

(110)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
HYDERABAD

OA 377/92 & OA 378/92

Dt. 11-7-1995

Between

L. Abbai
s/o Shri (Late) Jagganna,
aged 52 years,
Junior Accounts Officer
(Compulsorily Retired
from service)
at 16-2-741/D/52,
Behind T.V. Towers,
Asmangadh, Malakpet,
Hyderabad-500036.

Applicant

(in both cases)

And

1. Union of India
rep. by the Secretary,
Ministry of Communications,
New Delhi-110001.
2. Member (Personnel
Postal Services Board,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi-110001.
3. Chief Postmaster-General,
A.P. Circle, Hyderabad-500 001.
4. Shri C.P. Thomas,
Former Chief Postmaster-General,
A.P. Circle, C/o Present Chief
Postmaster-General, A.P. Circle,
Hyderabad-500 001.

Respondents

(in both cases)

Counsel for the Applicant Shri T. Jayant.

Counsel for the Respondents Shri N.V. Ramana.

Coram

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

Hon'ble Shri A.B. Gorthi, Member (Admn.)

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X AS PER HON'BLE JUSTICE SHRI V. NEELADRI RAO,
VICE-CHAIRMAN X

Heard both the learned counsels.

2. As the applicant in both these OAs is the same, both the OAs can be conveniently disposed of by a common order.

3. Charge Memo. dated 20-5-1984 with the following articles of 4 charges was issued to the applicant who was working as Jr. Accounts officer.

- I. that he claimed first class rail fares on certain dates in 1982 and 1983 in his Tour TA Bills in violation of the provisions of SR 36:
- II. that he claimed higher rates of Daily Allowance for his stay in certain lodges, which were stated to be in not existence:
- III. that he preferred for an LTC TA Bill for his family members, for which no cash memos were issued by Railway Department: and
- IV that thereby he contravened Rules 3(i)(iii) of the CCS (Conduct) Rules, 1964.

The enquiry officer held all the charges proved and basing on the same, the then Chief Postmaster-General, Andhra Circle, Hyderabad imposed penalty of a period of reduction of his pay by 10 stages for 2 years by memo. dated 1/7-5-86 vide Annexure A2. Thereby the applicant preferred an appeal to R2 and by order dated 3-3-87, the order of punishment dated 1/7-5-86 was set aside and denovo enquiry was ordered. In the de novo enquiry, the Enquiry officer held that charge I and part of charge II were proved, and that charge 3 is not proved (article 4 as per charge memo. dated 20-5-84 is not an independent charge and it merely states that in view of the 3 charges referred to as articles 1,2&3, the applicant contravened Rule 3 (i) (iii) CCS Conduct Rules, 1964.) Then Shri Thomas was the disciplinary authority and he agreed

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with the report of the enquiry officer and ordered compulsory retirement of the applicant from service by way of order dated 21-1-91. The appeal thereon was dismissed. The same is assailed in OA 378/92.

4. Charge memo. dated 10/11-9-86 with the following charge was issued to the applicant.

"That the said Sri L. Abbai, while functioning as J.A.O. during the period from 17-4-84 preferred a T.A claim dated 26-4-84 in connection with his transfer from Vijayawada to Hyderabad. The T.A claim included fare by 1st class for his two sons as having travelled on 10-4-84 from Vijayawada to Secunderabad which was found to be false. Sri L. Abbai failed to maintain absolute integrity contravening the provisions of rule 3(1) (ii) of C.C.S. (Conduct) Rules, 1964 and acted in a manner unbecoming of a Government servant under rule 3(1) (iii) ibid."

dated 7-11-86

5. Treating the explanation of the applicant as an admission of the above charge R4 Shri Thomas ordered compulsory retirement of the applicant as per memo. dated 21-1-1991 (Annexure A-10) in OA 377/92). The appeal thereon was rejected. The same is challenged in OA 377/92.

6. One of the contentions of the applicant with reference to both the OAs is that the orders whereby compulsory retirement was ordered are vitiated as R4 Shri C.P. Thomas had bias against the applicant. The applicant filed CP 53/90 in OA 47/87 on the file of this Bench wherein Shri Thomas was referred to as Respondent 2 by his name. It is further contended for the applicant that the earlier disciplinary authority imposed punishment by reducing his pay by 10 stages for a period of 2 years when all the 3 charges were held as proved, The punishment should have been less when only first charge and part of the 2nd charge were proved and charge 3 was not proved ^{in de novo enquiry} and in any case the punishment should not be higher

than the punishment imposed by the earlier disciplinary authority.

7. It was urged in regard to OA 377/92 that the disciplinary authority held that the charge referred to therein was proved on the basis of the alleged admission of the applicant as per his statement dated 7-11-86 when the said statement does not disclose that he had admitted the charge.

8. The last contention for the applicant is that when compulsory retirement was ordered with reference to one of the enquiries, there will be severance of relationship of the employee and the employer and in such a case punishment cannot be imposed in the other proceedings.

9. The applicant raised the plea of bias on the part of Shri Thomas even in the appeals preferred to against the orders of punishments imposed on him. The appellate authority observed that the disciplinary authority i.e. Shri C.P. Thomas had not shown prejudice in these cases and he acted merely on the facts before him.

The Apex Court held in 1994 SCC L&S 8 (V.MAHADEV AND OTHERS VERSUS D.C. AGGARWAL) while adverting to the plea of bias alleged against 2 Members of the Selection committees for it was found that the applicant therein filed contempt proceedings against those 2 Members, that in all fairness they should have withdrawn from the Selection Committee. Thus we feel that in view of the plea of bias against the disciplinary authority i.e. Shri C.P. Thomas, the appellate authority should have set aside the

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order of punishment and remitted the matters to an authority other than Shri Thomas for awarding punishment for fairness requires that whenever there is justification in regard to the apprehension of the affected party, the same has to be entrusted to someother authority. Thus in view of ^{principle of} fairness ~~and in view of the~~ ^{laid down in the} judgement of the Apex Court referred to above, the orders of punishment by way of compulsory retirement ordered by Shri C.P. Thomas ^{have} ~~has~~ to be set aside.

10. If there is no other plea for the applicant with reference to the punishment in regard to the charge covered by OA 378/92 we would have remitted the matter to the disciplinary authority as Shri C.P. Thomas is no longer the disciplinary authority for consideration in regard to the punishment imposed by him. But we cannot say that there is no force in the contention for the applicant that ~~in 2 cases~~ the punishment imposed in accordance with de novo enquiry should not be higher than the punishment that was imposed by the disciplinary authority before de novo enquiry was ordered. It is only the authority higher than the authority who imposed the punishment can enhance the punishment either in exercise of power ^{as} of the appellate authority or ~~that of~~ ^{or} revisional authority, and the disciplinary authority has no power to enhance it. So we feel that ~~instead of again~~ remitting the matter covered by OA 378/92 it is just and proper to order the punishment of reducing the pay of the applicant by 10 stages ~~for a period of 2~~ years as per order dated 1/7-5-86 (vide Annexure A-2) in OA 378/92 as the punishment for the charges proved in denovo enquiry.

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11. The explanation dated 7-11-86 of the applicant was referred to in the order of punishment dated 21-9-91 which is challenged in the OA 377/92. It was not filed as material paper even for the Respondents, but the same was produced during the course of the arguments. The learned counsel for the applicant perused it, and stated that ~~as it is not in the nature of admission, they had not produced it~~ *there cannot be any objection* for considering the same for disposal of the OA.

12. It will be convenient to read the material portion therein in order to appreciate the contention for the applicant that it is not in the nature of admission of the charge referred to. The relevant portion therein is as under:-

"In the charge sheet issued to me under Rule 14 of C.C.S. (C.C.A) Rules, 1964 dated 11.9.86, it is stated that one of the first class tickets was actually cancelled before commencement of the journey and refund was taken from the railway authorities.

I may kindly be permitted to state in this connection that the refund of the ticket was taken by my son without my knowledge and I was all the time thinking that he actually undertook the journey. It is unfortunate that my son has did like this.

I regret very much for the incident which has reflected very badly on my integrity. It is causing me much agony and I am undergoing mental frustration and on account of huge financial loss in my pay and allowances (it is coming to about Rs.18000) and postponement of my further promotion etc., the promotion which naturally any body will aspire after putting in 26 years of hard work in this department."

13. It is manifest from the above that it is admitted that the ticket purchased in the name of the son of the applicant was cancelled and refund was obtained and inspite of it, TA claim was made on that basis. As such, the contention that it is not in the nature of admission of the charge is not tenable.

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14. But as we held that the order of punishment of compulsory retirement passed by Shri C.P. Thomas has to be set aside on the ground of fairness, it is necessary to remit the matter to the disciplinary authority for awarding proper punishment in regard to admitted false claim of TA which is the charge referred to in memo. dated 10/1-9-86.

15. In the above view, we do not wish to express anything in regard to the contention for the applicant that when ~~in~~ two or more enquiries are concluded at a time and if in one of them, compulsory retirement, removal or dismissal is ordered, no punishment can be ordered with reference to the other and it is left open for consideration as and when it arises.

16. It is stated for the Respondents that as the applicant stood as surety for the loan taken by his son from the State Bank of India and as that loan is not yet discharged, no amount was paid to the applicant towards encashment of his leave salary.

17. This is a case where the applicant preferred these 2 OAs within 4 months from the date of receipt of orders of the appellate authority and as such there is no inordinate delay in filing these OAs. As the orders of compulsory retirement are set aside, the applicant has to be reinstated and we do not find any reason to dis-allow the salary and other allowances from the date the compulsory retirement has come into effect till the applicant has to be reinstated as per the orders. But as the applicant has to be ~~reinstated, the applicant~~ has to refund the amounts received by him towards gratuity, commutation of pension and also the amount received towards CGEIS.

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18. As we held that the punishment of reduction in pay by 10 stages for a period of 2 years as imposed by the earlier disciplinary authority should be treated as the punishment in regard to the charges proved in the de novo enquiry, we have to hold that the backwages have to be calculated as if the said punishment has come into force from the date the order of compulsory retirement has come into effect. The backwages have to be calculated on that basis. The difference between the pension and DR paid thereon and the backwages to be calculated as above have to be paid to the applicant.

19. It is stated that only an amount of Rs.625/- was received by the applicant towards balance of the amount accumulated by the applicant by the date the compulsory retirement has come into effect. So we feel it not a case where the applicant has to be directed to refund that amount.

19. The orders dated 21-1-91 ordering compulsory retirement are set aside. The punishment as per order dated 1/7-5-86 (vide Annexure 2) has to be treated as the punishment for the charges proved in respect of OA 376/92 and the subject matter covered by OA 377/92 is remitted to the disciplinary authority for awarding the proper punishment in regard to the charge covered by OA 377/92 which was admitted by the applicant.

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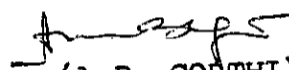
118

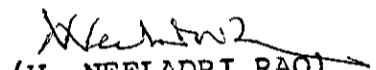
21. The applicant has to refund the amounts received by him towards gratuity, CGEIS and commuted amount of pension with interest thereon at 12% ~~from the~~ date of receipt till the date of the payment and the said amounts have to be refunded by 14th August, 1995.

22. The difference in backwages and the pension and the DA thereon have to be paid to the applicant by 9th October failing which the same carry interest at 12% from that date.

23. The applicant has to report to R3 along with a copy of this order by 21st July, 1995.

24. The OAs are ordered accordingly.
No costs.//


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


(V. NEELADRI RAO)
Vice-Chairman

Dated the 11th July, 1995
Open court dictation

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Deputy Registrar (J) CC

To

1. The Secretary, Union of India,
Ministry of Communications, New Delhi.
2. The Member (Personnel Postal Services Board,
Dept. of Posts, Dak Bhavan, Sansad Margm New Delhi-1.
3. The Chief Postmaster General, A.P. Circle,
Hyderabad-1.
4. One copy to Mr. T. Jayant, 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.

Received
at 18/7/95

C.C. by 21/7/95

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

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

A N D

THE HON'BLE MR. ^{A.B. Gorthi} ~~R. RANGARAJAN~~: (M(ADMN))

DATED --- 11/7 --- 1995.

ORDER/JUDGMENT:

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

in
OA.No. 377/92 & 378/92
TA.No. (W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No. order as to costs.

Central Administrative Tribunal
DESPATCH
20 JUL 1995
HYDERABAD BENCH.