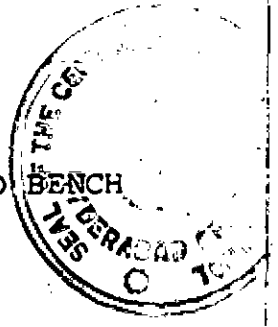


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.



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O.A.No.857 of 1992.

Date: July 8, 1996.

Between:

Mukkaram Hussain.

.. .. Applicant.

and

1. Divisional Engineer (Phones)
Charminar Telephone Exchange,
Hyderabad - 2.
 2. Sub Divisional Officer (Phones)
South SAXs Gowliguda, Hyderabad.
 3. Sub Divisional Officer (Phones)
SAXs II Charminar, Akbarbagh,
Malakpet, Hyderabad - 36.
- Respondents.

COUNSEL FOR THE APPLICANT:

SRI C.Suryanarayana.

COUNSEL FOR THE RESPONDENTS:

Sri V.Rajeswara Rao, Standing
Counsel for the respondents.

CORAM:

HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE-CHAIRMAN. *hll*

HON'BLE SHRI H.RAJENDRA PRASAD, MEMBER (A) *8/9*

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jurisdiction. The applicant filed a review application, ^{ie.} R.P.No.121/92 against the said Order. That was also rejected by the earlier Division Bench by an Order dated 7--12--1992. The applicant carried the matter to the Hon'ble Supreme Court. By Order dated 25--1--1996, in Civil Appeal No.2522/96, the Hon'ble Supreme Court ^{after} allowing the ^{appeal} ~~review application~~ has been pleased to remand the O.A. for disposal on merits. The O.A., has ~~is~~, therefore been restored and is now heard finally.

4. The learned counsel for the applicant, Mr. C.Suryanarayana submitted that the applicant ought to have been given an opportunity to answer the ^{levelled} ~~alleged~~ charges ~~lawfully~~ against him and the order of removal from service amounts to an order passed in violation of the principles of natural justice. He also submits that as noted by Their Lordships of the Supreme Court the applicant has been deprived of the opportunity to show that as he was suffering from Manic Depressive Psychosis, he cannot be awarded the penalty of removal from service and was entitled to be allowed to resume the duty after he was certified to be normal and continue in service with all benefits as per the rules for the period he was absent from duty.

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✓ Charge-sheet ~~personally~~ for the aforesaid reasons the Enquiry Authority proceeded with the enquiry ex parte, and came to the conclusion that the charges were proved. The Disciplinary Authority accepted the findings and did not consider the applicant to be a fit person to be retained in Government service. Hence by an Order dated 21/24--1--1978 passed by the S.D.O(P) Gowliguda South, the applicant was awarded the penalty of removal from service.

2. After a long lapse of time, the applicant filed an application in January, 1989 to the General Manager, Telecom Circle, Hyderabad on 23--1--1989 seeking re-employment as a Wireman. That request was rejected on 23--1--1989. The applicant thereafter submitted another application on 19--1--1992 seeking re-employment as well as permission to resume duty which was addressed to the General Manager, Telecom District, Hyderabad. That also was rejected on 5--8--1992 stating that in view of the delay in submission of the appeal, the same cannot be considered. Aggrieved ~~with the~~ with the same the applicant filed the instant O.A. on 15--9--1992 for quashing the order of removal and seeking re-instatement with consequential benefits.

3. The application was resisted by the ~~xx~~ respondents. By Order dated 13--10--1992 the earlier Division Bench had dismissed the ~~application at admission stage~~ ^{application at admission stage} ~~application at admission stage~~ as barred by limitation as well as being without

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considerable time and also the circumstance that the alleged mis-conduct was after all of not such a serious nature as should justify the exercise of ^{going through the} being gamut of a fresh enquiry. However, after considering this aspect in the first instance and if the respondents are not inclined to drop the enquiry, then the respondents shall carry out the directions given below. We are inclined to give these directions as in our view an adequate opportunity is necessary to be afforded to the applicant to establish the fact that he was prevented from attending duty owing to mental illness and therefore, he was not liable to be removed from service but ought to have been allowed to resume the duty as soon as he had become normal and had approached the respondents for that purpose. Hence the following Order:

- i) ^{Subject to observations above, the}
~~The~~ respondents are directed to hold a fresh enquiry from the stage of issuance of the charge-sheet in accordance with the CCS(CCA) Rules.
- ii) The Disciplinary Authority is directed to re-appoint the Enquiry Officer for holding the fresh enquiry
- iii) The enquiry shall proceed from the stage of service of charge-sheet

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5. Mr. Rajeswara Rao, learned counsel for the respondents submits that the Enquiry officer had ~~not~~ chosen to proceed with the enquiry ex parte, but as the whereabouts of the applicant were not known and therefore the impugned order cannot be held to be passed contrary to law and having regard to the enormous delay, the order of removal cannot be interfered with and the O.A., may be dismissed. Although the submission may be technically correct, we are not impressed by the same in the fact situation of this case.

6. Having regard to the overall circumstances and keeping in mind the observations of the Hon'ble Supreme Court we are of the opinion that it would not be in the interests of justice to maintain the impugned orders and the proper course ~~in the~~ ~~interests of justice~~ would be to direct de novo enquiry. Although we are ~~not~~ inclined to make that direction we would also like to impress upon the respondents that they may consider whether the enquiry should be dropped altogether and instead the request of the applicant to be re-employed subject to his medical fitness ^{may} be considered looking to the circumstance that the alleged mis-conduct was committed ~~may be about~~ twenty years ago and as a further enquiry will consume

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ix) The enquiry to be concluded as expeditiously
as practicable.

7. The O.A., is partly allowed in terms of the
above difections. No order as to costs.

प्रमाणित
CERTIFIED TO BE TRUE COPY
[Signature]
न्यायालय अधिकारी 15/7/96
COURT OFFICER
/ न्याय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद ब्याचपोठ
HYDERABAD BENCH

SSS.

Case Number	0A 857/92
Date of Judgment	8.7.96
Copy made ready on	17.7.96
[Signature]	

- iv) To ensure the service of charge-sheet, it is directed that as requested by the learned counsel for the applicant, Sri C.Suryanarayana, a copy of the Charge-sheet may be served upon the applicant through the said learned Advocate. Service upon the said Advocate will be taken as good service upon the applicant. However, all further service thereafter shall be effected upon the applicant directly.
- v) The applicant shall inform the Enquiry Officer his address for future correspondence and the applicant shall ensure that he would be available at the said address till the enquiry is concluded. Any change in the address shall be intimated to the Enquiry Officer.
- vi) The applicant will be given an opportunity in accordance with the rules to submit his statement of defence in answer to the charge and the enquiry shall thereafter be concluded in accordance with the provisions of Rule 14 of CCS(CCA) Rules
- vii) The applicant shall cooperate with the Enquiry Officer for speedy conduct of the enquiry
- viii) All the consequential questions as may arise as a result of the enquiry shall be dealt with in accordance with the rules.

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