

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

D.A. No. 1114/93.

Dt. of Decision : 1-8-94.

Mr. A.C. Tiwari

.. Applicant.

Vs

1. The Soil Survey Officer,  
All India Soil and Land Use Survey,  
12-5-27/2, Vijaipuri, Tarnaka,  
Secunderabad - 12.
2. The Asst. Soil Survey Officer,  
All India Soil and Land Use Survey,  
Vijaynagar Road, Beliaghata,  
Ahmedabad-380 013.
3. The Chief Soil Survey Officer,  
All India Soil and Land Use Survey,  
IARI Buildings, New Delhi-12. .. Respondents.

Counsel for the Applicant : Mr. GVRS Vara Prasad

Counsel for the Respondents : Mr. N.V. Raghava Reddy,  
Addl. 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.1114/93

JUDGMENT

Dt: 1.8.94.

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

Heard Shri GVRS Vara Prasad, learned counsel for the applicant and Shri N.V. Nagrava ~~Naury~~, learned standing counsel for the respondents.

2. Charge Memo dated 2.7.1993 as per Memo No.1195/2 of R-1 (Annexure-I) is assailed in this OA. The facts which give rise to this OA are as under:-

While the applicant was working as UDC in the office of R-2 at Ahmedabad, he was sent to State Bank of India, Bhadra, Ahmedabad to get 3 Demand Drafts for an amount of Rs.15,203/- to be sent to field parties. The applicant complained that when he was at the cash counter in the Bank, a ~~trickster~~ stated <sup>to</sup> him that some of his papers had fallen and when he bent down, two currency bundles containing Rs.13,801/- were stolen from him and he <sup>also</sup> ~~also~~ approached the Watchman and alarm was given <sup>but</sup> and the thief could not be caught <sup>As</sup> and ~~and~~ as per the advise given by the office, he lodged a police complaint on 9.1.1990 and the F.I.R. was closed on 20.1.1990 with an endorsement that the case was true but <sup>culpable</sup> could not be <sup>proved</sup>. Thereafter, R-2 ie., the disciplinary authority issued the charge memo dated 3.4.1990. Presenting Officer and ~~the~~ Inquiry Officer were appointed by the appellate authority. The Inquiry Officer submitted his report on

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26.12.1990 and a copy of the same was given to the applicant on 18.3.1991 and he submitted representation in regard to the same. // By the order dated 9.1.1990, the applicant was suspended and the same was revoked by the order dated 16.9.1991 and the applicant was transferred to R-1 office and then he joined in the said office on 27.9.1991. The impugned charge memo was issued on 2.7.1993.

3. It is not in controversy that the charge memo dated 3.4.1990 and the charge memo dated 2.7.1993 are on the part of the applicant in regard to the same alleged negligence/in the performance of his official duties, thereby he failed to maintain full devotion to official duties in regard to the loss of Rs.13,801/- out of the amount entrusted to him on 2.1.1990 for taking three Demand Drafts. The applicant was informed by the letter No.1372, dated 1.9.1993 of R-1 vide Annexure-II that the impugned charge memo dated 2.7.1993 was issued and a denovo inquiry was ordered to cover up procedural/administrative lapse and the same is reiterated in the reply filed in this OA.

4. The alleged procedural/administrative lapse, is in appointing the Presenting and the Inquiry Officers by the appellate authority instead of the disciplinary authority, as submitted for the respondents through their learned standing counsel at the time of arguments.

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Article 311 of the Constitution lays down that no authority subordinate to the appointing authority has the power to order removal or dismissal of employees coming within the purview of Article 311(1). Any how, as the charge memo dated 3.4.1990 was issued by the disciplinary authority, there is no basis to ----- for the disposal of this OA as to whether any authority over and above the appointing authority has the power to initiate disciplinary action against employees under him serving/within the ambit of Article 311(1) of the Constitution. When an authority subordinate to the appointing authority cannot order removal or dismissal, ~~it falls to~~ ~~its performance falls in~~ that authority subordinate to the ~~appointing~~ <sup>who</sup> ~~disciplinary authority~~ has no power to appoint the inquiry officer and/or presenting officer. But the authority which appointed the Presenting and the Inquiry Officers in this case, is the appellate authority and thus an authority superior to the appointing authority. At best, it can be stated that there is an irregularity when the appellate authority instead of appointing authority appointed the Presenting and the Inquiry Officers. In such <sup>a</sup> case, the ~~delinquent~~ applicant can raise objection in regard to such appointments. When no such objection was raised by the applicant herein, it cannot be stated that he has prejudice in such appointments. In any case, the Inquiry proceedings by the Inquiry Officer in this case cannot be held as ✓

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illegal on the ground that the Presenting and the Inquiry Officers were appointed by the appellate authority and not by the appointing authority, as we held that there is no constitutional bar for an authority superior to the appointing authority to pass the order of removal/dismissal. In the view which we have taken, there is no need to consider for disposal of this CA as to whether in fact there is any irregularity when the appellate authority but not the appointing authority, had appointed the Presenting and the Inquiry Officers.

5. Rule 15(1) of CCS (CCA) Rules lays down that the disciplinary authority has power to remit the case to the Inquiring authority for further inquiry and report. Neither Rule 15 nor any other rule empowers the disciplinary authority to order denovo inquiry. Of course, it will be different if any authority lower than the appointing authority initiates the disciplinary action, and if the disciplinary authority finds that the authority who initiated inquiry is not competent to do so, he can initiate disciplinary proceedings by ignoring the charge memo that was issued by an authority who is not competent to do it, and also the inquiry, if any, in pursuance of the said charge, for such a charge memo and inquiry, if any, thereon are not legal. The Supreme Court in AIR 1971 SC 1447 (K.R. Deb Vs. Collector, Central Excise, Shillong) held that Rule 15 does not

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contemplate successive enquiries and if there is some defect in the inquiry conducted by the Inquiry Officer, the disciplinary authority can direct the Inquiry Officer to conduct further inquiry in respect of that matter but ~~as~~ it cannot direct fresh inquiry.

6. We have to make it clear that this is not a case where the authority subordinate to the appointing authority had appointed the Presenting and the Inquiry Officers. If it were so, the disciplinary authority will be justified in ordering the inquiry from the stage of ~~the inquiry conducted by such~~ <sup>the</sup> Inquiry Officer who was not appointed by the competent authority is illegal. But as already observed, this is a case where the authority superior to the appointing authority had appointed the Presenting and the Inquiry Officers.

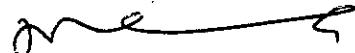
7. For the reasons stated, it has to be held that the charge memo as per the impunged order dated 2.7.1993 is void and hence it is set-aside. If so advised, R-2 is not debarred to send the inquiry proceedings and the report of the Inquiry Officer with the explanation of the applicant to R-1 to take action in pursuance of the charge memo that was issued by R-2 on 3.4.1990. As it is a matter in regard to the incident which had taken place in 1990, it is just and proper to direct the respondents to expedite the matter and the same has to be

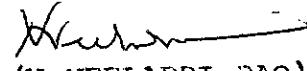
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disposed of preferably by 30.11.1994. The OA is ordered accordingly. No costs.

  
(R. RANGARAJAN)  
MEMBER (ADMN.)

  
(V. NEELADRI RAO)  
VICE CHAIRMAN

DATED: 1st August, 1994.  
Open court dictation.

  
Deputy Registrar (J) CC

vsn

To

1. The Soil Survey Officer, All India Soil and Land Use Survey, 12-5-27/2, Vijaipuri, Tarnaka, Secunderabad-12.
2. The Asst. Soil Survey Officer, All India Soil and Land Use Survey, No.1, Daji Colony (Ist floor) Vijainagar Road, Naranpura, Ahmedabad-13.
3. The Chief Soil Survey Officer, All India Soil and Land Use Survey, IARA Buildings, New Delhi-12.
4. One copy to Mr. G. V. R. S. Vara Prasad, Advocate, CAT. Hyd.
5. One copy to Mr. N. V. Raghava Reddy, Addl. CGSC. CAT. Hyd.
6. One copy to D. R. (J) CAT. Hyd.
7. 3 copies to Library, CAT. Hyd.
8. Copy to All Reporters as per standard list of CAT. Hyd.
9. One spare copy.

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*C.C. by 8/8/94*  
C.O. Sec  
TYPED BY ~~Doneo~~ Received on  
S. S. L. 8/8/94 CHECKED BY ~~at. S. C. O. F. M.~~  
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. R. RANGARAJAN : M(A.D.M.)

DATE: 1 - 8 - 1994

~~ORDER~~/JUDGMENT

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

in  
O.A.No. 1114/93

(T.A.No. (W.P.NO )

Admitted and Interim directions  
Issued.

Allowed.

Disposed of with directions.

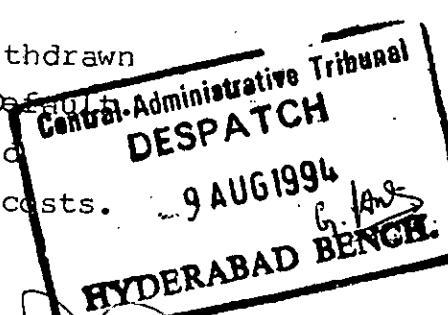
Dismissed

Dismissed as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.



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