

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD.
O.A.NO.463 of 1992.

Between

Dated: 10.4.1995.

P.J. Baby

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Applicant

And

1. The Admiral Superintendent, Naval Dock Yard, Visakhapatnam.
2. Vice Admiral Flag Officer, Commanding-in-Chief, Eastern Naval Command, Visakhapatnam.

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Respondents

Counsel for the Applicant

: Sri. G.Bikshapathy

Counsel for the Respondents

: Sri. N.R.Devaraj, Sr. CGSC.

CORAM:

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

Hon'ble Mr. A.B.Gerthi, Administrative Member

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O.A.No.463/92

Date of Order: 10.4.95

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

In this application the challenge is to the validity of the ~~legality of the~~ impugned order dated ~~was~~ 12.5.92 by which the following punishment/imposed upon the applicant:

"Reduction to lower post ~~in~~ Semi-Skilled in the pay scale of Rs.800-15-1010-EB-20-1150 until he is found fit for promotion to next higher grade with further directions that consequent upon the reduction to the lower post of Semi-Skilled, his basic pay is fixed at Rs1050/-".

2. The applicant having been sponsored by the Employment Exchange was directly recruited to the post of Electrical/Fitter Grade-II on 23.6.77. He was declared quasi-permanent w.e.f. 3.4.82 and was promoted as Electrical Fitter Grade-I (H.S.Gr.II) in 1985. On 20.3.86 he was served with a charge memo alleging that he obtained employment as Electrical Fitter Gr.II by producing I.T.I. certificate which was found to be false. The departmental disciplinary enquiry that was held found him guilty of the charge and the disciplinary authority imposed the penalty of removal from service. Aggrieved by the same he approached the Tribunal in OA.121/88 on the plea that he was not furnished/a copy of the enquiry officer's report. The OA was allowed with a direction to the competent authority to furnish the applicant with a copy of the Enquiry Officer's report and to proceed further in the matter. Consequently the Disciplinary Authority after having complied with the directions

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of the Tribunal reconsidered the matter and awarded the penalty of "Reduction of pay to the minimum of the scale of pay of HSK Gr.II i.e., from 1260/- to Rs.1200/- in the pay scale of Rs.1200-30-1440-EB-30-1800 for a period of two years" with further directions that he will not earn increment of pay during such reduction and that the reduction will not have the effect of postponing his future increment of pay. The appellate authority, however vide his order dt. 21.11.91 informed the applicant that he proposed to revise the penalty order of the disciplinary authority. Thereafter the impugned order dt. 12.5.92 was issued enhancing the penalty to that of reduction to the lower post of semi-skilled.

3. Mr.G.Bikshapathy, learned counsel for the applicant assailed the validity of the impugned order on several grounds but it will suffice if we confine our discussion in this judgement to only two of the important aspects raised by the applicant's counsel.

4. The first contention raised by Mr.Bikshapathy is that the penalty imposed by the appellate authority cannot stand the scrutiny of law because by means of the said penalty the applicant was reduced to a post which is even below that to which he was directly recruited. Admittedly the applicant was recruited as Electrical Fitter Gr.II which is a skilled post and the reduction ordered by the appellate authority is to the lower post of semi-skilled, which post/grade the applicant never held. In this context our attention has been drawn to Hussain Sasansaheb Kaladgi v. State of Maharashtra AIR 1987 SC 1627. In that case the appellant was directly recruited to the post of Assistant Deputy Educational

Inspector but was reduced to the lower post of Primary Teacher. Setting aside the same the Supreme Court observed as under:-

"A direct recruit to a post, it cannot be given-said cannot be reverted to a lower post. It is only a promotee who can be reverted from the promotion post to the lower post from which he was promoted. These propositions are so elementary that the same are incapable of being disputed and have not been disputed".

5. Mr. N. R. Devraj, learned standing counsel for the respondents has clarified the circumstances that led to the imposition of the impugned penalty. As the applicant himself had admitted that he did not possess the required I.T.I. certificate, the Appellate Authority came to the conclusion that the applicant was not fit to hold the appointment of Electrical Fitter Grade-II to which he was directly recruited. As the qualifications possessed by the applicant made him eligible for the appointment to a semi-skilled post, the appellate authority while enhancing the penalty already imposed by the disciplinary authority, ordered reduction to a lower post of semi-skilled. The reasoning of the appellate authority may be fair and satisfactory but the question remains whether an employee directly recruited to a post could by means of a penalty under the C.C.S. (C.C.A.) Rules be reduced to a post lower to that in which he was directly recruited. In this regard the judgement of the Supreme Court in the aforesaid case leaves no scope for ambiguity. We must therefore hold that the action of the appellate authority in reducing the applicant to the post of semi-skilled, which was lower to the one

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in which he was directly recruited, [redacted] cannot be sustained.

6. The second aspect emphasised by the applicant's counsel is that the authorities concerned proceeded against two other employees on similar/identical charges. In respect of those employees also the disciplinary authority imposed the same punishment of reduction of pay to the minimum of the scale of pay ^{initially} of H.S.K. Gr.II as was ^{initially} imposed upon the applicant. In their cases, however, appellate authority did not enhance the penalty. This, ^{has} as argued by the applicant's counsel, would offend the principle of equity. Learned standing counsel for the respondents stated that the cases of the other two individuals also would have been examined by the appellate authority for enhancement, but could not be done as the stipulated period for such review had expired. Whatever may be the reasons for which the penalty imposed upon the other two employees was not enhanced, [redacted] the fact remains that the applicant was singled ^{out} for the imposition of a higher penalty.

7. Mr.N.R.Devraj further submitted that if the impugned order is found to be illegal or irregular the same could be set aside giving liberty to ^{the} appellate authority to impose a fresh penalty. Ordinarily we would have acceded to this suggestion. In the instant case however we find that the applicant is physically handicapped, served the department for about 15 years and in the course of his career was not only given quasi-permanency but was also promoted to H.S.K.Gr.I. Besides these factors, we cannot also gloss over the

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fact that in respect of two other similarly situated employees the department allowed the penalty as imposed by the disciplinary authority to stand. There is thus no justification either from the point of view of law or equity as to why in the case of the applicant also the penalty as imposed by the disciplinary authority should not be allowed to stand.

8. In view of the afore-stated, we deem it just and proper to allow the application and set aside the impugned order dt. 12.5.92 issued by the Flag Officer, Commanding-in-Chief of Head Quarters, Eastern Naval Command (Respondent No.2). Consequently the penalty as imposed by the Respondent No.1 vide his order dated 17.6.91 shall stand.

9. The O.A. is ordered accordingly without any order as to costs.

ABG
(A.B.GORTHY)
Member (Admn.)

AH
(A.V.HARIDASAN)
Member (Judl.)

Dated: 10th April, 1995

(Dictated in Open Court)

ABG
Deputy Registrar (Judl.)

Copy to:-

1. The Admiral Superintendent, Naval Dock Yard, Visakhapatnam.
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2. Vice Admiral Flag Officer, Commanding in Chief, Eastern Naval Command, Visakhapatnam.
3. One copy to Sri. G.Bikshapathy, advocate, CAT, Hyd.
4. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy.

Rsm/-

OA 463/92

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

HON'BLE MR. A.V. Haridasan J.M.

HON'BLE MR. A.B. GORTHI, ADMINISTRATIVE MEMBER.

HON'BLE MR.

~~JUDICIAL MEMBER.~~

ORDER/JUDGEMENT:

DATED: 10/4/1995.

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

O.A.NO. IN 463/92

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.~~

Rsm/-

No Spare Copy

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