Nellore and P.Hazrathaiah, Jr. Telecom Officer, Sullurpet, the respondents had initiated disciplinary action as against the applicant which had ended in punishment of the Applicant. So, we see no force in the contention of the applicant that as the applicant had tendered apology and the same was accepted by the disciplinary authority that initiation of the disciplinary proceedings by the respondents as against the applicant were not justified.

9. Lastly and finally the learned counsel for the applicant vehemently contended that this is a case of no evidence. We have perused the entire record. The said P. Hazrathaiah who is the Jr. Telecom Officer has spoken in detail about the incident dt. 9-7-85. As a matter of fact he is the person that is abused by the applicant on 9-7-1985. The said P. Hazrathaiah (Jr. Telecom Officer,

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Sullurpet) who has given evidence during the enquiry does not have any motive to give false evidences against the applicant. He is an independent witness. His evidence is reliable. After going through his evidence we are satisfied that the said P. Hazrathaiah has given truthful account as to how the incident had occurred on 9-7-1985. Regarding the first charge as against the applicant that the applicant had misbehaved with the Telecom District Engineer on 16-8-85, one Ananda Rao, Asst. Engineer is examined as a witness. The said Ananda Rao (Enquiry Witness No.2) had spoken about the incident before the enquiry officer that took place on 15-6-85. The said Ananda Rao does not have any axe to grind against the applicant. From the evidence of P. Hazrathaiah and Ananda Rao who are responsible officers there cannot be any doubt about the fact that the applicant had misbehaved ~~sudely~~ towards both the officers on the respective dates and had used abusive language and ~~had~~ insulted them. The behaviour of the applicant towards the superiors is certainly unbecoming of a government servant. As P. Hazrathaiah is the victim and Ananda Rao is a Gazetted officer of the rank of Asst. Engineer, their evidence has got to be given utmost weight. Evidence has got to be weighed but not to be counted. Even though some other witnesses during the course of enquiry had given contradictory statements making their evidence unreliable, the evidence of said witnesses namely Hazrathaiah and Ananda Rao is reliable, credible and trustworthy. In view of the examination ~~by~~ P. Ananda Rao, Assistant Engineer (Tel.), in the enquiries, and whose evidence is accepted, no adverse inference can be drawn to the case by the respondents, even though the District Telecom Engineer ^{the first} who is the affected ^{had} not been examined to prove charge statement. The disciplinary authority is completely

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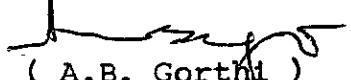
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justified in holding that the charges as against the Applicant are duly proved. Though disciplinary authority had given the punishment of reducing the pay of the applicant by 5 stages from Rs.900-825 for a period of 6 years the appellate authority had modified the said penalty by reducing the same to 3 years from 6 years. The penalty imposed on the applicant under the circumstances of the case is not at all excessive.

10. We see no merits in this O.A. and hence this OA is liable to be dismissed and is accordingly dismissed. The parties shall bear their own costs.


(T. Chandrasekhara Reddy)
Member (Judl.)


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

Dt.: 11-11-93
(By circulation)


Deputy Registrar (J)

To

1. The Director, Telecom, Tirupathi.
2. The Telecom Dist. Engineer, Nellore.
3. One copy to Mr. K. Sudhakar Reddy, Advocate, CAT. Hyd.
4. One copy to Mr. N. R. Devraj, Sr. CGSC. CAT. Hyd.
kmv
5. One copy to Library, CAT. Hyd.
6. One spare copy.

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*Tirupathi
P.S.L. 12/1993*