

47

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 403/92.

Dt. of Decision : 14-12-95.

Gulam Mohammad

.. Applicant.

Vs.

1. The Deputy Director,
SVP National Police Academy,
Hyderabad-500 252.

2. The Director,
SVP National Police Academy,
Hyderabad.

.. Respondents.

Counsel for the Applicant : Mr. I. Dakshinamurthy

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

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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O.A.NO.403/92

JUDGEMENT

Dt: 14.12.95

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE
CHAIRMAN)

Heard Shri I.Dakshinamurthy, learned counsel
for the applicant and Shri N.R.Devaraj, learned
standing counsel for the respondents.

2. The applicant joined SVP National Police
Academy, Hyderabad as Syce on 1.7.83. The Charge memo
dated 29.6.89 with the following charges was issued to
him:

(i) That the said Shri Gulam
Mohammad while functioning as a Syce
in the SVP NPA Stables remained
unauthorisedly absent from his duty
from 6th May, 1989 to 5th June, 1989
without any prior intimation to or
permission from his superior
officer. He was directed by his
then Disciplinary Authority viz. The
Asstt. Director (Adj:) vide the
Memorandum No.Trg/Adj./R.S/88 dated
8th June, 1989 to explain within 3
days from the date of receipt of the
above Memorandum as to why
disciplinary action should not be
taken against him for dereliction of
duty.

(ii) It was observed that the said
Shri Gulam Mohammad, while

469

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functioning as a Syce in the SVP NPA
Stables was in the habit of
remaining unauthorisedly absent from
his duties without prior intimation
to or permission from his superior
officer, an illustrative (not
exhaustive) list of which is given
below:-

1. 4.1.88 to 26.1.88 23 days
2. 20.4.88 to 26.4.88 7 days
3. 30.5.88 to 2.8.88 65 days
4. 16.9.88 to 25.9.88 10 days
5. 16.11.88 to 25.11.88 10 days
6. 6.2.89 to 9.2.89 4 days
7. 24.4.89 to 2.5.89 9 days
8. 5.5.89 to 9.5.89 5 days
9. 10.5.89 to 23.5.89 14 days
10. 24.5.89 to 5.6.89 13 days"

3. After the inquiry, the applicant was
dismissed from service as per the order dated 31.12.91
of the Assistant Director, SVP NPA. The said
punishment was modified as compulsory retirement by
the order dated 10.2.92.

4. The contentions for the applicant are

(i) The periods of absence were regularised
during the pendency of the inquiry and hence it is not
open to the disciplinary authority to continue the
inquiry after such regularisation of the periods of
absence.

(ii) The inquiry is vitiated as the Inquiry
Officer had not informed the applicant who is a

Group-D employee that he is free to have the assistance of a Defence Assistant in the inquiry.

(iii) There was no major misconduct deserving imposition of major penalty especially when the order of punishment is in December 1991 in regard to the absence in May 1991; and

(iv) The appellate authority modified the order of punishment as one of compulsory retirement to cover up all the omissions in the inquiry.

5. It is held by the Full Bench of the Central Administrative Tribunal, New Delhi in the judgement dated 4.8.93 in O.A.No.1344/90 (Page 240 of Full Bench Judgments of CAT 1991-1994, Vol.III: HARI RAM v. DELHI ADMINISTRATION AND OTHERS) that mere regularisation of the period of unauthorised absence is not^{or} bar for initiation of disciplinary proceedings. For the reasons stated therein, it has to be held that even the continuation of the inquiry is not a bar in view of the regularisation of the periods of unauthorised absence during the inquiry. Hence this contention is not tenable.

6. 1987(1) ATR CAT 129 (Padmanav Arukh v. Union of India and others (Cuttack Bench) is relied upon to urge that the inquiry is vitiated if the Inquiry Officer had not informed the delinquent employee about his right to engage Defence Assistant. But it was merely observed in the above judgement that if at the initial stage of the inquiry, the Inquiry Officer informed the delinquent about the said right, then it

is not necessary for the Inquiry Officer to remind the delinquent employee about the same at each and every stage of the inquiry. Hence mere observation in the said order that the Inquiry Officer is under obligation to inform the delinquent about such a right is mere obiter dicta. Hence it cannot be stated that it was laid down by the said Bench that it is necessary for the Inquiry Officer to inform Group-D delinquent employee about the same and the failure of the same will result in the inquiry being vitiated. The charges against the applicant are not ^{complicated} ~~obligated~~. They ~~in fact~~ are the admitted facts. The applicant himself was in a position to ^{comprehend the same} ~~come and say~~. Hence even assuming that it is necessary for the Inquiry Officer to inform the Group-D delinquent employee that he has a right to engage a Defence Assistant, merely failure on the part of the Inquiry Officer in this case did not cause any prejudice to the applicant. ***** It is not even stated that if he had the assistance of a Defence Assistant, he should have clarified some points during the inquiry. Hence this contention also has to be negated.

7. The Apex Court held in 1995(6) SCALE 465 (State of U.P. and others v. Ashok Kumar Singh and another) that the absence of the delinquent employee therein i.e. Police Constable, from duty without leave on several occasions would amount to a grave charge. The duties of the syce were referred to in Annexure-I appended to the reply statement filed in this OA. It shows that some of the horses will be allotted to each ^{syce} side and one of the duties is to warm the horses allotted. If they are not being taken for warming, it

may cause injury to the riders of those horses. Further when it is a case of allotment of horses to each Syce for the purpose of feeding etc. and if one is absent without prior permission, even in cases where prior permission ^{could be obtained} ~~can be granted~~ and much more so when such an unauthorised absence was number of times, the unauthorised absence from duty has to be held as a grave charge. Thus even this contention does not merit consideration.

8. There is nothing on record to indicate that the appellate authority modified the order of punishment as compulsory retirement to cover up any irregularity or omission in the inquiry. It is evident from the ^{tenor} ~~tenure~~ of the order of the appellate authority that even though it is a case where major punishment of dismissal is warranted, still on humanitarian consideration, he had chosen to modify the order of dismissal as one of compulsory retirement. Thus there is no basis for this contention.

9. In para 2 of the order of the appellate authority (R-1) it is observed as under:

"However, keeping in view the family circumstances and purely on humanitarian grounds, the appellate authority had modified the above penalty to compulsory retirement."

10. It is now stated that as the qualifying service of the applicant herein was less than 10 years, he is not eligible for pension and hence he is

not entitled to any pension under Rule 40 of CCS (Pension) Rules and he is entitled to only Rs.10,200/- towards gratuity under Rule 49(1) of the same rules. It is, however, stated that as the applicant had not filed the relevant documents, the said amount was not paid to him.

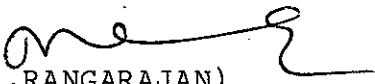
11. The order of R2 indicates that on humanitarian grounds, the order of dismissal was modified as compulsory retirement. But it is not clear therefrom as to whether he had taken note of ^{the} ~~that~~ fact that ^{applicant} ~~he~~ would be entitled to only gratuity under Rule 49(1) and he is not entitled to any pension under Rule 40 of CCS (Pension) Rules as he is not having sufficient qualifying service.

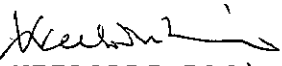
12. So we feel it a case to remand the matter to R-2 to consider as to whether in view of the above fact, the punishment of compulsory retirement requires further modification. Ofcourse, if he feels that it requires further modification, then it will be a case of reinstatement by awarding one of the major penalties, and that if such reinstatement is going to be ordered, he may order that the period from the date of removal till the date of reinstatement has to be treated as dies non.

13. In the result, the order No.21011/14/89-Estt. dated 10.2.92 of the appellate authority (R-1) is set-aside and the matter is remanded to R-2 for

consideration as referred to above.

14. The OA is ordered accordingly. No costs. //


(R. RANGARAJAN)
MEMBER (ADMN.)


(V. NEELADRI RAO)
VICE CHAIRMAN

Dated: 14th December, 1995
Open court dictation.

vsn


Deputy Registrar(J)CC

To

1. The Deputy Director,
SVP National Police Academy,
Hyderabad-252.
2. The Director, SVP National Police Academy,
Hyderabad.
3. One copy to Mr. I. Dakshinamurthy, Advocate, CAT. Hyd.
4. One copy to Mr. N. R. Devraj, Sr. CGSC. CAT. Hyd.
5. One copy to Library, CAT. Hyd.
6. 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. R. RANGARAJAN : M(A)

Dated: 14-12-1996

ORDER/JUDGMENT

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

in

O.A.No.

T.A.No.

(w.p.No.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Ordered/Rejected.

No order as to costs.

No Spare Copy

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण/DESPATCH

- 5 JAN 1996

हैदराबाद न्यायपीठ
HYDERABAD BEN