

(46)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

O.A. No. 835/93

Dated: 12th November, 1996

Between

Gulam Jeelani

.. Applicant

and

1. The Senior Superintendent,
RMS, Hyderabad Sorting Dn.,
Hyderabad.
2. The Director of Postal Services,
O/o PMG, City Region,
Hyderabad.
3. The Chief PMG,
AP Circle, Daksadan,
Hyderabad.
4. The Director General of Posts,
Dak Bhavan, Sansad Marg,
New Delhi.

Respondents

Mr. Krishna Devan

.. Counsel for applicant

Mr. N.R. Devaraj, SCGSC

.. Counsel for respondents

CORAM

HON'BLE SHRI JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN

HON'BLE SHRI H. RAJENDRA PRASAD, MEMBER (ADMN.) ~~VC~~

O R D E R

Oral Order (Per Hon'ble Shri Justice M.G. Chaudhari, VC)

Request made on behalf of Mr. Krishna Devan, learned counsel for the applicant, by Mr. B.S.S. Satyanarayana, refused.

2. Perused the records of the OA and the Enquiry papers produced by Mr. Devaraj, learned Standing Counsel for the respondents.
3. The applicant was working as Mail Man (Group-D) in Hyderabad Sorting Division, Hyderabad RMS, on the material date, i.e. 27.5.92. On that day, he was working in Registration Branch of Hyderabad Sorting/2. Proceedings under Rule 16 of the CCS (CCA) Rules, 1965 were initiated against him vide Memorandum of Charges dated 5.8.92. The statement of imputations issued to the applicant contains

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the following charges:-

- (1) The applicant had, while working in the Registration Branch of Secunderabad Sorting/2 on 27.5.92, concealed two Foreign RLs, bearing Nos. 03466 of Safat and 00949 of Sabhiyah which were invoiced in the despatch regd. list for Mahbubnagar RMS by RSA-7 under the canvas bag on which he sat with an ulterior motive of knocking them away thereby violating the provisions of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964.
- (2) He disobeyed the orders of ASRM when he was asked by the ASRM to give his statement about the aforesaid incident in the early hours of 28.5.92 and went away thereby violating the provisions of Rule 3(1)(iii) of CCS(Conduct) Rules, 1964.
- (3) When he was once again asked by the ASRM to give a statement on 2.6.92 about the incident dated 27.5.92 he carelessly replied that he was not going to give any statement and when he was questioned by the ASRM as to why he disobeyed his (ASRM) orders on 28.5.92 he went away abruptly without giving his statement and stated that he had nothing to tell the ASRM and uttered that he would see upto' criminal case and thus violated the provisions of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

4. Although the applicant was served with the charge memo and the statement of imputations he had not submitted any statement of defence. Hence the enquiry was proceeded with on the basis of the statement of the witness recorded in evidence and the documentary evidence that was made available at the enquiry. The Senior Superintendent, RMS, Hyderabad Sorting Division, as the disciplinary authority himself held all the charges proved and taking into account the gravity of the offence took a view that exemplary punishment was deserved. However, keeping in view the long service of the applicant which called for a lenient view, he, instead of initiating major penalty proceedings under Rule 14 of CCS (CCA) Rules, imposed a minor penalty of withholding of

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next increment of the applicant for a period of 3 years without cumulative effect. That order was passed on 28.9.92. The said order was confirmed by the appellate authority who, by order dated 24.6.93, dismissed the appeal preferred by the applicant by giving detailed reasons.

5. The applicant challenges both these orders and prays that the same may be quashed and respondents may be directed to give him consequential benefits.

6. We have carefully gone through the orders and the memorandum of appeal that was filed by the applicant. We find that both the authorities have duly considered the material available at the enquiry in the shape of oral as well as documentary evidence and the conclusions ^{are} drawn by them on facts leading to the proof of the charges framed against the applicant. On the quantum of punishment the authorities have already taken lenient view and once the charges are held proved it is not open for the Tribunal to go into the question of quantum of punishment as it cannot be said to be perverse or wholly unreasonable ^{and can be} sustained in law.

7. The grounds urged by the applicant inter alia are as follows:

(i) He was falsely implicated in the case with an oblique motive of depriving him the promotion under OTBP Scheme by the first respondent, i.e. the Senior Superintendent.

(ii) ^{His} The statements before the enquiry were obtained under threat and the evidence at the enquiry was not disclosed to him.

(iii) The appellate authority has not passed the appellate order by considering the points arising in the case adequately.

8. None of the aforesaid grounds are sufficient to show that either there was any illegality in the initiation and conduct

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of the proceedings or there was any grave irregularity in the procedure followed or that the orders passed ~~are~~ are perverse.

9. The respondents have stated in the counter that the evidence was given by the officials concerned in proving the matter. The allegation that respondent No.1 had acted with malafides is denied. False implication of the applicant is also denied. It is also stated that the applicant's allegation that there was negligence of RSA-7 but he was made a scapegoat has been denied. It is pointed out that although reasonable opportunity was given to the applicant to submit his representations he did not respond. It was the applicant ^{who} did not avail the opportunity provided to him to defend himself adequately. Thus, according to the respondents, there has been no illegality in the conduct of the proceedings.

10. From the papers produced by Mr. Devaraj, we notice that a detailed statement was given by the applicant. We cannot, therefore, say that his statement was not considered. We also find from the record that the statements of the witnesses whose evidence was tendered have been duly recorded. There is no question of the statements being kept secret from the applicant. Moreover, during the course of his statement which was recorded on 25.9.92, the evidence given by witnesses Mr. T.S. Prasad, Mr. B. Mondaiah, Mr. Balachander and Mr. Dasrath, were brought to his notice and he was asked questions in respect of their evidences. We, therefore, find no substance in the contentions urged in the application.

11. To complete the record we may refer to the memorandum of appeal which the applicant had filed to the appellate authority. In that appeal he raised a contention that the enquiry was conducted in violation of principles of natural justice, that he was made to confess under threat as the ASRM wanted to frame him in a criminal case and that the charges were trivial in nature and deserve to be leniently dealt with. He also stated that he was not given opportunity to cross examine the RSA ~~concerned~~ concerned, nor ^{to} perused the evidence procured by the department

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against him against me, - The appellate order however shows that the appellant had been given a chance to represent his innocence during the proceedings. We therefore find no substance in the grounds that were raised in the appeal although we are not required, strictly speaking, to refer to them.

12. The test applicable in disciplinary enquiries is preponderance of probability and not strict proof. The material in the instant case travels far beyond preponderance of probability and there is direct evidence produced by the prosecution establishing the fact of concealment of registered letters by the applicant which could not be but with ulterior design. We are satisfied that the conclusions drawn by the authorities below about the guilt of the applicant are warranted by the evidence and there is neither any illegality nor irregularity in the procedure followed, nor can it be said that the punishment awarded is so disproportionate to the misconduct as to be described as perverse.

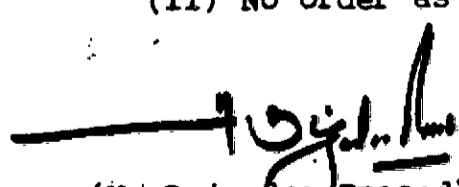
13. The enquiry related to the three acts of misconduct which arose in connection with the same incident. The three acts having been proved it cannot be said that the minor penalty imposed is harsh. The disciplinary authority himself had taken a lenient view.

14. For the foregoing discussion we hold that there is no merit in this application which is liable to be dismissed.

O R D E R

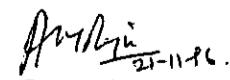
(i) In the result, the OA is dismissed.

(ii) No order as to costs.


(H. Rajendra Prasad)
Member (Admn.)


M.G. Chaudhari
Vice Chairman

12th November, 1996


Deputy Registrar (OCC)

12/12/96

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TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE M.G.CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD:M(A)

Dated: 12 - 11 - 1996

ORDER / JUDGMENT

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

O.A.No. 835/93

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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