

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
AT HYDERABAD.

O.A.NO.297 of 1992.

Between

Dated : 7.3.1995.

M.Seenaiah

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Applicant

And

1. The Sub Divisional Officer, Telecom, Adoni.
2. The Sub Divisional Officer, Telecom, Yemmiganur.
3. The Divisional Engineer (Mtce.), Kurnool Telecom District, Kurnool.
4. The Director General, Telecom (representing Union of India), New Delhi.

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Respondents

Counsel for the Applicant : Sri. C.Suryanarayana

Counsel for the Respondents : Sri. N.R.Devaraj, Sr. CGSC.

CORAM:

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

Hon'ble Mr. A.S.Gorthi, Administrative Member

Contd :....2/-

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O.A. 297/92.

Dt. of Decision : 07-03-95.

ORDER

¶ As per Hon'ble Shri A.V. Haridasan, Member (Judl.) ¶

This application under section 19 of the Administrative Tribunals Act is directed against the order dated 11-04-1991 of the third respondent (Appellate authority) imposing on the applicant a penalty of reduction of the applicant's pay to the lowest stage in the pay scale ~~in~~ the post of Lineman, withholding of the next increment for three years and forfeiture of his entire past service on account of break in service, due to removal modifying the penalty of removal from service ordered by the first respondent (Disciplinary authority).

2. The facts in brief can be stated as follows:-

3. While the applicant was working as Lineman he was served with a charge-sheet dated 3-6-88 alleging that, he at the time of his recruitment in 1988, produced a false transfer certificate and also filed a false attestation form duly signed stating that he studied upto VIIIth Class in ZP School, Giddalur from 15-6-66 to 24-4-69 and ^{that} his date of birth as per the transfer certificate was 1-6-1955 and thus acted in violative of Rule 3(i)(i) and (iii) of the CCS (Conduct) Rules. Though the applicant denied the charge, after an enquiry without supplying the applicant with a copy of the Inquiry Officer's report the first respondent passed an order removing the applicant from service. This order was set aside by the appellate authority on the ground that the disciplinary authority failed to supply the applicant with a copy of the report and to give ~~the~~ ^{applicant} opportunity to make his representation directing the disciplinary authority to proceed properly in accordance with the provisions contained in rule 15 of the CCS (CCA) rules. The

applicant was re-instated in service and was also paid wages for the period he was kept out of service. The first respondent thereafter furnished the applicant with a copy of the inquiry report and called for his representation. On a consideration of the report of the representation of the applicant the first respondent again passed an order finding the applicant guilty and imposing on him the penalty of removal from service. On the appeal of the applicant the third respondent^{who} is the appellate authority passed the impugned order which is challenged in this OA.

4. Though the impugned order is assailed on several grounds Shri C.Suryanarayana, learned counsel for the applicant did not press the other contentions and ~~xxx~~ stated that he is restricting the challenge only to the legality of the penalty imposed by the third respondent. Shri C.Suryanarayana with considerable tenacity argued that, the last limb of the order of penalty directing that the break in service of the applicant would result in forfeiture of the past service in toto, and that the applicant would not be entitled to pay and allowances for the period between removal and re-instatement is illegal, arbitrary and unsustainable. As the penalty of removal has been set aside and a lesser ~~of~~ penalty of reduction in pay and stoppage of increments has been awarded, to say that the removal from service has created a break which would result in forfeiture of ^{entire} past service of the applicant is illogical baseless and unreasonable argued the counsel. As the third respondent has set aside the penalty of removal and awarded another penalty, the counsel argued that the third respondent should have granted to the applicant the pay and allowances for the period he was kept out of service. We find considerable force in this argument of the learned counsel for the applicant that the order of the third respondent that the break in service would lead to forfeiture of the entire past service of the applicant, is illegal, illogical and unjustified.


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The third respondent set aside the penalty of removal and imposed on the applicant the penalty of reduction in pay being satisfied that the penalty of removal from service would be excessive in the circumstances of the case. To say that the break in service caused by the penalty of removal which has been set aside would result in forfeiture of the past service is illogical and is also against the provisions contained in Rule 25 of the CCS Pension Rules which provides that the period of service rendered by a government servant re-instated after setting aside the penalty of dismissal shall be counted for the purpose of pension. Further it is also not correct to say that there was a break in service which could result in forfeiture of past service because, the break if at all was caused by the penalty it was set aside on appeal. Further forfeiture of past service is not one of the penalties that can be awarded to a government servant under Rule 11 of the CCS (CCA) Rules. Therefore we are convinced that, that part of the order of the third respondent which provided for forfeiture of the past service applicant has to be set aside.

4. The claim of the applicant for wages between the date of removal till the date of re-instatement cannot however be accepted. In all cases where the penalty of dismissal or removal is modified and a lesser penalty is awarded, as a matter of right the government servant cannot claim back wages. The penalty was reduced by the third respondent taking a lenient view. Therefore the decision that the applicant would not be entitled to back wages for the period between removal and re-instatement cannot be held to be unjust or illegal.

5. In the result in view of what is stated above we allow the application in part and set aside the following part of the impugned order of the third respondent dated 11-04-1991. "the break in service will lead to forfeiture

of all the past service rendered by him in the department", while upholding the ~~xxixxx~~ rest of the order. There is no order as to costs.


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


(A.V. Haridasan)
Member (Judl.)

Dated : The 7th March 1995.
(Dictated in Open Court)


Deputy Registrar (Judl.)

Copy to:-

1. The Sub Divisional Officer, Telecom, Adoni.
2. The Sub Divisional Officer, Telecom, Yemmiganur.
3. The Divisional Engineer (Mtce.) Kurnool Telecom District, Kurnool.
4. The Director General, Telecom (representing "Union of India") New Delhi.
5. One copy to Sri. C. Suryanarayana, advocate, CAT, Hyd.
6. One copy to Sri. N.R. Devaraj, Sr. CGSC, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

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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 (J)

DATED 7/3/95

ORDER/JUDGMENT

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

D.A.NO.

in
297/92

Admitted and Interim directions
issued.

~~or~~ Allowed in part

Disposed of with directions

Dismissed.

Dismissed as withdrawn

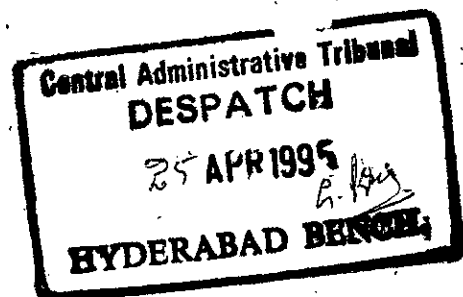
Dismissed for default

Rejected/Ordered.

No order as to costs.

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