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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.101/92

Date of decision: *7th April 1993.*

Between

Zamin Ali

... Applicant

and

1. Director of Postal Services,
Hyderabad City Region, Hyderabad.

2. Senior Superintendent of Post Offices,
Hyderabad City Region, Hyderabad.

3. Inquiry Officer, A.S.R.M.,
Zonal Division, Hyderabad.

4. Manager, P&T Motor Service,
Hyderabad.

... Respondents

Appearance:

For the applicant : Shri K.Mangachary, Advocate.

For the Respondents : *Sac. N.R. Deva Raj* *Su.C.GSC.*

CORAM:

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

The Hon'ble Shri R.Balasubramanian, Member (Admn.)

JUDGEMENT

(of the Bench delivered by the Hon'ble Shri Justice V.
Neeladri Rao, Vice-Chairman)

This O.A. is filed against the order of the appellate authority awarding punishment of compulsory retirement by modifying the order of removal passed by the ad-hoc disciplinary authority.

contd...2.

2. The facts which gave rise to this O.A. are as under: The applicant was a motor vehicle driver in P&T Motor Service, Hyderabad and he was conformed with effect from 1-3-1979. He was absent from duty from 9-1-85 to 4-2-85. When he reported for duty on 5-2-85, he was kept under suspension pending disciplinary enquiry for the unauthorised absence. Show-cause notice dated 1-3-85 was issued to the applicant requiring to show cause as to why disciplinary action should not be taken for his unauthorised absence from duty from 9-1-85 to 4-2-85. The applicant submitted his explanation dated 8-3-85. It is to the effect that he was illegally detained by the police from 9-1-85 to 4-2-85 and he was released on 5-2-85 (4-2-85 in his explanation dated 8-3-85 might be a type mistake) and on the same day he reported for duty. It is stated further therein that he was not allowed to move or communicate so during that period and he could not intimate the authorities about his absence during that period. But the concerned disciplinary authority proposed to proceed with the disciplinary enquiry and an Enquiry Officer was appointed and the former issued charge memo. dated 16-3-85 and the charge is as under:

"That the said Sri Zamin Ali while working as Time Scale Driver in the office of the Manager, P&T Motor Service, Hyderabad abruptly stopped away from duty from 9-1-85 to 4-2-85 without applying for leave and without getting the leave previously sanctioned. Thus, Sri Zamin Ali, Time Scale Driver, P&T Motor Service, Hyderabad caused dislocation in conveyance of mails while employed as Time Scale Driver to discharge the duties of essential service in nature. Therefore, it is alleged that Sri Zamin Ali, while working as Time Scale Driver in P&T Motor Service, Hyderabad showed gross negligence of duty and misconduct and did not maintain devotion to duty and acted in a manner which is unbecoming of a Government Servant in contravention of rule 3(1) (ii) & (iii) of CCS (Conduct) Rules, 1964."

The applicant reiterated his stand by his explanation dated 28-3-85. Only the show cause notice dated 1-3-85 and the explanation dated 8-3-85 of the applicant were marked for the employer. The applicant, in his representation dated 4-10-85 filed before the Enquiry Officer stated that he would not propose any witness to be examined on his behalf and he would not propose to file any document also on his behalf. The Enquiry Officer questioned the applicant on 15-10-85 on the basis of the material placed before him. The Enquiry Officer submitted report holding that the charge was proved. The adhoc disciplinary authority in his proceedings dated 2-9-86 ordered removal of the applicant from service by way of punishment. His appeal was dismissed on 12-11-87. It was assailed in O.A.No.72/88 on the file of this Bench. It was contended, inter alia, in the said O.A. that the order of the disciplinary authority is vitiated as there was infirmity in not furnishing copy of the Enquiry Report and in not calling for the explanation of the applicant on the basis of the said finding before the order of removal was passed.

full bench
By relying upon the judgment of the Central Adm. Tribunal in Premnath Sharma Vs. Union of India (1988(6) ATC 904) this Tribunal by judgment dated 27-9-89 quashed the order of penalty of removal from service and directed the Respondents to supply copy of the enquiry report to the applicant and give him an opportunity to make his representation, if any, and to proceed to complete the disciplinary proceedings from that stage. After furnishing the copy of the report of the Enquiry Officer and after receiving the explanation of the applicant

in regard to the same, the adhoc disciplinary authority passed the order dated 30-4-91 removing the applicant from service. The appellate authority, by order dated 20-11-91 modified the order of removal to one of compulsory retirement.

3. Writ Petition No.345/85 (Habeas Corpus petition) was filed praying for a direction to the police to produce the applicant and four others referred to therein. A counter was filed therein to the effect that the other four referred to in the said Habeas Corpus petition were arrested on 16-1-85 and produced before the Magistrate and the applicant was neither arrested nor taken into custody. The wife of the applicant herein filed W.P.No.734/85 (Habeas Corpus petition) praying for a direction to the police to produce the applicant herein. The same was closed on 6-2-85.

4. The contentions for the applicant are as under: The very fact of filing the Habeas Corpus petitions supports the plea of the applicant that the police had taken him into illegal custody. If he was not detained illegally by the police, there was no need or occasion for filing the above habeas corpus petitions. The authorities should have treated the period in question as leave and they should have dropped the disciplinary proceedings. No evidence is adduced for the authorities to establish that there was dislocation of mails due to the absence of the applicant. The C.C.No.25/86 on the file of the IV Metropolitan Magistrate, Hyderabad filed

against the applicant herein and another for the offence under Section 379 IPC in pursuance of the complaint lodged by the postal authorities on 26-12-84 as per Crime No.272/84 for theft of two parcels ended in acquittal. The said fact-~~xxx~~ discloses that the applicant was detained by the police on the basis of the above complaint and he was acquitted as he was innocent. In any case, the punishment by way of compulsory retirement is very harsh and wholly disproportionate to the guilt even if it is held that the charge is proved.

5. Rule 3(1), sub-rules (ii) and (iii) of the C.C.S. (Conduct) Rules, 1964 for which the applicant was charge-sheeted, read as under:

"Rule 3: GENERAL

- (1) Every Government servant shall at all times--
 - (i) xxx xxx xxx
 - (ii) maintain devotion to duty; and
 - (iii) do nothing which is unbecoming of a Government servant."

In annexure-I i.e. in the charge, it was stated that due to the absence of the applicant from 9-1-85 to 4-2-85, there was dislocation in conveyance of mails/during that period the applicant was employed as Time Scale Driver to discharge the duties of essential service in nature. The learned counsel for the applicant urged that no evidence to establish was adduced/that there was dislocation in conveyance of mails due to the absence of applicant from 9-1-85 to 4-2-85. But the applicant himself stated in para 3 of his explanation dated 28-3-85 that there might have been some dislocation in conveyance of mails during the period of his absence and it was due to unavoidable circumstances

which are beyond his control. It is, thus, clear from his own explanation that because of his absence, there was dislocation in conveyance of mails. There is no need for the authorities to prove a fact which is admitted. As such, the contention that there is no evidence about dislocation in conveyance of mails during the period in question is not tenable.

6. Admittedly, the applicant was absent from 9-1-85 to 4-2-85 and the applicant had not applied for leave for the said period. The respondents could not have known about the whereabouts of the applicant during the said period. The applicant pleaded that he was kept in illegal custody from 9-1-85 to 4-2-85. It is for him to establish this. He had not chosen to examine any witness in his support. He had also not offered to come as a witness. The Enquiry Officer, the adhoc disciplinary authority and also the appellate authority had adverted to the two habeas corpus petitions, viz. Writ Petitions No.345/85 and 734/85 referred to by the applicant. The said authorities had also considered about the appointment of an Advocate-commissioner to search for the persons referred to in the writ petitions including the applicant, in the police station and the fact that the said Advocate-commissioner did not find any of them in the police station. The averments in the counter in WP 345/85 to the effect that the other four were arrested on 16-1-85 and the applicant herein was neither arrested nor taken into custody and the statement of the police that the applicant herein was ^{were} not required in any case ~~was~~ also considered by the

Enquiry Officer, disciplinary authority and the appellate authority. On the basis of the material on record the said authorities had not believed the version of the applicant that he was illegally detained by the police from 9-1-85 to 4-2-85. This Tribunal is not an appellate authority. It is exercising the power under Article 226 of the Constitution of India. It is well established power that the court or tribunal in exercise of its ~~jurisdiction~~ ^{power} ~~jurisdiction~~ under Article 226 of the Constitution of India, does not interfere ~~in~~ ^{with} the finding of the disciplinary or appellate authority when there is some evidence in support of the finding, and the adequacy or sufficiency of the evidence to come to such a finding, is not a matter that can be agitated before the authority exercising ^{power} ~~jurisdiction~~ under Article 226 of the Constitution of India. As already observed, the applicant himself had not chosen to figure as a witness to depose in support of his plea. The Presenting Officer could have the opportunity of cross-examining the applicant if he figured as a witness. It was rightly stated for the respondents that as the applicant was merely questioned by the enquiry officer on the basis of the material before him, the presenting officer had no scope to cross examine the applicant. Further the applicant himself stated in his written representation before the enquiry officer that he would not cite any as witness. The acquittal in CC 25/86 was not brought to the notice of the enquiry officer or disciplinary authority or appellate authority. Anyhow, it was not argued before the said authorities that this disciplinary action was initiated for weeding

out the applicant for his alleged complicity in the case of theft. Hence the applicant cannot be allowed to allege the same for the first time in this O.A. The learned Standing Counsel for the respondents had also drawn our attention to the following averment at pages 20 and 21 in this O.A. and it is as follows:

"The award of removal from service is also malafide because the C.G.S. who was under a threat of arrest during investigation by the police with regard to complaints of theft of contents from insured articles could have absented himself to avoid arrest by the police and gone underground."
(emphasis supplied).

It was submitted for the respondents that the above averment in the O.A. is contradictory to the stand of the applicant that he was illegally detained by the police for the period from 9-1-85 to 4-2-85. Be that as it may, it cannot be stated that the finding of the concerned authority that the plea of the applicant that he was in illegal custody of the police from 9-1-85 to 4-2-85 is perverse or that there is no basis especially when he himself had not chosen to figure as witness to come to that conclusion. Para 62 of the Volume-III of P&T Manual is relied upon for the applicant to contend that the unauthorised absence may be treated as dies-non and no disciplinary action can be taken for such unauthorised absence. That para 62 reads as under:

"ABSENCE WITHOUT PERMISSION:

62. Absence of officials from duty without proper permission or when on duty in office, they have left the office without proper permission or while in the office, they refused to perform the duties assigned to them is subversive of discipline. In cases of such absence from work, the leave sanctioning authority may order that the days on which work is not performed be treated as dies-non i.e. they will neither count as service nor be construed as break in service. This will be without prejudice to any other action that the competent authorities might take ~~against~~ against the persons resorting to such practices."

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It is manifest from the above para that though such unauthorised absence may be treated as dies-non, it does not preclude the competent authority ~~xx~~ taking disciplinary proceedings for such unauthorised absence. Hence this contention also has to be negatived.

Thus, we cannot find any material to warrant interference with ~~xx~~ the finding that the charge is proved.

7. The next point that has to be considered is as to whether the punishment of compulsory retirement from service is harsh, excessive and wholly disproportionate to the guilt and unconscionable. The unreported judgment dated 10-12-1991 in OA 528/91 on the file of this Tribunal was referred to. The applicant therein was absent from 12-1-85 to 17-1-85. He pleaded that the absence was due to sickness. In view of the material on record the Tribunal felt that it was a case of absence due to the apprehension of arrest by the police in connection with investigation of theft of contents from the insured articles which took place during 1983-84. After due enquiry, the disciplinary authority removed the applicant therein from service by way of punishment. The appellate authority modified it by ordering compulsory retirement from service instead of removal. Material was placed before the Bench, in the said O.A. to the effect that it was a solitary instance of unauthorised absence. It was stated ~~that~~ in view of the circumstances therein that the punishment of compulsory retirement was disproportionate and unconscionable and hence the same was set aside and the disciplinary authority was directed to award an appropriate punishment.

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X

8. The period of absence in the O.A.528/91 was for six days while it is for 27 days in this case. No material is placed to the effect that this is a solitary case of unauthorised absence. Each case has to be decided on the basis of the facts and circumstances placed before the court or tribunal. In view of the material on record in this O.A., it cannot be stated that the punishment by way of compulsory retirement from service is very harsh, excessive, unconscionable or wholly disproportionate to the guilt.

9. In the result the O.A. is dismissed. No costs.

N.Rao
(V.Neeladri Rao)
Vice-Chairman

R.Balasubramanian
(R.Balasubramanian)
Member (Admn.)

Dated: the 7th day of April, 1993.

mhb/-

8/4/93
Deputy Registrar

To

1. The Director of Postal Services,
Hyderabad City Region, Hyderabad.
2. The Senior Superintendent of Post Offices,
Hyderabad City Region, Hyderabad.
3. The Inquiry Officer, A.S.R.M., ~~2~~
Zonal Division, Hyderabad.
4. The Manager, P&T Motor Service, Hyderabad.
5. One copy to Mr.K.Mangachary, Advocate, 1-9-626,
Adikmet, Hyderabad.
6. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
7. One copy to Library, CAT.Hyd.Bench.
8. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR.K.BALASUBRAMANIAN :
MEMBER(ADMN)

AND

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

DATED: 7 -4 -1993

ORDER/JUDGMENT

R.P./ C.P/M.A.No.

in

O.A.No.

101/92

T.A.No.

(W.P.No)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions
Dismissed as withdrawn.

Dismissed

Dismissed for default.

Ordered/Rejected.

No order as to costs.

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