

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
AT HYDERABAD

O.A. NO. 373 of 1992.

Between

Dated: 10.4.1995.

Rajendra Pal

...

Applicant

And

1. The Union of India represented by the Secretary, Ministry of Defence, (Defence Finance & Financial Adviser), Government of India, New Delhi.
2. The Controller General Of Defence Accounts, West Block-V, R.K.Puram, New Delhi.
3. The Controller of Defence Accounts 506, Anna Salai, Teynampet, Madras.
4. The Assistant Controller of Defence Accounts Incharge, Area Accounts Office (C.D.A.), Staff road, Sec'bad.

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Respondents

J..V.Laxmana Rao

Counsel for the Applicant : Sri. ~~XXXXXX~~

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

CORAM:

Hon'ble Mr. A.V.Haridasan, Judicial Member

Hon'ble Mr. A.B.Gerthi, Administrative Member

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O.A.No.373/92

Date of Order:

{ As per Hon'ble Shri A.B.Gorthi, Member(Admn.) }

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The applicant while working as an Auditor in the Defence Accounts Department was served with a charge memo which was followed by a departmental disciplinary enquiry at the end of which he was awarded the penalty of removal from the service. His prayer in this OA is that the penalty be set aside and that he be reinstated in service with all consequential benefits.

2. Initially a charge memo under C.C.S(C.C.A) Rules, Rule 16 which is for imposition of a minor penalty, was served upon the applicant. It was cancelled and another charge memo under Rule 14 for the imposition of the major penalty was issued. The allegation in the charge memo was that the applicant was absent from duty from 4.4.84 to 15.4.85 and again from 16.5.85 to 21.6.85. During the enquiry no witness was examined but only a bunch of documents as listed in Annexure-3 to the charge memo were taken on record by the enquiry officer. The applicant did not participated in the enquiry. The enquiry officer found that the applicant was guilty of absence from 4.4.84 to 15.5.85 but not guilty of absence for the latter period 16.5.85 to 21.6.85. Partly disagreeing with the enquiry officers finding, the disciplinary authority found the applicant guilty of absence for both the periods. On an appeal by the applicant the appellate authority found that the enquiry having been held at Bangalore instead of Secunderabad the applicant was denied reasonable opportunity to

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to participate in the enquiry. He accordingly directed the disciplinary authority to hold further enquiry at Secunderabad. The appellate authority did not however set aside the penalty order.

3. The disciplinary authority, in compliance with the orders of the appellate authority and in terms of Rule 15 (1) of C.C.S. (C.C.A) Rules, ordered further enquiry to be held at Secunderabad. The applicant did not participate even in the said enquiry stating that the order of removal had not been set aside and as such the department could not validly hold another enquiry into his case. Once again the enquiry concluded ex-parte taking on record some documents only and without examining any witness. On the conclusion of the enquiry, appellate authority (and not the disciplinary authority) found that the order of removal earlier passed by the disciplinary authority was in order. A Revision Petition submitted by the applicant was rejected on 6.11.91.

4. Mr. J.V. Lakshmana Rao, learned counsel for the applicant mainly assailed the validity of the penalty on ~~two~~ ^{two} grounds. Firstly he contended that the enquiry was not an enquiry at all as no witness was examined. There is considerable merit in the submission of the applicant's counsel. It has been held by the Supreme Court in M/s. Bareilly Electricity Supply Co. Ltd., v. The Workmen and others AIR 1972 SC 330, that observance of principles of natural justice in a domestic enquiry would imply ~~aff~~ ^{aff}ording a delinquent employee a reasonable opportunity to challenge the evidence led against him. Relevant extract from the judgement is reproduced as below:-

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"The application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact".

5. From the above it would be evident that the manner in which the enquiry was held is far from being satisfactory notwithstanding the fact that the applicant chose not to participate in the enquiry.

6. The second contention raised by the applicant's counsel, which seems to be of considerable importance, is that the appellate authority ordered further enquiry without first setting aside the penalty. Mr.J.V.Lakshmana Rao contended that so long as ^{the} penalty remained in force, any further enquiry would only give ^{an} impression that it would be merely a formality to be gone through. Even according to the rules the appellate authority is required to set aside the penalty order if he intended to order further enquiry. In this context learned counsel for the applicant has drawn our attention to Rule 27 (2) of CCS (CCA) Rules, reproduced below:-

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider-

- (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

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(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass orders—

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directing as it may deem fit in the circumstances of these cases:

provided that- xx xx xx xx xx

7. Rule-27(2)(a) requires the appellate authority to consider whether the procedure laid down in the Rules has been applied with or not and whether such non-compliance resulted ⁱⁿ failure of justice. Obviously, acting under the said clause the appellate authority in this case found that by holding the enquiry at Bangalore the applicant who was in Secunderabad was denied reasonable opportunity to participate in the enquiry. Having come to that conclusion he ought to have set aside ^{the} penalty while ordering the case to be remitted to the disciplinary authority for further enquiry. The word "or" appearing between sub clause (i) and (ii) of Rule 27(2) will have to be understood not as a disjunctive but as ^a conjunctive. If it ^{is} not thus read it would lead to an absurd situation, in that, a delinquent employee would be subjected to ^{further/fresh} enquiry under Rule 14 with opportunity to defend his case and explain his innocence when all the time the penalty of removal already imposed on him is in operation. Under ^{such} circumstances no delinquent employee can rightly feel that the enquiry thus ordered by the appellate authority was genuinely for the purpose of asserting his guilt or innocence. It is often said that justice must not only be done but must manifestly seem to be done. In the instant case it cannot be said that the applicant could have that confidence

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Copy to:-

1. Secretary, Ministry of Defence, (Defence Finance & Financial Advisor), Union of India, Government of India, New Delhi.
2. The Controller General of Defence Accounts, West Block-V, R.K.Puram, New Delhi.
3. The Controller of Defence Accounts 506, Anna Salai, Teynampet, Madras.
4. The Assistant Controller of Defence Accounts Incharge, Area Accounts Office(C.D.A.), Staff road, Secunderabad.
5. One copy to Sri. J.V.LaxmanaRao, advocate, CAT, Hyd.
6. One copy to Sri. M.V.Ramana, Addl. CGSC, CAT, Hyd.
7. One copy to Library, AT, Hyd.
8. One spare copy.

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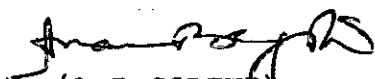
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to face the enquiry and ^{attempt} to establish his innocence.

8. For the afore-stated reasons we find that the decision of the appellate authority, as contained in his order dt. 14.5.88 directing further enquiry without setting aside the penalty order is in violation of Rule 27(2).

9. The consequential enquiry held and the resultant confirmation of the penalty of removal cannot be upheld. For the same reason the order of the revising authority agreeing with the order of the appellate authority cannot also be sustained.

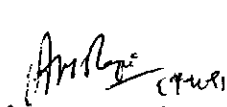
10. In the result, we set aside the order of the disciplinary authority dated 8.10.87 imposing the penalty of removal order, orders of the appellate authority dated 14.5.88 and 6.2.90 and the order of the revising authority dated 6.11.91. The respondents are directed to reinstate the applicant in service. We however, make it clear that it is open to the disciplinary authority to order a fresh enquiry in accordance with the rules from the stage of the issuance of the charge memo. The question of backwages and how the period from the date of removal of the applicant to the date of his reinstatement ^{should be} treated is left to be decided by the authority concerned according to the law. No order as to costs.


(A.B. GORTHY)
Member (Admn.)


(A.V. HARIDASAN)
Member (Judl.)

Dated: 10 April, 1995

sd


By Registrar (3)

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CA-373/92

TYPED BY
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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE SHRI A.V.HARIDASAN: MEMBER (J)

AND

THE HON'BLE SHRI A.B.GORTHY: MEMBER (..)

DATED 16/4/95

ORDER/JUDGMENT

M.A.NO/R.P.NO./C.P.NO.

D.A.NO.

in
373/92

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default

Rejected/Ordered.

No order as to costs.

YLKR

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