IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 645/94,
O.A. 855/94.

Dt. of Decision : 31.1.95.

P. Bhavanarayana .. Applicant in OA.No. 645/94.

P. Bhavanarayana .. Applicant in OA.No. 855/94.

Vs

1. The Union of India, Rep. by its Secretary, Ministry of Defence, South Block, New Delhi.

2. The Scientific Adviser to the Minister of Defence & Director General Research & Development, Directorate of Personnel, Ministry of Defence, New Delhi-110 011.

3. The Director, Defence Research & Development Laboratory, P.O. Kanchanbagh, Hyderabad-500 258. .. Respondents in both the OAs.

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

Counsel for the Respondents : Mr. N.V.Raghava Reddy, 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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O.A.No.645/94 & 855/94. Date: 31/1/95

J U D G M E N T

X as per Hon'ble Sri R.Rangarajan, Member(Administrative) X

Heard Sri N.Rama Mohan Rao, learned Counsel for the applicant and Sri N.V.Raghava Reddy, learned Standing Counsel for the respondents in both the OAs.

2. The applicant is same in both the OAs and as both the OAs are inter-related both the OAs are disposed of by this common judgment.

3. The applicant herein joined as an L.D.Clerk on 28.2.1963 in the D.R.D.L. at Hyderabad. He was subsequently promoted as U.D.Clerk with effect from 1.12.1969. He was elected as General Secretary of a Trade Union called D.R.D.L. Civilian Employees Union. But this Union was not a recognised one, as the establishment belong to the Ministry of Defence.

4. While working as U.D.Clerk by proceedings dt. 23.9.1974, he was placed under suspension by R-3 pending contemplated disciplinary proceedings against him. A charge memo dt. 11.4.1977 was served on the applicant levelling two charges against him. The allegations contained in the charge memo are that the applicant had preferred false medical claims during the period 1972-74 for treatment of himself and family dependents without actually consulting the Doctors and without taking treatment for the disease which caused loss to the D.R.D.L. administration thereby violating Rule-3 of C.C.S.(Conduct) Rules, 1964 and that the applicant also made some of the illiterate employees of the D.R.D.L. to forcibly sign certain appeals to the higher authorities.

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5. After an enquiry in regard to the above charges. a show cause notice dt. 30.4.1979 was served on the applicant proposing to impose the penalty of removal from service. The applicant initially filed W.P.No.4039/74 on the file of A.P.High Court to quash the show cause notice contending that the Director, D.R.D.L. is not the appropriate authority and hence the Director, DRDL cannot remove the applicant from service. This writ was dismissed by the A.P.High Court on [illegible] became effective from 13.11.1979. Subsequently, the applicant filed Writ Appeal No.501/79 on 26.11.1979 against the dismissal of the W.P.No.4039/79 inter-alia contending that the Director, DRDL was not empowered to initiate the disciplinary proceedings against the applicant nor he had the power to pass the order of removal. The Division Bench of A.P.High Court allowed the Writ Appeal and held that the Director, DRDL lacks competence and jurisdiction to initiate disciplinary action against the applicant. The matter was carried in appeal by the Union of India to the Supreme Court by filing Civil Appeals which were disposed off by the order dt. 10.4.1990 and it was reported as Daniel case (1990(2) SLR 722 - Scientific Advisor to the Ministry of Defence and Ors. Vs. S.Daniel) and Ors.). Therein, the Supreme Court held that the Director, DRDL is competent to initiate the enquiry proceedings and also pass the order of removal against the applicant. The Writ Appeal 501/79 filed by the applicant was remanded back to the Division Bench of the High Court of A.P. The Division Bench by its order dt. 2.2.1994 dismissed the W.A.No.501/79 on the ground of jurisdiction and made it clear that the said

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judgment dt. 2.2.1994 in W.A.No.501/79 does not preclude the applicant (applicant in O.A.No.645/94) from seeking appropriate relief from the appropriate forum in respect of the orders of removal passed against him. Thus, the matter has now been agitated in this Tribunal by filing O.A.No.645/94.

6. The applicant had also filed another O.A.No.855/94 on 4.7.1994 against the order of removal of R-3 dt. 8.11.79. The date of order of removal in O.A.No.855/94 is also the same date viz. 8.11.1979 as in the case of order of removal issued in O.A.No.645/94 quoted above. The Charge in O.A.No.855/94 is that the applicant organised and actively participated in an illegal strike and instigated other staff members also to stop work during the period December, 1977 - January, 1978 as per Memorandum of Charge sheet dt. 23.2.1979. A show-cause notice to impose penalty of removal from service was issued to him on the basis of the enquiry conducted on 29.6.1979. The applicant initially filed W.P.No.5110/79 on the file of A.P.High Court questioning the competence of R-3 to initiate disciplinary proceedings. Though the said W.P. was dismissed, on Writ Appeal No.500/79 the Division Bench of A.P.High Court held that the Director lacks competence and jurisdiction to initiate disciplinary action against the applicant. The matter was carried in appeal to Supreme Court by filing Civil Appeals which were disposed off by order dt. 10.4.1990 remitting back the matter to the High Court of A.P. with a direction to dispose of the matter on merits. The Writ Appeal No.500/79 was dismissed by A.P.High Court with a direction to approach appropriate forum for relief in respect

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of orders of removal passed against the applicant. Thus, the matter has now been agitated in this Tribunal by filing this O.A.

7. By order dt. 6.6.1994 in M.A.No.376/94 in O.A. S.R. 1012/94, this Tribunal has not rejected the O.As on the ground that the applicant has not exhausted the alternate remedy of relief and admitted the O.As. on 25.7.1994.

O.A.No.645/94.

8. It is stated for the respondents that there was only one Article of charge against the applicant and the enquiry officer has divided the charges into two limbs. In the first limb of the charge, the enquiry officer had stated that the applicant preferred false medical claims and the second limb of the charge was that the applicant was responsible for making some of the DRDL illiterate employees to forcibly sign [illegible]. The enquiry officer had held that the first limb of the chargewas proved, and the evidence in respect of the second limb of the charge was not sufficient to hold the applicant guilty. It is further stated for the respondents that the disciplinary authority agreed with the findings of the enquiry officer and held that the article of charge that the applicant had preferred false medical reimbursement claims is proved. The grounds on which the disciplinary authority relied upon are (1) that the applicant himself had admitted before the fact finding committee that the medical claims in regard to the bills referred to in the charge are false. (para-25.J of the reply), (2) The Statements of the co-employees during the fact-finding enquiry naming the applicant as one of those who had filed false medical reimbursement claims, and (3) the material gathered by the CBI and the

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and the irregularities found in the essentiality certificate.

9. The applicant contended inter-alia that the charge is not proved and the applicant along with few others was picked up for disciplinary action. The applicant was removed from service because of his trade union activities and this punishment is discriminatory in view of the fact that many of the employees who indulged in preferring false claims were let off by awarding minor penalty like withholding of increments for certain period etc. It is further stated for the applicant that the punishment by way of removal is wholly disproportionate to the guilt and at best the change warrants only imposition of minor penalty.

10. It is stated for the respondents that enough opportunity was afforded to the applicant at the time of enquiry and the principle of naturel justice was fully followed. It was also stated for the respondents that in the case of employees who admitted their guilt at the time of fact finding enquiry were punished by way of censure/withholding of one increment/withholding of two increments.//When some of the employees of DRDL, DLRL, DMRL were punished for such false claim of medical bills by way of removal, they challenged the same in Writ Petitions and when those Writ Petitions were transferred to this Tribunal, after they were remitted back to the High Court by Supreme Court, T.A.13/91, 14/91 and some other TAs had come up for consideration on 8.10.1993. There are also the cases where the challenge was made by the employees against the order of removal in regard to false claim of medical bills and acting as agents in procuring receipts for purchase of medicines and producing

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essentiality certificates from the doctors. There are also cases where the applicants in majority of those T.As. admitted before the fact finding committee about the false claims. There also the enquiry officers held that the charges were not proved and the disciplinary authorities differed from the same and issued show cause notices to the respective employees as to why they should not differ from the findings of the enquiry Officers for reasons stated therein. Sri N.Ram Mohan Rao, learned counsel for the applicant herein also appeared for those batch cases and raised similar contentions in those cases also.

11. After going through the various contentions of both the parties for reasons stated therein in the order dt. 8.10.1993 in T.A.No.13/91 and batch, the Bench found that there are no grounds to interfere with the findings of the disciplinary authority that the charge against the applicant is proved.

12. The contention for theconcerned employee ~~is~~ that the punishment for removal was discriminatory, was accepted by the order dt. 8.10.1993 in T.A.No.13/91 and Batch. In this case also, the facts are similar in regard to the said aspect. It is not shown why the Department had chosen to issue the charge memo to the applicant even after he accepted the guilt before the fact finding committee for awarding major penalty, when the minor penalty was imposed in regard to other employees who admitted the false medical claims. Hence, for reasons stated in the order dt. 8.10.1993 in T.A.No.13/91 and batch, the order of removal in regard to this charge of false claims of medical bills has to be set aside and the minor punishment of withholding two increments has to be imposed.

SLP bearing Nos.18506-18511/94 filed by the petitioners TA No.13/91 and batch were dismissed by the Apex court by order dt. 21.10.1994.

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13. The applicant (in OA 645/94) was paid last drawn salary till 10.4.1990 the date of disposal of appeals by the Supreme Court in view of the interim orders. In the order dt. 8.10.1993 in T.A.13/91 and batch passed by this Bench for which one of us was a Member (Justice Sri V.Neeladri Rao, Vice-Chairman) it was held that the delay in disposal of the matters is due to the stand taken by the applicant that the Director is not competent to take disciplinary action against the applicant and as the said plea was not accepted by the Supreme Court, it is not just and proper to pass an order for payment of salary or subsistence allowance from 11.4.1990 till the date of reinstatement in pursuance of the orders therein. We feel that similar order has to be passed in this O.A. also. In the order dt. 8.10.1993 passed in T.A.No.13/91 and batch it was held that the applicants therein have to be reinstated by 1-1-1994 failing which they are entitled to the salary and allowances from that day and the period from date of removal till the date of reinstatement has to be reckoned for the purpose of pension and terminal benefits and the same does not count for seniority and increments, and the applicant has to be reinstated by 1.3.95 and he is entitled for similar relief as in TA 13/91. We pass similar order as in T.A.No.13/91 in this O.A. i.e. 645/94. O.A.No.645/94 is accordingly disposed of.

14. We will now consider the contentions raised in regard to O.A.No.855/94. It was urged for the applicant as under:-

(i) R-3 was victimised the applicant because of his Trade Union activities of the unrecognised DRDL Civilian Employees union, and access to certain documents were denied to him which resulted in miscarriage of natural justice.

(ii) When the order of removal was passed in regard to charge memo covered by OA 645/94 there was a severance of relationship of employer and employee and hence the order of removal passed in regard to charge covered by OA 855/94 is a void order.

(iii) The punishment of removal is shockingly disproportionate to the guilt even if it is held as proved.

15. The respondents in their reply statement stated that R-3 is not prejudiced against him because of his activities, but when he organised an illegal strike, action was taken by issuing a charge-sheet. It is further stated that the applicant failed to produce any documents or witnesses on his behalf and as there was no such document as required by the applicant, the same could not be furnished to him. The Enquiryofficer had given his findings that the applicant was guilty of charge framed against him. On the basis of the materials available on record we do not find infirmities in regard to the enquiry conducted and thus there are no grounds to hold that there is any irregularity in the enquiry that was conducted.

16. It was contended that the order of removal comes into effect when the same was despatched on delinquent employee. But "1982 Lab.I.C. 1361 (Umasankar Chatterjee Vs. Union of India and others)" the judgment of the Calcutta High Court relied upon does not support the said contention of the applicant. The Supreme Court held in [AIR 1966 SC 1313 - State of Punjab Vs. Amar Singh] that the order of dismissal or removal comes into effect from the date on which it is served or deemed to have been served on the delinquent employ while the order of reversion or suspension comes into effect from the date of despatch of the order.

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16. It has to be seen that the order of removal in both the OAs (OA 645/94 & 855/94) is dt. 8.11.1979. Further, it is the case of the applicant that he received both the orders of removal on the same date.

17. But, as a matter of fact, the applicant might have been one or the other order earlier. When once the earlier order of removal had come into effect at the time of receipt by the applicant, the other order has to be held as void for there cannot be another order of removal after there was severance of relationship of employer and employee. We feel that as the charge memo covered by OA 645/94 is in regard to incident which had taken place during the year 1972-73 (for which charge-sheet was issued on 11.4.1977) and thus earlier to the incident for which he was charge-sheeted on 23.2.1978 in respect of the case covered by O.A.No.855/94, it is just and proper to presume that the order of removal in regard to charge-memo covered by O.A.No.645/94 was received earlier and thus there was severance of relationship of employer and employee by the time the order of removal covered by OA No.855/94 was received and so it has to be held as void. Hence, the removal order is liable to be set aside restoring the relation of employer and employee for further disposal of the case.

18. Under the circumstances, it is just and proper to set aside the order of removal in regard to the charge covered by O.A.No.855/94 and remit it to the disciplinary authority to pass appropriate orders after giving notice to the applicant about the proposed punishment and after considering the explanation of the applicant in regard to the same if any. Though it is not necessary to issue such a show-cause notice in case of disciplinary enquiries against

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Government employees, after amendment of Article 311, we veel it just and proper to give such a direction as it is a matter that has to be considered after a lapse of over 15 years.

19. The learned counsel for the applicant urged that the applicant is in the lower rung of the organisation and he suffered for want of job for more than a decade and he has been victimised for his trade union activities which he undertook with a view to help the co-workers and hence the learned counsel for the applicant pleaded that the punishment of removal has to be held as disproportionate. In view of the course we adopted i.e. as this is the matter which has to be remitted to the disciplinary authority, we leave it to the disciplinary authority to take into consideration these contentions and other contentions that may be raised by the applicant in the explanation to the show-cause notice to be given as per this order. Hence, we do not want to express any views in regard to the same. But, it is made clear that if the applicant is going to be aggrieved by the order to be passed by the disciplinary authority, he is free to move this Tribunal if so advised.

20. In the result, the order of removal dt.8.11.1979 removing the applicant from service in regard to the false claims of medical bills referred to in the charge-sheet dt. 11.4.1977 in OA 645/94 is set aside. Instead of removal, withholding of two increments without cumulative effect is ordered as punishment in view of the finding that the charge referred to is proved. 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. The applicant

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has to be reinstated by 1-3-1995 failing which he is entitled to the salary and allowances from that date and the period of service from the date of removal till the date of reinstatement does not count for increments or seniority and it only counts for pension and other terminal benefits. The applicant is not entitled for salary and other emoluments for the period from which the same were not paid till the date of reinstatement or 1-3-1995 whichever is earlier. The amounts paid to the applicant as per orders of Supreme Court referred to in para-13 supra cannot be recovered from him.

21. The order dt. 8.11.1979 removing the applicant [illegible] aside and the matter is remitted back to the disciplinary authority to pass the order in regard to punishment after giving notice to the applicant in regard to the punishment to be proposed after considering the explanation if any in this regard.

22. Both the OAs are ordered accordingly. No costs./

(R.Rangarajan)
Member(Admn.)

(V.Neeladri Rao)
Vice-Chairman

Dated 31st January, 1995.

Deputy Registrar(J)CC

Grh.

To

1. The Secretary, Ministry of Defence, Union of India, South Block, New Delhi.
2. The Scientific Adviser to the Minister of Defence Director General Research & Development, Directorate of Personnel, Min.of Defence, New Delhi-11.
3. The Director, Defence Research & Development Laboratory, P.O.Kanchanbagh, Hyderabad-258.
4. 2 copies to Mr.N.Ramamohan Rao, Advocate, CAT.Hyd.
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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