

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.As. 643/94 & 1004/94.

Dt. of Decision : 31.1.95.

N. Tiruvengalam

.. Applicant in both
the OAs.

vs

1. Union of India, rep. by its
Secretary to Government,
Ministry of Defence,
New Delhi.

2. The Scientific Adviser to the
Minister of Defence & Director
General Research & Development,
Directorate of Personnel,

Ministry of Defence, New Delhi
3. The Director, Defence Research &
Development Laboratory,
PO Kanchanbagh, Hyderabad-500 258.

.. Respondents in both
the OAs.

Counsel for the Applicant : Mr. N. Rama Mohana Rao
(in both the OAs)

Counsel for the Respondents : Mr. N. V. Ramana, Addl. CGSC.
(in both the OAs)

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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OAs 643/94 & 1004/94

JUDGEMENT

(As per Hon'ble Sri Justice V.Neeladri Rao, Vice-Chairman)

As the applicant in both these O.As. is same and as the material facts are also same, it will be convenient to dispose of these two O.As. by common order.

2. The applicant was recruited as a labourer in D.R.D.L. and as he rejoined service on 27-1-65. He was suspended by order No.DRDL/Vsn/3 dated 6-6-74 as disciplinary action for alleged false medical claims was contemplated. Charge memo.No. DRDL/Vig/174-Estt. dated 4-4-77 was issued to the applicant for the two following charges:

- (i) That during the period from 1971 to 1973 the applicant preferred some false medical claims.
- (ii) That he procured false essentiality certificates and cash memos. for others for claiming false medical claims.

3. Then the Hon'ble Minister for Defence by marking copies to the General Secretary, Janata Party and also to Respondent-3, the Director, DRDL about charge-memo dated 4-4-77 issued to him and the disciplinary action in regard to the same. Then another charge-memo dated 9-7-77 was issued to the applicant by alleging that by such representation the applicant attempted to bring political and outside influence to bear upon R-3 to further ~~protect~~ his interest ~~and~~ in respect of matters pertaining to his service in DRDL.

4. The enquiries in regard to the above two charge-memos. were conducted separately. In both the above enquiry proceedings it was pleaded, inter alia, for the applicant that copies of the documents required by him were not furnished and the defence witnesses in regard to whom the lists were submitted by him were not summoned. In regard to the first limb of the charge-memo dated

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4-4-77 the enquiry officer found the applicant guilty while he held him not guilty of the other charge memo. But the disciplinary authority viz. R.3 held the applicant guilty even in regard to the second limb of the said charge and issued show-cause notice dated 18-7-1979 by tentatively coming to the decision to impose the penalty of removal. Thereupon the applicant filed W.P.No.5465/79 challenging the same by contending, inter alia, that it is R.2 the Scientific Advisor to the Ministry of Defence and Director General, Research and Development, Director of Personnel and not the Director of DRDL who is competent to pass order of removal in his case. The said Writ Petition was dismissed on 7-11-79. On 8-11-79 R.3 ~~xxx~~ passed the order removing the applicant from service.

5. The enquiry officer held the applicant guilty even in regard to the charge as per memo. dated 9-7-77 and the disciplinary authority issued show-cause notice dated 18-7-79 by tentatively arriving at the decision of removal from service. The said show-cause notice was also challenged in W.P.No.5464/79 on the very ground on which W.P.No.5465/79 was filed. This writ petition was also dismissed on 7-11-79, and on 8-11-79, R-3 issued order of removal even in regard to this charge.

6. The applicant filed Writ Appeal Nos.504/79 and 505/79 against the orders in writ petition Nos.5464/79 and 5465/79 respectively. Both those Writ Appeals alongwith some other writ appeals were allowed by judgement dated 22-4-80 by holding that the Director, DRDL lacks competence and jurisdiction to initiate disciplinary action against the applicant. The appeals against the judgements in Writ Appeals were filed in the Supreme Court. These SLPs/Civil Appeals were heard alongwith some other SLPs/Civil Appeals by the Supreme Court and by judgement dated 10-4-90 reported in

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1990(2) SLR 724 (Scientific Advisor to the Ministry of Defence
it was held that R.3 is competent to pass an order removing applicant and
Vs. S.Daniel), as merits were not considered in writ appeals Nos.504
and 505 of 1979, they were remitted to A.P. High Court. Thereupon
the applicant herein filed application praying for amendment of
the prayer in the writ petitions for the orders of removal were
passed after the writ petitions were dismissed. The Division Bench
of the A.P.High Court dismissed the WMPMs by holding that it was
this Tribunal that can consider a challenge in regard to the order
of removal, and without prejudice to the right of the applicant to
move this Tribunal against the orders of removal, the writ appeals
alongwith some others, were dismissed by order dated 2-2-94. There-
upon the applicant filed these two OAs challenging the orders of
removal dated 8-11-79.

6. It may be noted that it was alleged that hundreds of employees
in Defence Research Laboratories in Hyderabad viz. DRDL,DLRL
and DMRL, had come up with ~~false~~ medical claims and they were
allowed, and on investigation it was found that those claims were
false. Thereupon a high level committee was constituted to enquire
from each of those claimants as to whether he was going to confess
about the same. Except 30 to 40 of the employees, the rest confess-
sed, and then recovery was ordered in regard to the amount paid
towards false medical claims and penalty of withholding increments
ranging from one to three was imposed. In regard to those who
confessed about the guilt about the false medical claims. The enquiry
was held in regard to those who have not confessed. Then they
approached the A.P. High Court either before the enquiry was closed
or against the order of removal by way of punishment. The writ
petitions which had come up for consideration before 22-4-80 the
date of judgement in the writ appeals, were dismissed. The writ
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petitions which had come up for consideration on or after 22-4-1980 were allowed. Then the respondents preferred appeals before the Supreme Court against all those orders in writ petitions and writ appeals. When in view of the judgement dated 10-4-90 the writ petitions were remitted to A.P.High Court, they were transferred to this Tribunal. TA Nos.13, 14, 18, 19, 21 and 25 of 1991 are some of such TAs.

7. The above TAs alongwith TA 85/87 and OA 577/87 were disposed of by common order dated 8-10-93 by this Hyderabad Bench and ~~one of us~~ ^{to it.} ~~one of us~~ (Vice-Chairman) was a party. It was held therein that there was no force in the contentions for the applicants therein that they were not given sufficient opportunity in not furnishing the documents requested for and in not summoning the witnesses cited by them. It was ^{also} held therein that there was nothing ~~to show the applicants therein were there was nothing~~ ~~or record~~ to show that the applicants therein were not guilty in regard to the false medical claims and/or acting as agents on behalf of other claimants claiming false claims towards medical bills and the documents required for would not help their case. The same learned advocate who is appearing for the applicant herein appeared for the applicants therein. It is fairly conceded by him that in view of the finding in the above TAs, he cannot ~~persuade~~ this Bench ~~to conclude~~ in regard to the above contentions. Hence for the reasons stated in the order dated 0-10-93 13/91 and batch, we hold that there is no force in the contention for the applicant that he was not given sufficient opportunity in the enquiry in regard to the false medical claims and also the charge in regard to the representation directly given to the Hon'ble Defence Minister.

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D.S.J.W.

8. It was held in TA 13/91 and batch that as the punishment of removal had to be held as grossly disproportionate and excessive as the other employees who were held guilty in regard to similar charges were imposed a punishment of withholding 1 to 3 increments. Hence for the reasons stated therein we feel that in regard to the enquiry on the basis of charge-memo. dated 4-4-77 the punishment of removal is excessive and hence the same has to be set aside. It was further held in TA 13/91 that it was not just and proper to remit the matter again to the disciplinary authority for imposing appropriate punishment as it was an incident which had taken place about two decades back and as only minor punishment was imposed by R.3 in regard to those who confessed in regard to same charges, and hence a punishment of withholding of two increments was imposed besides ordering recovery of the amount paid to the applicants towards the medical claims which were found to be false. Hence we feel that similar punishment can be imposed in regard to charge dated 4-4-77.

9. We cannot accede to the contention of the applicant that making direct representation to higher authority in regard to a disciplinary matter pending cannot be treated as a grave one. But it was stated for the applicant that he was a mere labourer and he was misguided in making that representation and hence lenient ~~extenuating~~ view may be taken. We feel that in view of the above ~~extenuating~~ circumstances, it has to be held that the punishment of removal even for the said charge has to be held as excessive. It cannot be even a case where compulsory retirement has to be held as just and proper for he must have been prevailed upon by others who were facing the enquiry to submit such a representation. Hence in the circumstances the order of removal in regard to this charge also has to be set aside and reinstatement has to be ordered, for any punishment that is going to be imposed by R.3 to whom the matter has to be remitted for imposing appropriate punishment will be even less than compulsory retirement.

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10. It may be noted that judgement in Writ Appeals/Writ ~~app~~ petitions, disposed of subsequent to the disposal of the Writ Appeals, was in favour of the respective applicants. the Supreme Court directed payment of salary and other emoluments if they are not going to be reinstated pending disposal of the appeals before the Supreme Court, and subsistence allowance in regard to those against whom enquiries were not over by the time ~~Writ Appeals~~ SLPs were filed before the Supreme Court. In pursuance of those directions, salary and emoluments/subsistence allowance was paid till the matter was disposed of by the Supreme Court in 1990. Keeping the same in view it was held ~~now~~ in TA 13/91 and batch that the applicants therein are not entitled to any back wages from the time their salary/subsistence allowance was ~~ceased~~—~~paid~~ paid till 1-1-94, the date by which the applicants therein were required to be reinstated failing which they will be entitled to salary ~~as~~ from that date. It was further held therein that the salary and emoluments/subsistence allowance which was already paid should not be recovered from the respective applicants and the period from the date of removal till the reinstatement does not count for seniority or increment, and it counts only for pension and retiral benefits. The applicants therein to the extent it is against them i.e., preferred SLP against the said order/ in not ordering back wages to them for the periods referred to and in not reckoning ~~counting~~ the relevant period for reckoning seniority Supreme Court by or increment. They were dismissed by order dated 21-10-94.

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11. Hence it is just and proper to order even in regard to the applicant that he is not entitled to salary/emoluments from the date the same ~~was not~~ ~~was suspended~~ paid till 1-3-95 the date on which the applicant has to be reinstated as per this order failing which he is entitled to the ~~same~~ salary and other emoluments from 1-3-95.

12. The amount paid by way of salary and emoluments as per the interim orders of the Supreme Court should not be recovered from the applicant. The period from the date of removal till the date of reinstatement does not count and it for seniority or increment which counts only for pension and other retiral benefits.

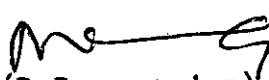
13. In the result ~~these~~ OAs are ordered as under:

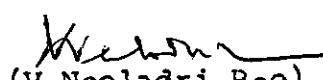
(i) The order dated 8-11-79 removing the applicant from service on the basis of the enquiry against the applicant in regard to the charge memo. dated 4-4-1977 is set aside. Two increments of the applicant without cumulative effect are withheld by way of punishment on the basis of the findings in the enquiry in regard to the above charge. The amounts paid to the applicant towards medical claims which were found to be false have to be recovered. The recovery can be effected from the salary of March 1995 onwards as per rules.

(ii) The order of removal dated 8-11-79 on the basis of the enquiry pertaining to charge memo. dt. 9-7-77 is set aside. The matter is remitted to the Respondent-3 to impose appropriate punishment in accordance with law by and keeping in view the observations in this order and after issuing a notice to the applicant in regard to the proposed punishment.

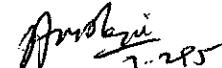
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(iii) The applicant has to be reinstated by 1-3-95 failing which he has to be paid salary and other emoluments from that date. The period from the date of removal till reinstatement as per this order or 1-3-95 whichever is earlier does not count for seniority or increments and it counts only for pension and other retiral benefits. The applicant is not entitled to salary and other emoluments for the period from which the same were not paid till the date of reinstatement or 1-3-95 whichever is earlier. The amounts paid to applicant as per orders of Supreme Court cannot be recovered from him. No costs. /


(R. Rangarajan)
Member/Admn.


(V. Neeladri Rao)
Vice-Chairman

Dated: the 31st January, 1995.


Deputy Registrar (J) CC

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To

1. The Secretary to Govt. Ministry of Defence, Union of India, New Delhi.
2. The Scientific Adviser to the Minister of Defence and Director General Research & Development, Directorate of Personnel, Ministry of Defence, New Delhi.
3. The Director, Defence Research & Development Laboratory, PO Kanchanbagh, Hyderabad-258.
4. One copy to Mr. N. Ramamohan Rao, Advocate, CAT. Hyd.
5. One copy to Mr. N. V. Ramana, Addl. OGSC. CAT. Hyd.
6. One copy to Library, CAT. Hyd.
7. One spare copy.

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PJS/09/95