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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

..
O.A.No.353/1993.

Date: 10th September, 1996.

Between:

T.Ranganayakulu. Applicant.

A n d

1. Union of India represented by the Secretary, Department of Posts, Ministry of Communications, Government of India, New Delhi.
2. The Director of Postal Services, A.P.Southern Region, O/O the Post Master General, Kurnool 518005.
3. The Chief Postmaster General, A.P.Circle, Hyderabad-1.
4. Member Personnel, Postal Service Board, New Delhi 110001. .. Respondents.

Counsel for the Applicant: Mr. Syed Sharief Ahmed.

Counsel for the Respondents: Mr. N.R.Devaraj, Senior Standing Counsel for the Respondents.

CORAM:

HON'BLE SHRI JUSTICE B.C.SAKSENA, (VICE-CHAIRMAN, ALLAHABAD BENCH)
MEMBER, J

HON'BLE SHRI R. RANGARAJAN, MEMBER(A)

..

O R D E R

(PER HON'BLE SHRI JUSTICE B.C.SAKSENA, (VICE-CHAIRMAN,
ALLAHABAD BENCH), MEMBER(J)

..

Through this O.A., the Applicant challenges the Review Order dated 8-9-1992 passed by the Member, Personnel, Postal Board, New Delhi as well as the Appellate Order dated 24-12-1990. The relief prayed for by the applicant is ^{also} for quashing of an Order passed by the Appellate Authority. The applicant has

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sought also/the restoration of the increments which were withheld by reason of the order of punishment and also claims that a direction be issued to allow the petitioner's promotion to HSG.II with effect from 1-10-1991 under B.C.R. Scheme.

2. The 2nd Respondent issued charge-sheet against the applicant for the alleged submission of false T.A. Bills and similar other charges. The applicant instead of submitting his explanation to the charges levelled against him, filed O.A., in this Tribunal which was registered as O.A.187/86 and was subsequently dismissed on 11-8-1989 holding that there was no merit in the contention of the applicant in the said O.A. The applicant did not participate in the Disciplinary Proceedings though he was given several opportunities to do so. ~~and as the proceedings were held ex parte.~~ The enquiry was therefore held ex parte. The Enquiry Officer found all the charges are proved since the applicant belonged to LAG Cadre, the entire case was remitted to the 2nd Respondent with necessary documents for further disposal. The 2nd Respondent agreeing with the findings of the Enquiry Officer held the applicant guilty of the charges and by an Order dated 13-4-1989 awarded the punishment of reduction of pay of the applicant by two stages from Rs.1640 to Rs.1500.00 in the time scale of Rs.1400--2300 for a period of two years with effect from 1-11-1989 without cumulative effect.

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3. The applicant preferred an appeal on 27-4-1989 to the 3rd Respondent which was rejected. The applicant preferred a revision petition to the 4th Respondent which was rejected by the Order d/8.9.1992.

4. The Respondents have filed a detailed counter-affidavit. We have heard the learned counsel for the parties. The learned counsel for the applicant made the following submissions:

- i) That before the Disciplinary Authority passed an order of punishment, he was not furnished with a copy of the Enquiry Officer's report and there was violation of principles of natural justice ^{and} ~~under~~ _{for} Article 311(2) of the Constitution of India
- ii) That though the punishment was for reduction of two stages for two years but actually he has been deprived of six annual increments
- iii) That the Appellate Order is not a speaking Order and the Appellate Authority did not give him a personal hearing.

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5. As far as the first submission is concerned, the learned counsel for the applicant cited Supreme Court's decision in RAM CHANDER V. UNION OF INDIA (A.I.R. 1986 S.C.1173). We have carefully gone through this decision and in our opinion the said decision has

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wrongly been referred to in support of the submission that despite the 42nd Amendment to the Constitution of India, a second show cause notice was required to be issued and Enquiry Officer's report was required to be furnished. On the contrary in this decision, the Hon'ble Supreme Court held in paragraph 10 that "after the amendment of cl.(2) of Art.311 of the Constitution by the Constitution (Forty-Second Amendment) Act, 1977 and the consequential change brought about in Rule 10(5) of the Railway Servants (Discipline and Appeal) Rules, 1968, ~~it was~~ substituted by the Railway Servants (Discipline and Appeal) (Third Amendment Rules, 1978,) it is no longer necessary to afford a second opportunity to the delinquent servant to show cause against the punishment." It was noted that the ~~42~~ Forty-Second Amendment has deleted from Cl.(2) of Art. 311 of the requirement of a reasonable opportunity of making representation on the proposed penalty and, further, it has been expressly provided inter alia in the first proviso to Cl.(2) that : Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making ~~a~~ representation on the penalty proposed." It was therefore held that after the Forty-Second Amendment, the requirement of Cl.(2) will be satisfied by holding an

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enquiry in which the Government servant has been informed of the charges against him and given a reasonable opportunity of being heard. But the essential safeguard of ~~xxxx~~ showing his innocence ~~by~~ at the second stage that is to say after the Disciplinary Authority has come to a tentative conclusion of guilt of the accused upon a perusal of the findings ~~by~~ by the Enquiry Officer on the basis of evidence adduced as also against the proposed punishment has been removed to the determent of the delinquent Officer.

6. The question about the effect of the Amendment brought about ~~th~~ by the Forty-Second Amendment of the Constitution engaged the attention of the Hon'ble Supreme Court in subsequent decisions. Contrary views were expressed and ultimately the question came up for consideration before a ^{Three Judges} ~~Three Member~~ Bench of the Hon'ble Supreme Court in the case of UNION OF INDIA & OTHERS Vs. MOHD. RAMZAN KHAN ((1991) 16 ATC. 505). In this case the law was settled and it was provided that under Article 311(2) the first proviso as amended by the Forty-Second Amendment, the delinquent employee was entitled to a copy of the Enquiry Officer's Report and to make representation against it. It was also held that non-furnishing of a report to the delinquent would be violative of principles of natural justice rendering the final order invalid. Their Lordships of the Supreme Court, however, laid down that the Rule would be prospective and in operation and no

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punishment imposed shall be open to challenge on this ground.

The said decision was rendered on 20-11-1990. In the said decision Their Lordships of the Supreme Court also held that any contrary conclusion, if any, by ~~the~~ ^{two} ~~High Courts~~ ^{Judge Bench} or any ~~of the Benches~~ of the Supreme Court will ~~be~~ no longer ^{as} be taken good law. In the present case, since the Order of punishment had been passed prior to 20-11-1990 that is to say 13-4-1989, the plea that the Enquiry Officer's report has not been furnished cannot be of any avail to the applicant.

7. The second submission made by the learned counsel for the applicant also ~~xxx~~ is not tenable since in the ^{C.A.} ~~application~~ ^{on} it has been indicated that non-drawal of his increments ~~due~~ ^{on} 1-11-1991 and 1-11-1992 was in no way connected with the punishment imposed against him. The Service Book of the applicant was not available with the Pay Drawing Officer that is to say the Post Master, Malakapur (HQ). His Explanation offered in this connection is satisfactory and the submission made by the learned counsel for the applicant has to be rejected.

8. Coming to the last submission, we find ~~from~~ ^{Bel} the Order passed by the Appellate Authority which is on record as Annexure A-8 ~~xxx~~ is a speaking order. It cannot be said to be a non-speaking order. The Appellate Authority had considered all the grounds ^{raised} ~~challenged~~ ^{Bel} in

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the Appeal. The Applicant has not stated in the application that he had asked for a personal hearing before the Appellate Authority. That being so and in the absence of any statutory rule enjoining upon the Appellate Authority to afford a personal hearing, we are not impressed with the submission made by the learned counsel for the applicant.

9. In view of the aforesaid discussion, the O.A., has no merits and deserves to be dismissed and it is accordingly dismissed. No costs.



R. RANGARAJAN,

MEMBER (A)



B.C. SAKSENA, J

MEMBER (J)

Date: 10th Sep 1996

Pronounced in open Court."

Authd: 11/9/96
Dy. Registrar (S)

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O.A.No.353/93

Copy to:

1. The Secretary, Dept. of Posts,
Min. of Communications,
Govt. of India,
New Delhi.
2. The Director of Postal Services,
A.P.Southern Region,
O/O The Postmaster General,
Kurnool.
3. The Chief Postmaster General,
A.P.Circle, Hyderabad.
4. Member Personnel, Postal Services
Board, New Delhi.
5. One copy to Mr.Syed Shareef Ahmed, Advocate,
CAT, Hyderabad..
6. One copy to Mr.N.R.Devraj, Sr.CGSC,
CAT, Hyderabad.
7. One copy to Library, CAT, Hyderabad.
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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

The Hon'ble Justice Shri B.C. Saxena: V.C.
THE HON'BLE SHRI R. RANGARAJAN: M(A)

DATED: 10/9/96

ORDER JUDGEMENT
R.A./C.P./M.A.NO.

in
O.A.NO. 353/93

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED ✓
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS.

YLKR

II COURT

