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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 404/98.

Dt. of Decision : 14-12-95.

M. Pentaiah

.. Applicant.

Vs

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

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

.. 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.)

JUDGEMENT

Dt: 14.12.95

(AS PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

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

2. The applicant herein is working as Syce in the SVP National Police Academy from 1979 onwards. He was issued with the charge sheet for certain omissions on 22.6.89. The Article of charges reads as follows:-

"That the said Shri M.Pentaiah, while functioning as Syce in the SVP NPA Stables remained absent himself from his duty on the morning of 20th June, 1989 without applying for any leave, seeking permission or sending prior intimation to his superior officers.

(2) That the said Shri M.Pentaiah, syce disobeyed the orders of his superior officer S.I.Mohd. Akbar when he (Shri M.Pentaiah) was asked to appear before the Asstt. Director (Adjutant) SVP NPA at 11.00 hrs on 20.6.89 with his explanation for his absence from duty on the morning of 20th June, 1989.

(3) That the said Shri M.Pentaiah was already issued with a warning Memorandum by the Asstt. Director

(Adjutant) vide Memo No.PF/L/Syce/79-

Estt. dated 4th May, 1989 warning him not to absent himself unauthorisedly from duty. He was also informed vide the above Memorandum dated 4th May, 1989 that his service will be terminated in case he again absents from duty without leave/prior intimation. However, he again wilfully disobeyed the above orders of his superior officer.

(4) that the said Shri M.Pentaiah, Syce has been in the habit of absenting himself from his duty without sending prior intimation, application for leave or seeking prior permission. He has been found remaining absent from his duty without adopting the above procedure many occasions, the details of which are given below:-

- (a) 1 day on 8.4.1982
- (b) 22 days from 18.11.83 to 9.12.83
- (c) 1 day on 23.1.84
- (d) 6 days from 15.5.86 to 20.5.86
- (e) 33 days from 11.1.88 to 12.2.88
- (f) 2 days from 4.7.88 to 5.7.88
- (g) 1 day on 4.10.88
- (h) 28 days from 6.10.88 to 2.11.88
(he was Censured but shown to indicate his habit of absentism)
- (i) 50 days from 3.11.88 to 22.12.88

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- (j) 5 days from 17.3.88 to 21.3.88
- (k) 5 days from 2.6.88 to 6.6.88
- (l) 4 days from 28.1.89 to 31.1.89
- (m) 1 day on 22.8.88
- (n) 11 days from 8.3.89 to 18.3.89 and
3 days from 19.3.89 to 21.3.89
- (o) 5 days from 23.4.89 to 27.4.89"

3. The Disciplinary Authority after inquiry imposed a punishment of dismissal from service w.e.f. 22.11.91 (AN) by his order No.21011/11/89-Estt. dated 22.11.91. The applicant appealed against the same and the appellate authority viz., R-1 reduced the punishment to that of compulsory retirement from service by his order No.21011/11/89-Estt. dated 9.1.92.

4. This OA is filed challenging the above order^s of the disciplinary and the appellate authorities.

5. The main contentions of the applicant in this OA are as follows:

(i) He came late to duty on 20.6.89 and he was available at Academy performing his duty through-out that day. Hence his coming late to duty on 20.6.89 cannot be construed as absence from duty.

(ii) He had not disobeyed the orders of his superiors to appear before the Assistant Director on that day. The Syce incharge had only told him that he will produce him before the Assitant Director and he had not instructed him to appear before the Assistant Director at 11.00 hrs on that day.

(iii) The Inquiry Officer had not given him any Defence Assistance. He had not even instructed him to take the assistance from an official of the Academy as per rules. Hence the Inquiry is vitiated. He relies on a reported judgement of the Cuttack Bench of Central Administrative Tribunal in 1987(1) ATR CAT 129 (Padmanav Arukh v. Union of India and others) for this contention.

(iv) The appellate order is to cover up the omissions in the inquiry and the disciplinary proceedings. Hence the appellate order is not sustainable.

6. The applicant was not present during the early part of the day on 20.6.89. During this period only the applicant has got ~~lot~~ lot of duties to be performed like warming of horses, feeding etc. It is stated for the respondents that if the warming of horses is not done before the horses are taken over by the trainee officers for training, it may lead to serious accident to trainee officers. Hence, his absence from duty in the initial part of the date cannot be treated lightly. Further, he had not taken any permission to come late ^{on that day} ~~which he could~~ have ~~been done earlier~~ by contacting the concerned official of the Academy. ~~either personally or through phone.~~ As he ~~was aware~~ of his health conditions in regard to his tooth ache from 19.6.89 onwards, he has no excuse in not taking permission to come late on that day.

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

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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 O.A. It shows that some of the horses will be allotted to each

Syce 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 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. The charge of absence was that the applicant was in the habit of absenting himself without proper permission in the earlier periods also as given in the charge sheet. Hence it has to be construed that his absence on that day during the initial part of the day cannot be condoned. Hence this contention fails.

9. As regards the unauthorised absence as indicated under the 4th Article of Charge, it has been submitted that absence on those days have been regularised. Hence including this Article of Charge of unauthorised absence for previous period is not tenable.

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10. In this connection, it was held by the Full Bench of the Central Administrative Tribunal, New Delhi in Judgement dt.4.8.93 in O.A.No.1344/90 (Page 240 of Full Bench Judgements of CAT 1991-1994, Vol.III: HARI RAM v. DELHI ADMINISTRATION AND OTHERS) that mere regularisation of the period of unauthorised absence is not a 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.

11. The applicant is duty bound to inform the concerned officer if he has come late immediately after his arrival to the duty place. It is not necessary for anybody to instruct him to go and get necessary permission for late coming from the concerned official. Even if the Syce incharge ~~is~~ ^{has} not told him to appear before the Assistant Director, it is the duty of the applicant to present himself before the concerned official and get the required permission for late coming. This he failed to do. Hence we see no substance in this contention also.

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12. 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 employees 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 a 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. They are the admitted facts. The applicant himself was in a position to comprehend the same. 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, mere 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, ^{could} he ~~should~~ have clarified some points during the inquiry. Hence this contention also has to be negatived.

13. 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 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.

14. The applicant has put in about 12 years of service by the time he was dismissed from service which was later converted as compulsory retirement. Though he is entitled for pension as per Rule 40 of CCS (Pension) Rules and gratuity as per Rule 49(1) of CCS (Pension) Rules, the amount he gets will be very meagre.

15. R-2, the appellate authority, had stated in Para 12 of his appellate order dt.9.1.1992 that "he is reducing the punishment of dismissal to one of compulsory retirement from service purely on humanitarian grounds." It is not clear that the amount the applicant is going to receive by way of terminal benefits is taken note of by the appellate authority while reducing the punishment on humanitarian grounds. Further in a similar case viz., OA 403/92, wherein the applicant

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therein was also a Syce in SVP NPA and who was punished on similar charges, the applicant therein had less than 10 years of service and that case was remanded back to the appellate authority to reconsider the orders of compulsory retirement as the compulsory retirement will not give the applicant therein any relief by way of recurring pay and allowance as he had put in only less than 10 years of service. If this OA is dismissed, the applicant who has put in less than 10 years of service in OA 403/92 may get the benefit of reinstatement because of the reconsideration of the applicant's case therein by reducing his punishment, ^{but} the applicant herein who has put in more than 10 years of service will get less benefit. Hence, we feel that it is also a fit case for the reasons quoted above to remit the case back to the appellate authority for reconsideration of the punishment of compulsory retirement.

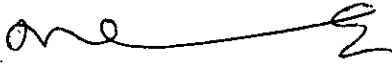
16. In the result, the following direction is given:

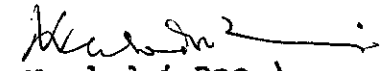
The case of the applicant herein is remitted back to the appellate authority (R1) to reconsider his case in regard to the punishment of compulsory retirement from service awarded to him. If in pursuance of this order, the compulsory retirement is going to be modified to one of other major penalties which involves his reinstatement in service, the period from the date of his dismissal from service to the date of his reinstatement will be treated as dies non.

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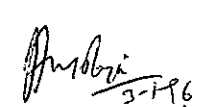
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17. The OA is ordered accordingly. No costs. //


(R. Rangarajan)
Member (A)


(V. Neeladri Rao)
Vice Chairman

Dated 14th December, 1995
Open Court Dictation


Deputy Registrar(J)CC

vsr/kmv

To

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

pvm

vs 921
3/1/96

I COURT

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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.

404/92

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
ब्रेषण/DESPATCH

- 5 JAN 1996

हैदराबाद न्यायपीठ
HYDERABAD BENCH