(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.21 of 1993 Date of decision: 9-3-93

Between

Raja Seshaiah ... APPLICANT

A N D

The Commissioner of Income-Tax,
Ayakar Bhavan, Daba Garden,
Visakhapatnam-20. ... RESPONDENT

Appearance:

For the applicant : Shri G.V.R.S.Vara Prasad, Advocate

For the Respondent : Shri N.V.Ramana, Addl.SGSC

CORAM:

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

The Hon'ble Shri R.Balasubramanian, Member (Admn.)

J U D G M E N T

(of the Bench delivered by the Hon'ble Shri Justice V. Neeladri Rao, Vice-Chairman)

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During 1990-91, the applicant was working as Inspector of Income-tax in the office of the Tax Recovery Officer at Hyderabad. One of his duties as Tax Recovery Inspector was to collect arrears from various defaulters in respect of whom recovery certificates were issued by the various Income-Tax Officers. Even cash can be collected by the Tax Recovery Inspector from the defaulters.

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2. The notice of demand in the case of M/s Sri Rajeswari Lorry Transport, Feelkhana, Hyderabad was entrusted to the applicant on 12-1-90. A trap was arranged when Sri T.Krishna Mohan Rao, a partner of the firm of M/s Sri Rajeswari Lorry Transport reported to C.B.I. officials that he represented to the applicant that he was only a working partner and hence the amount had to be collected from the Managing Partner and the applicant demanded Rs.1,000/- from him on 4-1-91 for collecting the arrears of tax from only the Managing Partner and not from him (Sri T.Krishna Mohan Rao) and he requested the applicant to come on 5-1-91 to collect theamount of Rs.1,000/- and khen he reported the same to CBI. The case of the applicant is that Sri T.Krishna Mohan Rao paid him Rs.1,000/- towards part payment of income-tax as per demand notice and before he could write and issue the receipt for the amount collected, the CBI officials seized the amount and registered a case instead. The said version did not find favour with the Special Judge for CBI cases, Hyderabad who tried C.C.No.12/91 the case registered against the applicant in regard to the above trap. The applicant was convicted for the offence under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and he was sentenced to RI for two years and fine of Rs.2,000/- in default to undergo simple imprisonment for a period of six months. The applicant preferred criminal Appeal No.107/92 on the file of the High Court of Andhra Pradesh against his conviction and sentence. The accused was released on bail on his bond for Rs.5,000/- with one surety for like amount as per order dated 11-11-92 in Crl.M.P.No.2945/92.

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3. After the applicant was convicted for the offence referred to in CC 12/91 on the file of the Special Judge for CBI Cases, Hyderabad, show-cause notice dated 15-12-92 was issued to the applicant requiring him to show cause as to why appropriate penalty under Rule 19 of the C.C.S. (C.C. & A) Rules, 1965 cannot be awarded by taking into account the gravity of the criminal charge for the offence in terms of Rules 3(1)(i) and 3(1)(iii) of the C.C.S. (Conduct) Rules, 1964. He was also placed under suspension by order dated 15-12-92.

4. The show cause notice dated 15-12-92 is assailed in this O.A. on various grounds:

(1) That the respondent gravely erred in giving a finding of guilt against the applicant by his enquiry report dated 15-12-92 without issuing any charge memo and conducting enquiry. The regular enquiry by the department should not be dispensed with except in circumstances where holding of enquiry is not practicable in the opinion of a reasonable man taking a reasonable view on the prevailing situation;

(2) That the said action of therespondent is in violation of the instructions of the Government of India, Department of Personnel and Training OM No.1102/11/85-Est.(A) dt.1-11-85 and 4-4-86 wherein guiding principles for dispensing with the enquiry in case of conviction and other circumstances have been enumerated; and

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(3) The respondent failed to note that the applicant's appeal is pending before the High Court of Andhra Pradesh and the conviction has not become final.

In order to appreciate the above contentions of the applicant, it is convenient to read Rule 19 of the CCS (CCA) Rules, which is as under:

"19. Special procedure in certain cases:

Notwithstanding anything contained in Rule 14 to Rule 18--

(i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules,

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to beimposed before any order is made in a case under clause (i):

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule. "

It is evident from Rule 19(i) that in case where a Government servant is convicted on a criminal charge, the disciplinary authority without conducting any enquiry as contemplated in Rule 14 to Rule 18 can impose a penalty.

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It is stated for the Respondent that as the applicant was convicted by the Special Judge for CBI Cases, Hyderabad for the offence under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, the disciplinary authority after considering the judgment therein felt that it is a fit case where penalty has to be imposed and accordingly the impugned show-cause notice has been given. The learned counsel for the applicant urged that the conviction referred to in Proviso (a) to Article 311(2) of the Constitution of India and Rule 19 of the CCS(CCA) Rules is the conviction which has become final, and as the applicant has preferred an appeal against the judgment in CC 12/91, it is not open to the disciplinary authority to proceed under Rule 19(i). The learned counsel for the applicant referred to AIR 1965 Punjab 153*in this context. In that case, the Government servant challenged the order of dismissal which was passed on the basis of the order of the conviction passed by the trial court, by urging that the said order of dismissal has to be set aside as the appellate court set aside the order of conviction. Therein it was urged for the Government that Rule 1706 of the Disciplinary and Appeal Rules for Non-Gazetted staff of Railway Establishment (D&A rules for short) which is similar to Rule 19 of CCS (CCA) Rules, empowered the disciplinary authority to impose a penalty on the basis of the conviction of the trial court and the same cannot be challenged even after theorder of conviction had been set aside by the appellate court or higher court. The said contention was negatived in 1965 Punjab 153 by observing that the conviction

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*Dhanji Ram Sharma Vs. Union of India & Anr.

referred to in Article 311(2) Proviso (a) of the Constitution and Rule 1706 of the D&A Rules has to be read as conviction which has become final. But the question as to whether the disciplinary authority can initiate action under the relevant rule of the Railway Establishment rules when an appeal is pending against the order of conviction and sentence has not fallen for consideration fn 1965 Punjab 153.

5. The Full Bench of this Tribunal in Om Prakash Narang Vs. Union of India & Ors. reported in 1989(1) SLJ 609 (CAT) observed as under in para 9 of the judgment:

> "9. ... ... The fact that the appeal is pending and the sentence has been suspended may be a consideration which may weigh with the disciplinary authority in exercising its undoubted power to impose a penalty based on conviction which discloses a conduct that the public servant is not fit to be continued in service. While the power is recognised, the order of dismissal may be bad for other reasons viz. that the disciplinary authority has not taken into consideration all relevant facts but that does not militate against the power vested under Rule 19(i) of the CCS (CCA) Rules to impose the penalty based on conviction, merely because an appeal is pending."

Hence thecontention of the applicant that it is not open to the disciplinary authority to proceed under Rule 19(i) of the CC&A Rules when the appeal against the order of conviction and sentence is pending, is not tenable. Of course, it is open for thedisciplinary authority to take into consideration about the factum of the pendency of the appeal in the High Court in order to decide as to whether final orders can be passed now in pursuance of the impugned show-cause notice or whether the same can be deferred till after the disposal of the criminal appeal No.1107/92 on the file of the High Court of Andhra Pradesh.

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6. No enquiry as under Rule 14 to Rule 18 of the C.C.A. Rules has to be made before action is taken under Rule 19(i). The contention of the applicant that the Respondent really erred in giving a finding of guilt against the applicant by his enquiry report dated 15-12-1992 without issuing any charge memo., and conducting enquiry,has to be negatived for the said finding is given on the basis of the judgment in CC 12/91. As the disciplinary authority had taken action in this case by invoking Rule 19(i) but not Rule 19(ii) of the CCA Rules, the question of satisfaction about the impracticability of holding an enquiry in the manner provided in the rules, does not arise.

7. Even though specific plea to the effect that there is an infirmity in issuing the show cause notice in not giving personal hearing before the said show cause notice was issued,is not taken in the O.A., it was urged at the time of hearing of this O.A. In support of the said contention the third clause in Form-16 in Appendix-I to CCS (CCA) Rules is emphasised. The said clause reads as under:

> "AND WHEREAS before coming to a decision about the quantum of penalty Shri (here enter name of the convicted official) was given an opportunity of personal hearing to explain the circumstances why penal action should not be taken against him in pursuance of the provisions of Rule 19 ibid; "

While issuing the show-cause notice in this case in accordance with Form-16, the above said clause was not incorporated. The emphasised clause contemplates personal hearing before show cause notice is given, urged the learned counsel for the applicant. But the learned Standing counsel for the Respondent

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submitted that Note to form-16 makes it clear that "portions not required should be struck out according to the circumstances of each case" and as in this case personal hearing was not given, the same was left out in issuing the show-cause notice to the applicant herein. It was further stated for the respondent that neither Article 311(2) of the Constitution nor Rule 19(i) nor any other rule in CCA Rules envisages personal hearing before issuing a show-cause notice while proceeding under Rule 19(i), and if the disciplinary authority feels that in the circumstances of the case an opportunity of personal hearing has to be given, the same can be given and only in such cases the clause referred to has to be incorporated in the show-cause notice issued in Form-16 and it is not mandatory to give personal hearing. But it was contended for the applicant that it was observed at more than one place in AIR 1985 SC 1416 * that before penalty is imposed while invoking Rule 19 of the CCA Rules and other relevant rules, the delinquent employee has to be heard and the word 'heard' means personal hearing.

8. Audi alteram partem is one of the principles of natural justice. That Latin maxim is translated in English as follows: No one can be condemned without being heard. 'Heard' referred to is held as giving opportunity to the concerned to explain the circumstances which are against him. Such an opportunity can be given by issuing a show-cause notice and where the delinquent employee desires an oral enquiry, the enquiry had to be held. But if the delinquent prays while

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*UOI & Anr. Vs. Tulsiram Patel

submitting his explanation that he may be personally heard, and generally in the case of minor penalty the employee may ask for mere personal hearing. In such a case, instead of detailed enquiry, personal hearing will be given. Thus, the word 'heard' in regard to the principle that no one can be condemned without being heard, does not necessarily mean personal hearing. The word heard referred to in 1985 SC 1416 has to be understood accordingly. Unless personal hearing is specifically mentioned the word 'hearing' or 'heard' does not include 'personal hearing'. Neither Article 311(2), proviso (a) nor Rule 19(i) nor any other rule in CC&A rules, lays down that personal hearing has to be given before imposing penalty while proceeding under Rule 19(i). In view of Rule 19(i) it is open to the disciplinary authority to impose penalty in case of conviction of the Government employee on a criminal charge. In such cases, it is necessary for the disciplinary authority to peruse the judgment of the court which convicted the employee in order to consider as to whether it is a fit case for imposing penalty. The judgment of the criminal court discloses the gravity of the offence and the circumstances under which it was committed. But it would not be necessary for the criminal court to refer to the extenuating or mitigating circumstances which may have a bearing in imposing the nature of penalty. The delinquent employee who was accused in the case may not refer to the same during the trial of the case. So it is enjoined upon the disciplinary authority to give an opportunity to the delinquent employee to put forth the circumstances

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which have to be taken into consideration in deciding about the nature of penalty that can be imposed. Accordingly the show-cause notice in Form-16 has to be given before the penalty is imposed. By following such a procedure, sufficient fresh opportunity is given to the employee to state about the mitigating or extenuating circumstances. So it cannot be stated that it is also necessary to give personal hearing before the disciplinary authority makes up his mind about the nature of penalty to be imposed. At times it may not be practicable to give personal hearing. There may be a case where the delinquent employee may be at a place which is far off from the place the disciplinary authority functions. It will be a case of waste of funds of the Government if it has to be stated that personal hearing is mandatory, in such matters. Of course it is different if the delinquent employee requests for personal hearing. When such request is made it is for the disciplinary authority to decide and determine as to whether it is necessary to give the opportunity of personal hearing to the delinquent to explain the circumstances narrated in his statement submitted in pursuance of the show-cause notice in form-16. But there is no need to further elaborate the same for disposal of the O.A. as it is not stated that the delinquent requested for personal hearing. Even DG P&T No.113/96/80-Disc.II dt. 19-8-80 which is as under does not support the contention for the applicant that personal hearing had to be given when action is taken under Rule 19(i).

> "As explained in the instructions above, the the disciplinary authority should itself in the first instance hold an enquiry, in which the accused official should be given a chance

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(17)

To

1. The Commissioner of Income-tax,
   Ayakar Bhavan, Daba Garden, Visakhpatnam-20.
2. One copy to Mr.G.V.R.Sivara Prasad, Advocate, 113/3RT Vijayanagar colony, Hyderabad.
3. One copy to Mr.N.V.Ramana, Addl.CGSC.CAT.Hyd.
4. One copy to Deputy Registrar(J)CAT.Hyd.Bench.
5. Copy to All Reporters and All Benches as per standard list of CAT.Hyd-Bench.
6. One spare copy.

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to explain and defend the case. No charge-sheet is required to be servedon the accused as the charges have already been established in the court. A copy of skeleton enquiry report held by the disciplinary authority should be furnished along with the show cause notice to the official in the tentativedraft (item 16 of Forms in Appendix I) which may be suitably modified, if so required. In the inquiry report no reference should be made about the findings of the charges as they stand already established in view of the court judgment. The reference should be made to the extenuating circumstances, if any, brought forward by the convicted official and the gravity of the criminal charge, for provisionally deciding the quantum of penalty which may be finalised after taking into consideration the reply submitted by the accused in response to the show cause notice served on him."

It has to be made clear that the above instruction is relied upon only to urge that personal hearing is mandatory in proceedings under Rule 19. Hence for disposal of this O.A. it is not necessary to consider as to whether the said instruction has to be followed or not in view of the later judgment of the Supreme Court in Tulsiram Patel's case (1985 SC 1416) which was delivered subsequent to the said instruction. Be that as it may, it has to be stated that even the said instruction does not envisage personal hearing when action is taken under Rule 19.

9. Thus, this O.A. does not merit consideration. Accordingly the applicant is not entitled for declaration that the enquiry report dated 15-12-92 is illegal, arbitrary, unjust and improper. The O.A. is, hence, dismissed with no order as to costs.

(V.Neeladri Rao)
Vice-Chairman

(R.Balasubramanian)
Member (A)

Dated: 9th day of March, 1993.

mhb/-

Deputy Registrar (J).

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
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HYDERABAD BENCH

HYDERABAD

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: AT HYDERABAD

THE HON'BLE MR. Justice V. Neeladri Rao V.C.

AND

THE HON'BLE MR.R.BALASUBRAMANIAN:M(A)

AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY:M(J)

AND

THE HON'BLE MR.C.J. ROY : MEMBER(JUDL)

Dated: 9 - 3 - 1993

ORDER/JUDGMENT: Post Typing

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

in

O.A.No. 21/93 .

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

Admitted and Interim Directions issued

Allowed

Disposed of with directions

Dismissed

Dismissed as with drawn

Dismissed for default

M.A.Ordered/Rejected

No order as to costs.

pvm.