

(55)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA.45/93

date of decision : 16-3-1993

Between

T.V. Subba Rao

: Applicant

and

1. Union of India, rep. by
The Telecom District Manager
Vijayawada 520010

2. Divisional Engineer Phones (Admn.)
O/o the Telecom District Manager
Vijayawada 520050

: Respondents

Counsel for the Applicant

: T.P.V. Subbarayudu
Advocate

Counsel for the Respondents

: N.V. Ramana, Standing
Counsel for Central Govt.

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HON. MR. JUSTICE V. NEELADRI RAO, VICE CHAIRMAN

HON. MR. R. BALASUBRAMANIAN, MEMBER (ADMINISTRATION)

Judgement

(As per Hon. Justice Mr. V. Neeladri Rao, Vice Chairman)

The applicant was dismissed from service as a Telecom Office Assistant. He challenged the said order ~~before the~~ ^{preparing} appellate authority by ~~praying an~~ appeal under RL No.3627, dated 3-4-91 which was received in the office of TDM, Vijayawada, on 4-4-1991. The said appeal was dismissed by (the Telecom District Manager), R-1, the appellate authority, as per his proceedings dated 16-1-1992.

2. The following reliefs are prayed in this OA :

To declare the report of the Inquiry Officer and the resultant order of 17-1-1991 dismissing the applicant as

unconstitutional being violative of Article 311(2) of the Constitution of India, and for all consequential benefits.

3. The order dated 17-1-1991 was sent by post by the Controlling authority under registered post on 28-1-1991. The same was returned as undelivered. The applicant submitted that it was ultimately delivered on 20-2-1991. The ~~said~~ allegation of the applicant that the order of 17-1-1991 was delivered to him in person on 20-2-1991 is not challenged.

4. It is evident from Rule 25 of CCS(CCA) 1964 Rules, that no appeal preferred shall be entertained unless such appeal is preferred within a period of 45 days from the date on which a copy of the appeal order has been delivered to the applicant. It is urged for the applicant that as he preferred the appeal by letter dated 3-4-1991 and as the said appeal was preferred within 45 days from the date of receipt of the order dated 17-1-1991, the appellate authority ~~was~~ in dismissing the appeal as being time barred. But the appellate authority observed that as the same was dispatched by the controlling authority by registered letter dt. 28-1-1991, 28-1-1991 should be taken as starting point for reckoning 45 days i.e. the period of limitation. But the said reasoning is not ~~covered~~ ^{correct}. It is clear from the Rule 25 of CCS(CCA) that the period of 45 days should be reckoned from the date of delivery of the impugned order. So it cannot be counted from the date of despatch. Accordingly, the order dated 16-1-1991 of the appellate authority is set-aside. So, it is necessary to direct the appellate authority to restore the appeal and consider the case on merits.


5. The learned counsel for the applicant submits that he has challenged the order dated 17-1-1991 of the Disciplinary authority and he is not challenging the order of the appellate

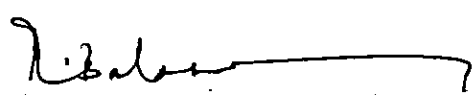
and hence
authority. This Tribunal has to consider this DA on merits.
But when once an appeal is preferred, the order of the
original authority ^{merges} with the order of the appellate
authority. Unless the orders of the appellate authority is
set-aside, the order of the original authority does not stand
revived. Hence, it is not open to the concerned employee to
challenge the order of the disciplinary authority i.e.
~~challenging~~ the original authority without challenging the
order of the appellate authority. In view of the material
on record, we feel that even though there is no specific
prayer for setting aside the order of the appellate authority,
~~we feel that~~ the applicant seeks the relief for setting aside
the order of appellate authority also.

6. Heard Sri T.P.V. Subba Rayudu, learned counsel for the
applicant and Sri N.V. Ramana, learned counsel for the
respondents.

7. In the result, the order dated 16-1-1991 of R-1 is set
aside. R-1, the appellate authority is directed to restore
the application and ^{dispo} ~~restore~~ the same on the merits. It is need
less to say that the applicant if aggrieved by the order of
the appellate authority, is at liberty to move this Tribunal.

8. DA is disposed of accordingly. No costs.


(V. Neeladri Rao)
Vice-Chairman


(R. Balasubramanian)
Member (Admn)

Dated : March, 16, 1993
Dictated in the Open Court

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O.A. 45/93

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. K. BALASUBRAMANIAN :
MEMBER (ADMN)

AND

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

DATED: 16/3/-1993

ORDER/JUDGMENT

R.P./ C.F/M.A.No.

in

O.A.No.

45/93

T.A.No.

(W.P.No)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed as withdrawn.

Dismissed

Dismissed for default.

Ordered/Rejected.

No order as to costs.

pvm

