

(77)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.A.NO. 714/92

Date of Order: 6-9-95

Between:

C.Kutumba Rao.

.. Applicant

and

1. Union of India, rep. by the Secretary,  
Ministry of Communications,  
New Delhi-1.
2. The Telecom Dist.Manager,  
West Godavari, Eluru-W.G.Dist.
3. The Divisional Engineer, Telecom,  
Eluru-050, W.G.Dist.

Respondents.

For the Applicant :- Mr. T. Mayant, Advocat.

For the Respondents: Mr. N.R.Devraj,  
Sr./Asst. CGSC

CORAM:

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

THE HON'BLE MR. A.B.GORTHI : MEMBER(ADMN)

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O.A.NO.714/92.

JUDGMENT

Dt: 6.9.95

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

Heard Shri T.Jayant, learned counsel for the applicant and Shri N.R.Devaraj, learned standing counsel for the respondents.

2. The applicant was selected as Telecom Office Assistant (TOA) by the Divisional Engineer, Telecom (DET), Eluru on 13.3.1981 and he was appointed to the said post on 6.7.1981. Charge memo dated 12.2.1986 was issued to the applicant by alleging that he had falsely stated ~~that~~ his date of birth as 1.2.1957 instead of 1.7.1954. By the order dated 11.1.1988, the DET i.e., the disciplinary authority dismissed the applicant from service after inquiry. The same was challenged in OA 577/89. It was disposed of on 24.10.1989 by setting aside the order of dismissal on the ground that the copy of the inquiry report was not furnished to the applicant before the said order was passed. But liberty was given to the disciplinary authority to continue the inquiry after copy of the inquiry report is given to the applicant. Then copy of the inquiry report was given to the applicant and he was asked to submit his explanation. The DET dismissed the applicant by the order dated 4.8.1990. It was challenged in the appeal. The appellate authority held by the order

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dated 17.10.1990 that there was an infirmity in not considering the explanation of the applicant and hence the order of dismissal was set-aside. But it is not stated in the said appellate order that the disciplinary authority is free to continue the inquiry after consideration of the explanation of the applicant. After the said order was passed by the appellate authority, the DET passed the order dated 20.11.1990 by keeping the applicant under deemed suspension and directed him to submit his representation on the Inquiry Officer's report. When the applicant submitted in writing on 7.12.1990 requesting the DET to reinstate him into service and he further stated therein that the order of deemed suspension is not valid. The DET dismissed the applicant from service by the order dated 21.12.1990. The appeal thereon was dismissed on 5.8.1991. One of the contentions raised in the said appeal is that the impugned order of dismissal is not valid, for the DET had no right to continue the inquiry when no such liberty was given to him by the appellate authority as per the order dated 17.11.1990.

3. Being aggrieved, the applicant preferred this OA on 19.8.1992.

4. CCS(CCA) Rules 1965 have not conferred power of review on the Disciplinary authority. As such he has no power even to review his own order. It is only the Appellate

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authority or the Revisional authority that can interfere with the order of the disciplinary authority. Ofcourse the same also can be challenged in the Court or Tribunal, if it is permitted by the Court or Tribunal even before the alternative remedy is exhausted.

5. This is a case where the Appellate authority by order dated 17-11-1990 set aside the order of dismissal passed by the Disciplinary authority on 4-8-1990. The contention for the applicant is that the Disciplinary authority becomes functus-officio after he passes final order and it cannot open the disciplinary proceedings unless it is again remitted to him by the Appellate authority or Revisional authority or by Court or Tribunal. The Disciplinary authority is creature of statute and it will have powers as specified in the statute. There is no provision in the CCS(CCA)Rules, whereby the Disciplinary authority can continue the inquiry when the final order passed by it was set aside by the Appellate authority on technical grounds. Even Rule 10 of CCS(CCA)Rules states that the suspension shall be deemed to have been continued in force on and from the date of original date of dismissal, removal etc. if the case is remitted for further inquiry. Thus, it also indicates that the Disciplinary authority has no power to proceed by way of further inquiry when its final order is set aside, unless the case is remitted. Hence, we accede to the contention for the applicant that the action of the Disciplinary authority in issuing proceeding dated 20-11-1990 by keeping the applicant under deemed suspension and proceeding with the further inquiry, when the order of removal was set aside by the Appellate authority on 17-11-1990 without remitting it to the Disciplinary authority, is illegal.

To

1. The Secretary, Ministry of Communications,  
Union of India, New Delhi-1.
2. The Telecom Dist. Manager,  
West Godavari, Eluru W.G. Dist.
3. The Divisional Engineer, Telecom,  
Eluru-050, W.G. Dist.
4. One copy to Mr. T. Jayant, Advocate, CAT. Hyd.
5. One copy to Mr. N. R. Devraj, Sr. CGSC. CAT. Hyd.
6. One copy to Library, CAT. Hyd.
7. One spare copy.

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6. Hence, the impugned order dated 21-12-1990 dismissing the applicant from service as upheld by the Appellate authority on 5-8-91 is liable to be set aside.

7. But it is urged for the respondents that when the order of dismissal was set aside by the Appellate authority on 17-11-1990 <sup>only,</sup> on Technical grounds, the matter should have been remitted to the Disciplinary authority. As even the Appellate authority is also not having the power of review, he too cannot issue such a direction now. But the Revisional authority against the order of Appellate authority is competent to look into the same and if the said authority feels it is a matter for consideration, we feel that the said authority should not be debarred from considering it.

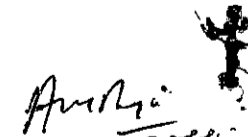
8. In the result, the impugned order dated 21-12-1990 dismissing the applicant from service, as affirmed by the Appellate authority by order dated 5-8-1991 is set aside. But this order does not debar the Revisional authority i.e. an authority over the Appellate authority to consider the matter in order to determine whether it is a matter for remitting to the Disciplinary authority for further inquiry.

9. The DA is ordered accordingly. No costs. //

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

  
(V. Neeladri Rao)  
Vice Chairman

Dated : September 7, 95  
Dictated in Open Court

  
Deputy Registrar G.C.C.

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD.

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

and

THE HON'BLE MR. *A. R. Gopal*  
~~R. RANGARAJAN~~ : M (ADMN)

DATED: - 6/7-9 -1995.

ORDER/JUDGMENT.

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

in

O.A.No.

714/92

T.A.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.

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*No. Spare copy*

Central Administrative Tribunal  
DESPATCH  
27 SEP 1995  
HYDERABAD BENCH.