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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A. No.698/93

Date of Decision:

A. Jaya

.. Applicant

and

1. The Dy. Chief Executive (A),
Nuclear Fuel Complex,
Department of Atomic Energy,
Govt. of India, ECIL Post,
Hyderabad - 500 762.

2. The Chief Executive,
Nuclear Fuel Complex,
ECIL Post,
Hyderabad - 500 762.

.. Respondents

Counsel for the Applicant: Mr. V. Venkateswara Rao

Counsel for the Respondents: Mr. N.R. Devaraj

CORAM:

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

THE HON'BLE SHRI B.S. JAI PARAMESHWAR: MEMBER (JUDL.)

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OA 698/93

JUDGEMENT

(Oral order per Hon'ble Sri B.S. Jai Parameshwar: Member (Judl.)

Heard Shri V. Venkateswar Rao, learned counsel for the applicant and Shri N.R. Devaraj, learned counsel for the respondents.

In this OA the applicant has challenged the inquiry proceedings and the report relating to order No.NFC/PA-5/2606/2176/377 Dt.28.12.92 passed by the respondent No.2 (Annexure-12) and confirming the punishment imposed by the Ist respondent vide his order No.NFC/PA-5/2606/2176/281 Dt.22.7.1992 (Annexure-10) passed by the Respondent No.1 as illegal, arbitrary, unconstitutional, and malafide and for consequential reliefs.

During the year 1989-90 the applicant was working as the Tradesman-B in the Nuclear Fuel Complex under respondent No.2. On 26.3.90 there was an incident in the change room of this complex. With respect to the said incident, the applicant addressed a letter to the General Secretary, Nuclear Fuel Complex (Annexure-1) In the said letter the applicant alleged the certain acts of misbehaviour on/part of Sri K. Sivasankar, SO/SC.

A preliminary inquiry was conducted into the incident as and also to the veracity of the letter Dt.27.3.90 written by the applicant.

Thereafter a charge memo No.NFC/PA-II/2606/2176/602 Dt.13th December, 1990 was served on the applicant. The charge memo indicts the applicant as follows:

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Article - I

"That the said Shri A. Jaya, while functioning as Tradesman 'B' in E.P.P., NFC, is alleged to have abused and threatened to kill Shri K. Sivashankar, SO(SC), and also threatened and abused Shri S.K. Jha, SO(C), on 26.03.90. Thus, Shri Jaya, is alleged to have behaved in a manner unbecoming of a Government Servant.

Article - II

That the said Shri A. Jaya while functioning as T/B in the aforesaid plant, is alleged to have levelled false allegations against Shri K. Sivashankar, SO(SC) with false witnesses in support of his allegation contained in his letter dated 27.03.90. Thus Shri Jaya is alleged to have behaved in a manner unbecoming of a Government Servant. "

An inquiry officer was nominated to inquire into the charges levelled against the applicant. On May 15, 1992 the inquiry officer submitted the inquiry report. (Annexure-8 is the report of the inquiry officer). We feel it appropriate to reproduce herein the report of the inquiry officer as the report is very Crypt.

"As per the directions given by the Disciplinary authority the proceedings were conducted from the stage the defence witnesses were examined.

Based on the evidence adduced during the enquiry proceedings and the written brief submitted by the Presenting Officer and Defence Assistant and other relevant documents, I came to the conclusion that no evidence is available to show that Shri Jaya abused with un-parliamentary words and threatened Shri Sivashankar in the charge room on 26.3.1990. There is also no evidence to show that he used filthy language and made an attempt to threaten Shri S.K. Jha, SO/C on that day in charge room. I, therefore, hold Article I as not proved.

As regards to Article-II it has been established that Shri Buchaiah, EC No.2069, was in General Shift and left office on 26.3.1990 at 1645 hours. No evidence also had been adduced to show that Shri Sivashankar used the words 'array' or 'rray' to address Shri Jaya as stated in the letter in the change room on 26.3.1990.

Charges levelled against Shri Jaya in Article-II to that extent stands proved.

I therefore hold Article-II as partially proved.

Copy of the enquiry proceedings, written brief submitted by Presenting Officer, Defence Assistant and other relevant documents relating to the inquiry are also submitted herewith. "

After considering the report of the inquiry officer the respondent No.I passed the impugned order imposing the order of penalty of reduction of pay of the applicant. The ~~penalty~~ imposed on the applicant reads as under:

" Now, THEREFORE, the undersigned in exercise of the powers conferred under clause (b) of sub-rule (2) of Rule 12 of CCS (CCA) Rules, 1965, read with DAE Order No.1/14(I)/88-Vig/370 dated 11.10.90 hereby imposes the penalty of reduction of pay by two stages from Rs.1250/- to Rs.1200/- in the time scale of pay of Rs.1150-25-1500 for a period of 2 years with immediate effect on the said Shri Jaya, TB, EC No.2176, EPP. It is further directed that Shri Jaya will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will not have the effect of postponing his future increments of pay. "

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Against the said order of imposition of penalty the applicant submitted the memorandum of appeal. (Annexure-11 is the memorandum of appeal).

The appellate authority i.e. the Respondent No.2 considered the memorandam of appeal and by his order Dt.28.12.92 confirmed the penalty imposed on the applicant.

It is these orders that ~~have~~ been challenged by the applicant in this O.A.

The applicant has challenged the orders on the grounds that the procedure adopted by the inquiry officer in conducting the inquiry against him was not according to law that the inquiry officer allowed all the witnesses to be present during the course of examination that thereby the witnesses were aware of what they were required to depose during the inquiry that the inquiry officer has not analysed the evidence placed on the records by the disciplinary authority. That the inquiry officer has not taken pains to ascertain whether the evidence placed on the record substantiated the charge levelled against him that the inquiry officer has not appreciated his defence that at the time of incident one Buchaiah was present and that the said buchaiah had not supported his defence that, therefore, there was no other go for him to than to pray excuse from the authority that the appellate authority has not at all considered any of the grounds raised by him ~~for~~ in the memorandum of appeal that the report of the inquiry officer, the order imposing the penalty on him, ~~was served~~ and the order of the appellate authority confirming the penalty ~~do~~ not disclose any or conclusion the reasons that therefore the orders are not tenable in law. Thus submitted the inquiry was not at all conducted according to the principles of the natural justice.

As against this the respondents have filed counter affidavit. In the counter affidavit it is stated that with respect to the incident that occurred on 26.3.90 and also letter Dt.27.3.90 addressed by the applicant to the General Secretary, a preliminary inquiry was conducted [redacted] and [redacted] a prima facie case was disclosed with regard to the incident [redacted] and with regard to the averments made in the letter. That one of the senior most officer had conducted a discrete inquiry and found that the applicant had misbehaved with the senior officer using filthy and unparliamentary language.

On the basis of the preliminary inquiry an explanation was sought from the applicant as to his conduct. The applicant furnished his reply Dt.12.9.90. Considering his reply, a charge memo Dt.13.12.90 was served on him. The charge memo [redacted] indicted the applicant as follows:

" 1. The applicant has alleged to have abused and threatened to kill one of the officers and threatened and abused another officer on the same day.

II. The applicant levelled false allegations against one of the officers and false witnesses in support of his allegations. "

The applicant submitted his reply through his letter Dt.20.12.90. That considering his reply to the charge memo an inquiry officer was nominated on 29.12.90 that the inquiry officer conducted the inquiry and submitted the report, that a copy of the inquiry officer's report was furnished to the applicant along with letter Dt.25.6.92. That the applicant submitted his representation on 4.7.92. That considering the inquiry officer's report and the representation of the applicant the disciplinary authority imposed the penalty of reduction of pay of the applicant from Rs.1250 to Rs.1200/- in the time

scale of Rs.1150-25-1500 for a period of 2 years with immediate effect without cumulative effect. That the disciplinary authority passed the said order on 22.7.92. That inquiry officer was appointed only after the authority received the reply from the applicant to the charge memo. That the applicant challenged the punishment before the appellate authority and the Appellate authority by his order Dt.11.9.91 (Annexure-2) confirmed the punishment. Thus the respondents contend that the impugned orders are quite in order and that the OA is liable to be dismissed.

The report of the inquiry officer does not conform to the rules. In our humble view the inquiry authority has to analyse the evidence placed on record and give cogent, clear and convincing reasons for her conclusions. The report of the inquiry officer must be self explanatory. The report of the inquiry officer must consider the defence of the delinquent employee. We find from the report of the inquiry officer (Annexure-8) that the inquiry officer has not at all applied her mind to the facts placed by the disciplinary authority and the applicant. It does not disclose what was the charge levelled against the applicant, what was the nature of the evidence relied upon by the disciplinary authority to substantiate the charge and what was the defence, nature of evidence put forth by the applicant and what was her conclusion. In our humble view the inquiry report does not stand to any reason.

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The disciplinary authority on the basis of such an inquiry report sought an explanation from the applicant. His explanation is at Annexure-9. In annexure-9, the applicant submitted that at the time of the incidence one Buchaiah, an employee was present in the charge



room that the said Buchaiah subsequently turned hostile to him and pleaded that he was not at all present in the change room. So in those circumstances he pleaded for mercy and to pardon him. The disciplinary authority has not taken this explanation of the applicant before passing the order of punishment Dt.22.7.92.

Against the order of punishment the applicant preferred an appeal. The memorandum of appeal is at Annexure-11. The order of the appellate authority is at Annexure-12. In our humble opinion the order of the appellate authority is bereft of reasons. The appellate authority has not considered even a single ground raised by the applicant in Annexure-11.

Sub-rule-2 of Rule 27 of the CCS (CCA) Rules lays down that the appellate authority shall consider-

- (a) Whether the procedure laid down in the C.C.S. (C.C.A.) Rules has been complied with and if not whether such non-compliance has resulted in the violation of any provisions of the constitution of India or in the failure of justice;
- (b) Whether the findings of the disciplinary authority are warranted by the evidences on the record; and
- (c) Whether the penalty is adequate, inadequate or severe.

Thus the rule requires that even if the appellant has not brought out any new points in the appeal, it is obligatory on the part of the appellate authority to discuss how there has

been no procedural flaw or denial of opportunity of defence and that the findings of the disciplinary authority are based on evidences and are just. This is rarely done and the result is obvious. It has also created a feeling (though may not be quite correct) that the decisions of the appellate authority are arbitrary and summary in nature. The appellate authority should bear this in mind and issue the appellate orders in such a way that such unjust feelings or impressions ~~are~~ not created. This is possible only if the appellate orders discuss thoroughly the following points:-

- (i) The procedural aspects as well as the justness of the findings of the disciplinary authority with reference to the admissible evidences;
- (ii) a proper discussion of the points raised in the appeal; and
- (iii) any objective assessment of the lapse on the part of the punished official with a view to coming to a decision that the charge(s) had been established and that the penalty is appropriate/adequate and does not require to be either toned down or enhanced. "

The order of the appellate authority does not conform to Rule 27(2) of the CCS (CCA) Rules.

To sum up the report of the inquiry officer does not contain any reasons for the conclusions arrived at by her. On the basis of that perfunctory report, the disciplinary authority imposed the punishment without applying the mind and without conforming to rule 27(2) of the CCS (CCA) Rule the appellate authority dismissed the appeal.

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For the above said reasons we feel that the inquiry conducted by the inquiry officer against the applicant is not fair and reasonable. The disciplinary authority and appellate authority have failed to notice such a patent lacune in the disciplinary proceedings. Hence we feel it proper to set aside the orders of the disciplinary authority and the appellate authority and to direct the authorities to take a decision of continuing the disciplinary proceedings from the stage of nominating a fresh inquiry officer, ~~if circumstances~~ ~~justify~~.

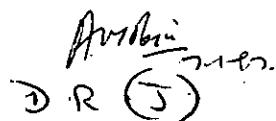
For the reasons stated above the OA deserves to be accepted. Accordingly it is accepted. Both the impugned orders Dt.22.7.92 and 28.12.92 are set aside. Even the report of the inquiry officer is also set aside. The respondents shall consider the question of continuing the disciplinary proceedings against the applicant from the stage of considering his explanation Dt.13.2.90 to the charge memo.

The respondents shall take a decision within 2 months from the date of receipt of ~~of the~~ copy of this order.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL)


(R. RANGARAJAN)
MEMBER (ADMN.)

Date: 30th Jan 1997


D.R. (J)

KSM

9/1/97

14/7/1997

TYPE SET BY

14/7/1997

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

AND

THE HON'BLE SHRI B.S.JAI PARAMESHWARI:
M(J)

DATED:

3.1.96

ORDER/JUDGEMENT

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

D.A.NO. 6981/93 in

ADMITTED AND INTERIM DIRECTIONS 166

ALL TIED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS.

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