

(15)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.267/92

DATE OF JUDGEMENT:

28-2-1994

Between

I. Satyanarayana .. Applicant

and

1. Union of India rep. by
Secretary, Min. of Communications,
New Delhi.
2. Sub-Divisional Officer (Telecom.)
Chilakaluripet
Guntur Distt.
3. Divisional Engineer
Telecommunications (Rural)
Maintenance, Chandramoulinagar
Guntur
4. GVA Murthy,
Accounts Officer-cum-Inquiry Officer
Office of Telecom District Manager
Vijayawada .. Respondents

Counsel for the Applicant :: Mr P.Rattaiah

Counsel for the Respondents :: Mr NV Ramana, Addl.CGSC

CORAM:

HON'BLE SHRI A.B. GORTHI, MEMBER(ADMN)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

T. C. R.

...2

STAPCO
g/

JUDGEMENT

(As per Hon'ble Shri T. Chandrasekhara Reddy, Member(J))

This is an application filed under Section 19 of the Administrative Tribunals Act to set aside the order of compulsory retirement passed by the SDO, Telecom, Chilakaluripet dated 16.6.90 which was upheld by the Divisional Engineer, Telecom, Guntur as per his memo dated 15.9.90 and to take back the ~~on duty~~ applicant with all consequential benefits.

2. Facts giving rise to this OA in brief, are as follows:

3. The applicant was formerly working as Line Man, Telephones, under SDO, Telecom, Guntur in the year 1977. During August, 1984, he was transferred to Chilakaluripet out of his sub-division in the interest of service by Divisional Engineer, Telecom, Guntur. The applicant joined at Chilakaluripet as Line Man Phones on 21.8.1984. Again the applicant was transferred from Chilakaluripet to Edlapadu. While he was working at Edlapadu, the applicant was proceeded against under Rule 14 of CCS(CCA) Rules, 1965 vide SDO, Telephones, Chilakaluripet, as per ~~his~~ orders dated 7.2.85 for the applicant's alleged failure to attend the duties which resulted in a lot of dislocation of Departmental work. The applicant was directed to submit his ~~expak~~ explanation within 10 days of the receipt of the charge memo. The applicant submitted his explanation on 21.2.85 to the said charge memo. An Enquiry Officer and a Presenting Officer ~~were~~ appointed and ~~the~~ a regular departmental enquiry was conducted as against the applicant.

The applicant did not participate in the enquiry. After completion of the departmental inquiry, the Enquiry Officer submitted his report to the Disciplinary authority i.e. SDO, Telephones, Chilakaluripet. The Disciplinary authority vide its orders dated 21.11.85 awarded the punishment of compulsory retirement of the applicant from service with immediate effect. The applicant preferred an appeal to the appellate authority who is Divisional Engineer, Telephones, Guntur. The appellate authority vide its orders dated 26.8.86 confirmed the punishment of compulsory retirement passed by the disciplinary authority. Questioning the said orders of compulsory retirement, the applicant filed OA 534/87 before this Tribunal. The said OA was disposed of by orders of this Tribunal dated 20.12.89. This as per its order dated 20.12.89, Tribunal had set aside the compulsory retirement order passed as against the applicant but permitted the respondents to continue the proceedings from the stage after supplying copy of the enquiry report to the applicant (delinquent official) and giving him an opportunity to submit his representation within one month. Accordingly, the copy of the enquiry report was provided to the applicant and the applicant submitted his representation dated 2.5.90 to the disciplinary authority against the findings of the Enquiry report. After considering the representation of the applicant dated 2.5.90 and the material that was placed before him, the disciplinary authority as per its order dated 16.6.90 awarded the punishment of compulsory retirement to the applicant with effect from 16.6.90 and further held that the period

..4..

of absence from 22.11.85 to 16.6.90 will not count as qualifying service for any other purposes including under Rule 23 of CCS(Pension)Rules,1972. Thereafter, the applicant preferred an appeal dated 21.7.90 to the appellate authority, who is Divisional Engineer, Telephone Guntur. The appellate authority vide its order dated 15.9.90 confirmed the orders passed by the disciplinary authority. The applicant has again approached this Tribunal for a ~~seen~~ second time by filing the present OA questioning the said orders of Disciplinary authority dated 16.6.90 which was confirmed by the appellate authority vide its order dated 15.9.90.

4. Counter is filed by the respondents opposing this OA.

5. It is the contention of the respondents that the applicant, at no stage had been denied reasonable opportunity and that the applicant did not avail the reasonable opportunity provided to him to participate in the inquiry and in the conduct of the inquiry, no procedural irregularity had been committed and that, there was sufficient evidence to show that the applicant had been guilty of serious misconduct and unauthorisedly absent, and so this OA is liable to be dismissed.

6. We have heard in detail Mr Satyanarayana for Mr P. Rathaiah, counsel for the applicant and Mr NV Ramana, Standing Counsel for the respondents.

T - C - M - P

...5

A. P. R.

7. It is the contention of the learned counsel for the applicant, that the inquiry had been conducted ex-parte and copy of the documents, which the respondents had relied during the course of inquiry, were not furnished to the applicant and thus the applicant had been denied reasonable opportunity and so, the order of ~~compusele~~ compulsory retirement passed as against the applicant is liable to be set aside.

8. It is not in dispute that a charge memo dated 7.2.85 was issued as against the applicant under Rule 14 of the CCS(CCA)Rules, and the same had been served on the applicant. The record discloses that the applicant had remained absent on the days of inquiry even though intimation about ~~date of~~ every inquiry had been sent to the applicant by registered post and well in advance. It is the case of the applicant that the copy of the daily sheets and Enquiry report were not sent to him by registered post. But the question in this case is whether it was open for the Enquiry Officer to proceed ex-parte as against the applicant, as the applicant did not attend the inquiry. Disciplinary rules provide for ex parte inquiry, where a Government servant intentionally refuses to participate in the inquiry. Rule 14(20) of CCS(CCA)Rules, 1965 reads as follows:

"(20) If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex parte."

As could be seen, the applicant had refused to participate in the inquiry inspite of notices served on him that in case of failure to attend the inquiry, that the inquiry will be held as ex-parte. We may refer to a decision reported in AIR 1955 SC 160 P.Joseph John Vs State of Trivancore-Cochin wherein it is laid down that once an opportunity of show cause has been given to a Govt. servant and if he fails to avail himself of it, that it was not open to say that the requirements of reasonable opportunity had not been satisfied. So, in view of the said decision of the Supreme Court, it is not open for the applicant to contend that he had been denied reasonable opportunity in this case. As the applicant had not attended the inquiry, it is not open for him to contend that the inquiry officer should not rely on the copies of documents of which were not supplied to him, and therefore, he was not given reasonable opportunity to show that the charges as against him were unfounded.

9. In AIR 1962 SC 1344 Major UR Bhatt Vs Union of India it is laid down, in cases of this nature, it is not open for the govt. servant to contend that witnesses were not examined viva voce by the Enquiry Officer since the Enquiry officer was entitled to act upon the material placed before him. (See para 4 of the Judgement at Pages 1346 & 1347). So, in view of this position also the contention of the learned counsel for the applicant that the inquiry is vitiated as the same had been ex parte and based on the copies of documents of which were not supplied to the applicant (delinquent officer) cannot be accepted.

(21)

..7..

10. It is faintly contended that there is no evidence in this case to bring home the charges framed as against the applicant. During the course of arguments, when confronted whether any explanation had been given by the applicant, at any time for his absence, the applicant's counsel very fairly conceded for the days the applicant was absent, no explanation had been given by the applicant. One of the charges as ~~against~~ against the applicant in the departmental inquiry (which has been amply proved) was that the applicant had remained absent from 14.11.84 to 16.11.84 three days, 24.11.84 to 25.11.84 two days, 22.12.84 to 24.12.84 three days, 26.12.84 to 28.12.84 three days, 4.1.85 one day, 10.1.85 one day and from 17.1.85 to 20.1.85 four days and the applicant had exhibited lack of devotion of duty and violated provision of Rule 3(i) & (ii) of CCS Conduct Rules, 1964.

11. There are certain other charges also in the charge sheet. But one among them is, that he was not regular to his duties which caused dislocation of departmental work. The fact that the applicant had been absent on the said dates unauthorisedly and had failed to attend the canal phone works at Etlapadu on the dates specified in the charge sheet cannot at all be denied. As already pointed out, the applicant has no explanation for the said absence. As the applicant has no explanation for the said absence, and in view of the conduct of the applicant by unauthorisedly absenting himself from the disciplinary authority, after going through the Enquiry Report had come to the conclusion that the charges, as well as the remaining charges as against the applicant, were duly proved.

TMG

The appellate authority had also come to the conclusion after going through the material that the charges as against the applicant were duly proved. Hence, the orders of the disciplinary authority as well as appellate authority are speaking orders. As a matter of fact, the appellate authority, as well as, the disciplinary authority have provided the applicant full opportunity while dealing with the case of the applicant. So, in view of the strong evidence as against the applicant and as already pointed out, as no procedural irregularities had been committed in the conduct of inquiry so as to cause any prejudice to the applicant, the order passed by the respondents compulsorily retiring the applicant from service, is liable to be upheld.

12. The learned counsel for the applicant contended that the punishment of compulsory retirement awarded to the applicant is too severe and so, the same is liable to be set aside. In support of his contention, the learned counsel for the applicant relied on a decision reported in AIR 1989 SCC L&S 303 Parma Nanda Vs State of Haryana and others wherein it is laid down that Tribunal can interfere with the apparently unreasonable punishment. But, in the very same Judgement, it is also laid down that the Tribunals have ordinarily no power to interfere with punishment awarded by the Competent authority in departmental proceedings on the ground of the penalty being excessive, or disproportionate to the misconduct proved if the punishment is based on evidence, and is not arbitrary, malafide or perverse. So, from a reading of

In Parma Nanda's case it appears to us that the punishment imposed on the applicant cannot be interfered on the ~~any~~ ground that the same is excessive. But nevertheless, the punishment imposed on the applicant, in view of the facts and circumstances of the case and in view of the conduct of the applicant appears to be proportionate, to the mis-conduct that has been proved against him. So, we do not see that this is a fit case for interference with the punishment that had been imposed on the applicant.

13. It is faintly contended that the Enquiry officer had bias on the applicant and so, the entire proceedings are vitiated. We are not prepared to accept the contention of the Enquiry officer, having any bias, in view of the facts and circumstances and as the applicant himself had remained ~~himself~~ ex parte in the said departmental proceedings.

14. The learned counsel for the applicant further contended that the applicant had put in ^{not} more than 10 years of service, and so, the punishment of compulsory retirement cannot be imposed on the applicant, and, hence the punishment is liable to be set aside. In support of his contention, the learned counsel for the applicant relied on a decision report in 1991(1) SLR 799 Balkar Singh Vs Union of India and others. The facts in that case, would go to show that the petitioner therein was recruited to CRPF on 21.10.1980 and a departmental inquiry was initiated ~~that~~ on the allegations that he had misplaced his personal arms and ammunition which were later recovered. He was compulsorily retired from service by an order dated 18.11.89. In the said case, the compulsory retirement was challenged on two grounds namely (1) the punishment of compulsory retirement was not one of the punishments enumera in Section 11 of the Central Reserve Police Force Act, 1949,

124

...10...

(2) the total service of the petitioner being less than ten years that is from 21.10.80 to 18.11.89, the date of compulsory retirement, no pension was granted to the petitioner, which made the punishment, in fact, an order of dismissal from service.

Ans But, in this case, CCS(ACA) rules, 1965, enumerate the punishment that could be imposed on an erring Govt. servant. Compulsory retirement is one of the punishment that could be imposed on an erring govt. servant, for his misconduct. So, the above said decision has no applicability to the facts of this case. and the respondents have got every power to impose the punishment of compulsory retirement on the applicant.

16. The learned counsel for the applicant relied on an another decision reported in AIR 1964 SC 1585 Gurudev Singh Siddhu Vs State of Punjab. We have gone through the said decision. From the said decision, it is evident that the termination of the service of a permanent public servant under such a rule, though called compulsory retirement as a measure of punishment is in substance, removal under Art.311(2) of the Constitution and as such, he cannot be removed from service in contravention of Art.311(2) of the Constitution of India and as a measure of punishment if any such compulsory retirement is inflicted without observing the safeguards under Art.311(2) of the Constitution of India is invalid. As a regular departmental inquiry was held ~~xxxxxx~~ as against the applicant in this case and as the applicant had been provided reasonable opportunity, the said decision does not advance the case of the applicant.

T. S. T.

...11...

10/11/89

125

...11....

16. Ofcourse, for putting less than 10 years of service the applicant cannot have pensionary benefits, as the minimum service that is required for being qualified for pension is ten years. But, in such case, compulsory retirement should be treated as removal from service. The applicant had been under suspension from 21.11.85 to 16.6.90. The competent authority has got powers to pass appropriate orders with regard to the suspension period i.e. from 21.11.85 to 16.6.90. The suspension period from 21.11.85 to 16.6.90 is ordered to be treated as non-duty period, and that the same will not count as qualifying service or for any other benefits including pension. The said order in the circumstances of the case appears to be reasonable. Hence, we uphold the order passed by the respondent in treating the suspension period from 21.11.85 to 16.6.90 not only as non-duty period, but also will not count for pensionary benefits.

17. M.A.No.582/93 is a petition filed by the applicant herein to direct the respondents to pay him subsistence allowance from 21.11.85 to 16.6.90. Admittedly, the applicant had, in law, come under deemed suspension period from 21.11.85 to 20.12.89 when the said compulsory retirement order dated 21.11.85 was set aside by this Tribunal and the respondents continued the inquiry from 21.12.89 to 16.6.90 as per the directions of this Tribunal in OA 534/87 after furnishing a copy of the enquiry report to the applicant. For a second time, compulsory retirement orders were passed as against the applicant on 16.6.90. So, the applicant, as already pointed out, must be deemed to be under suspension from 21.11.85 onwards upto 20.12.89 and then from 21.12.89 onwards to 16.6.90. It is ~~xxx~~

T - C - J

...12

With P.S.

needless to point out that for deemed suspension period, the applicant is entitled to be paid subsistence allowance. It is the right of the applicant to have subsistence allowance for the said period. It is also the case of the applicant that he has not been paid subsistence allowance for the said period. So, in view of this position, a direction is liable to be given to the respondents to pay subsistence allowance to the applicant for the periods from 21.11.85 to 16.6.90. Hence, the MA is liable to be allowed.

18. In the result, we allow MA 582/93 and direct the respondents to pay subsistence allowance to the applicant in accordance with the rules and regulations for the deemed suspension period from 21.11.85 to 16.6.90. The directions in this Judgement shall be complied within three months from the date of communication of this order. We see no merits in the OA, the same is liable to be dismissed and is accordingly dismissed leaving the parties to bear their own costs.

T.C.R.
(T.CHANDRASEKHARA REDDY)
Member(Judl.)

A.B.G.
(A.B. GORTHI)
Member(Admn)

Dated: 28-2-1994

7/11/94 7.30
Deputy Registrar(J)CC.

mvl

To

1. The Secretary, Union of India, Min.of Communications, New Delhi.
2. The Sub Divisional Officer(Telecom) Chilakaluripet, Guntur Dist
3. The Divisional Engineer, Telecommunications(Rural) Maintenance, Chandramoulinagar, Guntur.
4. One copy to Mr.P.Rattaiah, Advocate, CAT.Hyd.
5. One copy to Mr.N.V.Ramana, Addl.CGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

pvm.

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.B.GORTHI : MEMBER(A)

AND

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

AND

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

Dated: 28-2-1994.

ORDER/JUDGMENT:

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

in

O.A.No.

267/92

T.A.No.

(W.P.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.

