

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.188 of 1993

DATE OF JUDGMENT: 10th August, 1993

BETWEEN:

Mr. Ghanshyam Prasad .. Applicant

AND

1. The Deputy Director,
S.V.P.National Police Academy,
Hyderabad-500252.

2. The Director,
SVP National Police Academy,
Hyderabad. .. Respondents

APPEARANCE:

COUNSEL FOR THE APPLICANT: Mr. I.Dakshina Murthy, Advocate

COUNSEL FOR THE RESPONDENTS: Mr. N.R.Devaraj, Sr.CGSC

CORAM:

Hon'ble Shri Justice V.Neeladri Rao, Vice Chairman

Hon'ble Shri P.T.Thiruvengadam, Member (Admn.)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN

The applicant was a Constable in S.V.P.National Police Academy, Hyderabad. A charge sheet was issued on 19.7.1986 with the allegations that the applicant misbehaved with Mr. Hansa Ram, Head Constable during the roll call on 7.2.1986 and he assaulted a Daftry Mr. Hukum Singh of the Academy and beaten him up due to old enmity on 5.5.86. After an inquiry, the applicant was removed from service and the same was set-aside by the order dated 7.11.1988 in T.A.No.17/88 on the file of this Bench. Therein it was

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ordered that the applicant had to be reinstated and he had to be paid back-wages and if the applicant was gainfully engaged during the period from the date of removal till the date of reinstatement, wages ^{Arrears} held thereby had to be deducted from out of the wages payable.

2. It is stated for the respondents that the applicant filed an affidavit to the effect that he was not engaged during the period of his removal and on inquiry it was noticed that the applicant was engaged in a private concern from 1.8.1988 to 1.1.1990. It may be noted that the applicant was reinstated in the Academy on 3.2.1989. A charge sheet dated 24.4.1990 was issued alleging that he falsely represented that he was not gainfully engaged from 1.8.88 to 2.2.1989 and that there was misconduct on the part of the applicant as he held a private job from 3.2.1989, the date on which he was reinstated, till 1.1.1990. An exparte inquiry was conducted when the applicant did not participate in the inquiry. The record discloses that the inquiry report and was communicated to the applicant, the latter submitted his representation in regard to the same and then the disciplinary authority (Assistant Director) proposed withholding of one increment for one year by way of punishment. At that stage, the 1st respondent, Deputy Director (Admn.) issued a show cause notice dated 7.11.1991 in purported exercise of power under Rule 29 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (hereinafter referred to as 'the rules'), as to why an order of dismissal should not be passed by way of punishment. The 1st respondent passed the order dated 3.12.1991 dismissing the applicant from service. The appeal thereon was dismissed on 27.4.1992. It is assailed in this OA.

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3. Para 9 of the show-cause notice dated 7.11.1991
reads as under:-

"The undersigned under the powers delegated vide rule 29 of the C.C.S.(Classification Control and Appeal Rules) 1965 called for records of the enquiry and found that the Disciplinary Authority has not passed orders properly. The punishment of stoppage of increment for one year proposed by the Disciplinary Authority is not commensurate with the gravity of the charges proved. The charges not only amount to gross violation of conduct rule 15(1) of C.C.S.(Conduct) Rules, 1964 but also tantamount to criminal culpability."

It is evident from the above that the 1st respondent intended to exercise power under Rule 29 of the rules. The power of revision under Rule 29 of the rules can be exercised after the expiry of the period of limitation for appeal or disposal of the appeal where any such appeal has been preferred. The appeal is contemplated under Rule 23 of the rules against the orders referred to therein. Rule 23(ii) refers to an order imposed by way of penalty. If the delinquent employee is found guilty for the charge, then necessary punishment has to be imposed. The order of punishment comes into effect from the date on which it is served or deemed to have been served upon the delinquent employee. The period for preferring the appeal has to be reckoned from the date on which the order of punishment is served upon the delinquent or deemed to have been served upon him. It is thus clear that the revision can only be against orders imposed or passed under the rules. It is even clear from

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the plain reading of the relevant portion of Rule 29 of the rules which is as under that revision lies only against an order made under CCS (CCA) Rules or under the/repealed by Rule 34 of the Rules:-

"29. (Revision)

(1) Notwithstanding anything contained in these rules-

(i) the President; or

(ii) the Comptroller and Auditor General, in the case of a Government servant serving in the Indian Audit and Accounts Department; or

(iii) the Member (personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Services Board and (Adviser (Human Resources Development), Department of Telecommunications) in the case of a Government servant serving in or under the Telecommunications Board); or

(iv) the Head of a Department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board), under the control of such Head of a Department; or

(v) the appellate authority, within six months of the date of the order proposed to be (revised); or

(vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order;

may at any time, either on his or its own motion or otherwise call for the records of any inquiry and ~~revise~~ any order made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed, but

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from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary."

(Emphasis is supplied)

4. The learned counsel for the respondents submitted that it is open to the higher authority to withdraw the disciplinary proceedings to himself at any stage and then dispose of the same and the 1st respondent had done so in this matter and as such there is no infirmity in the order of dismissal ~~as~~ passed by the 1st respondent. We feel it not necessary to consider for disposal of this ~~and~~ OA as to whether it is open to the superior authority to withdraw the disciplinary proceeding ^{himself} and dispose the same, for it is clear from the show cause notice dated 7.11.1991 that the 1st respondent intended to exercise power under Rule 29 of the rules and when the disciplinary authority had already proposed some punishment, nothing more need be done by the higher authority in withdrawing it for further disposal.

5. We have already observed that the order of punishment will be ~~effect~~ⁱⁿ only from the date of service. As the order of punishment was not communicated to the applicant, there is no order which can be appealed against. Hence, the stage for revision had not arisen. Such revision in ~~in~~ the order dated 3.12.1991 which was passed in exercise of the power under Rule 29 of the rules has to be set-aside as premature.

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6. So, it is for the disciplinary authority to pass appropriate order and communicate it to the applicant. If the latter is aggrieved, he is free to prefer an appeal. If such an appeal is preferred, it is proper to observe that the same should not be considered by Shri S.K.Rout,

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Deputy Director (Admn.) who passed the order dated 3.12.1991.

In such ^ocase, the Director (2nd respondent) has to issue necessary proceedings for requiring another authority superior to the disciplinary authority to dispose of ^{The} such an appeal.

7. Since the order of dismissal dated 3.12.1991 is set-aside, the applicant has to be reinstated. The question as to how the period from the date of removal till the date of reinstatement has to be treated depends upon the rules.

8. The OA is ordered accordingly. No costs. Office has to communicate this order to the Assistant Director (Admn.), S.V.P.National Policy Academy, Hyderabad and also to the 1st and 2nd respondents.

(Dictated in the open Court).

P.T.Thiru
(P.T.THIRUVENGADAM)
Member(Admn.)

V.Neeladri
(V.NEELADRI RAO)
Vice Chairman

Dated: 10th August, 1993.

8/3/93
Deputy Registrar(J)

To vsn

1. The Assistant Director(Admn) SVP National Police Academy, Hyderabad. [By order of Tribunal]
2. The Deputy Director, S.V.P.National Police Academy.
~~S.V.P.National Police Academy~~, Hyderabad.
3. The Director, SVP National Police Academy, Hyderabad.
4. One copy to Mr.I.Dakshina Murthy, 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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10/8/93

Urgent
13/7/93

TYPED BY

COMPARED BY

CHECKED 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.B.GORTHY : MEMBER(A)

AND

THE HON'BLE MR.T CHANDrasekhar REDDY
MEMBER(JUDL)

AND

THE HON'BLE MR.P.T.TIRUVENGADAM:M(A)

Dated: 10 - 8 - 1993

ORDER/JUDGMENT:

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

in

O.A.No. 188/93

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

Admitted and Interim directions
issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered

No order as to costs.

