

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT
HYDERABAD.

U
C.A.NO. 27/93.

DATE OF JUDGMENT: 27-09-95.

BETWEEN:

S.S. Zama

.. Applicant.

AND

1. Director of Postal Services,
Hyderabad City Region,
Hyderabad-1.

2. Sr. Superintendent of Railway
Mail Service, S.S.R.M.S., Hyderabad
Sorting Division, Hyderabad-1.

3. Manager, Mail Motor Service,
Hyderabad-1.

.. Respondents.

COUNSEL FOR THE APPLICANT: SHRI K. Mangachary

COUNSEL FOR THE RESPONDENTS: SHRI N.V.Raghava Reddy,
Ex/Addl.CGSC.

CORAM:

HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN
HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

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O.A.NO.27/93.

JUDGMENT

Dt: 27.9.95.

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

Heard Shri K.Mangachary, learned counsel for the applicant and Shri N.V.Raghava Reddy, learned standing counsel for the respondents.

2. The charge memo dated 16.3.1985 was issued to the applicant who was working as T/S Driver in Meter Mail Service (MMS), Hyderabad for unauthorised absence from 12.1.1985 to 17.1.1985. He was placed under suspension from 18.1.85 till 29.9.1986, the date on which (the applicant) was removed from service by way of punishment after inquiry. The appeal thereon was rejected. The same was challenged in OA 670/88. It was disposed of on 27.8.1989 by setting aside the order of removal on the ground that ~~the~~ copy of the inquiry report was not furnished before the said order was passed and liberty ~~is~~ was given to the disciplinary authority to continue the inquiry after furnishing ~~the~~ copy of the inquiry report. The disciplinary authority passed the order dated 3.7.1990 ~~by~~ removing the applicant from service after considering the representation of the applicant which was submitted after receiving ~~the~~ copy of the inquiry report. The appellate authority modified the punishment as compulsory retirement. The same was assailed in OA 528/91. The said OA was disposed of by the order dated 10.12.1991 wherein it was held that the order of punishment is very ✓

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harsh and hence the same was set aside and the matter was remitted to the disciplinary authority for considering with regard to the punishment. Thereupon the disciplinary authority passed the order dated 24.4.1992 reducing the pay of the applicant for a period of four years with further direction that on expiry of the said period of four years, the reduction will not have the effect of postponement of his increments of pay. ~~(S/13956) - T. 11/11/92~~ The appellate authority by the order dated 12.9.1992 modified the penalty to that of withholding of next increment for a period of four years with cumulative effect. The order of the disciplinary authority to treat the period of absence as dies-non was confirmed by the appellate authority. The latter further directed the disciplinary authority to regularise the period of suspension and the period of unemployment by following the prescribed provision laid down in FR and CCS(CCA) Rules. The same is challenged in this OA.

3. Rule 62 of P&T Manual Volume-III empowers the disciplinary authority to treat the period of unauthorised absence as dies-non. Hence, it cannot be stated that it is in violation of the rules/instructions.

4. It may be noted that the applicant was working as Driver of MMS. Any delay in sorting down the mail and/or delivery of the same will at times cause much hardship to public. Hence, we feel that it cannot be held as harsh

When that period of unauthorised absence was treated as dies-non.

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5. The applicant cannot have any apprehension that as the period from 12.1.1985 to 17.1.1985 was treated as dies-non service prior to it will be forfeited. The effect of dies-non is not to treat the period of dies-non as service for payment of salary and emoluments for the purpose of increments ^{and} for including the qualifying service for grant of LAP and LMAP and the terminal benefits.// It is evident from FR ~~54~~ 54(B)(5) that it is necessary to issue notice to the concerned government employee for considering regularisation ~~of~~ of the period of suspension. FR 54(A) (2)(i) envisages issual of notice for consideration of the period from the date of dismissal/removal/compulsory retirement to the date of reinstatement when such reinstatement was ordered by the court in the circumstances referred to therein. The memo dated 17.10.1992 in No. MSE/33/PF/91-92 does not indicate that such notice is given to the applicant.

6. It may be further noted that the period from the date of dismissal/removal/compulsory retirement till the date of reinstatement in regard to the cases coming under FR 54(A) (2) cannot be treated as dies non, for it is made clear ~~as~~ that some amount has to be paid which need not be whole of the pay and allowances for that period.

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(Lk)

Further F.R. 54(2)(i) states that, the dismissal/removal/ compulsory retired is set aside by the Court, solely on the ground of non-compliance with the requirement of Article 311 sub clause 1 and 2 of the constitution and where he is not exonerated on merits, the Government Servant shall subject to the provisions of FR 54 subclause (vii) be paid such amount as laid down therein and that amount had to be determined by the Competent Authority after giving notice to the Government Servant and after considering the representation, if any submitted by him in that connection within such period which in no case shall exceed 60 days from the date on which the notice had been serviced. There is an infirmity in the order dt.17-10-92 passed by the Disciplinary Authority as the notice as contemplated under FR 54(A)(2) was not issued by the applicant. Hence the order dt.17-10-92 is required to be set aside and the Disciplinary Authority had to proceed in accordance with FR 54 (A) (2) in regard to ^{each} period/periods from the date of removal till the date of ^{each} re-instatement.

7. It may be noted that the appellate authority modified the punishment as one of with-holding of increments. It is a minor penalty as referred to in Rule-11 of CCS (CCA) Rules. Further OM No.11012/15/85-Est.(A) dt.3-12-1985 lays down that if a Govt. Employee was suspended pending the Disciplinary Proceedings and if ultimately the same ended in minor penalty, the period of suspension has to be held as unjustified in

terms of FR 54(B) and as such the employee concerned should be paid full pay and allowances for the period of suspension by passing the suitable order under FR 54(B).

8. It may be noted that while the applicant ^{was} suspended on 18-1-85, the O.M. is ~~dt.~~ 3-12-85. But it makes it clear that the past cases already decided need not be re-opened while mentioning that ~~the~~ order will be effective from the date of issue. So it means that in all the cases where the order of punishment became final subsequent to 3-12-85, the said O.M. is applicable and the period of suspension is not relevant for considering whether the said OM is applicable or not. It means even if the entire or part of the suspension was earlier to 3-12-85, the delinquent employee gets the benefit of the same if the order of punishment is subsequent to 3-12-85 and if that punishment is by way of minor penalty.

9. While the Disciplinary Authority imposed punishment of reducing the pay to Rs.950/- from Rs.1130/- for four years without cumulative effect, the Appellate Authority modified it ~~as~~ with-holding of one increment with cumulative effect. The applicant is ^{aged} less than 45 years. He is still having more than 13 years of service. As the order of Appellate Authority ^{is} stated to be cumulative, it affects the pay of the applicant for the remaining period of service, ^{and} ~~but~~ also in regard to pension, DCRG and also encashment of leave. We feel that if the same is taken into consideration then a doubt arises as to whether the punishment imposed by the Appellate Authority

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effect monetarily the applicant more or whether the punishment imposed by the Disciplinary Authority is going to affect ^{him} monetarily more. Appellate Authority had not adverted to the same.

10. It is clear from the order of the Appellate Authority that it is felt that the order of Disciplinary Authority is harsh and hence lesser punishment ~~have~~ ^{not} to be imposed and in ~~in~~ ^{But} the result ~~is that~~ it might be a case of enhanced punishment if the difference in the pay on the basis of the Appellate Authority and on the basis of the Disciplinary Authority is taken into consideration. It is not a case where we are observing that the order of the Appellate Authority is harsh or excessive and thus it is not a case of remitting it to the Appellate Authority. ~~Appellate~~ But when the Disciplinary Authority felt that lesser punishment ~~has to be imposed~~ ^{less} than the punishment awarded by the Disciplinary Authority, the result appears to be the other way when it is ordered that the with holding of increments ^{with} cumulative effect. But if it is going to be ordered as one without cumulative effect, it will be a punishment less than the punishment imposed by the Disciplinary Authority and it will be according to the view of the Appellate Authority that lesser punishment has to be imposed than the one that was ~~was~~ awarded by the Disciplinary Authority. Hence we feel that it is a case of modifying the order of Appellate Authority by ordering it as without cumulative effect.

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11. In the result this O.A. is ordered as under :-

(a) The order of punishment as awarded by the Appellate Authority is modified by directing the with-holding of one increment ^{and} without cumulative effect;

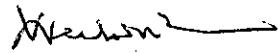
(b) The order of the Appellate Authority in confirming the order of Disciplinary Authority to treat the period of unauthorised absence as dies-non is confirmed;

(c) The period of suspension in pursuance of the order of suspension had to be treated as on duty and he had to be paid the pay and other alloances as adumberated in ~~order~~ O/I. No.11012/15/85-Est dt.3-12-85;

(d) The Disciplinary Authority i.e. the Respondent No.3, had to proceed in accordance with FR 54(A) (ii) and Sub-clause (i) in regard to the periods from the date of each removal till the date of ^{each} re-instatement as per the order of the Tribunal.

12. Original Application is ordered accordingly. No order as to costs. //


(R.RANGARAJAN)
Member (A)


(V.NEELADRI RAO)
Vice-Chairman

Dt. 27th September, 1995.

Dictated in Open Court.


Deputy Registrar (J) CC

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To

1. The Director of Postal Services, Hyderabad City Region, Hyderabad-1.
2. The Sr. Superintendent of Railway Mail Service, S.S.R.M.S. Hyderabad Sorting Division, Hyderabad-1.
3. The Manager, Mail Motor Service, Hyderabad-1.
4. One copy to Mr.K.Mangachary, Advocate, 1-9-626, Adigmet, Hyderabad.
5. One copy to Mr.N.V.Raghava Reddy, Addl.CGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE V.NEELADRIKAO
VICE CHAIRMAN

AND

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

DATED: 27-9-1995

ORDER/JUDGMENT

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

in

O.A.No. 27/93

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.

No Spare Copy

P.V.M.

