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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

ORIGINAL APPLICATION NO. 1145/94

DATE OF ORDER : 03-06-1997.

Between :-

M.T.K.Murthy

.. Applicant

1. Chief Postmaster General,  
AP Circle, Hyderabad.
2. Postmaster General,  
Vijayawada Region, Vijayawada.
3. Director of Postal Services,  
Vijayawada Region, Vijayawada.
4. Sr. Superintendent of Post Offices,  
Prakasham Division, Ongole.

.. Respondents

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Counsel for the Applicant : Shri S.Ramakrishna Rao

Counsel for the Respondents : Shri N.V.Ramana, Addl.CGSC

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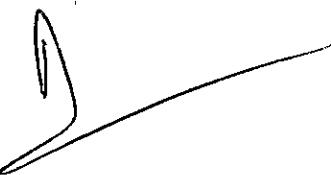
CORAM:

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

THE HON'BLE SHRI B.A.JAI PARAMESHWAR : MEMBER (J)

(Order per Hon'ble Shri R.Rangarajan, Member (A) ).

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.. 2.

(Order per Hon'ble Shri R.Rangarajan, Member (A) ).

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Heard Shri S.Ramakrishna Rao, learned counsel for the applicant and Shri V.Rajeshwar Rao for Shri N.V.Ramana, standing counsel for respondents.

2. The applicant was issued with the charge sheet for certain omissions which were disclosed by Respondent No.4 by ~~in~~ his order dt.30-9-91 (Annexure-II to OA). By this order the applicant was removed from service. He appealed against that order to Respondent No.3 and the appeal was disposed of by Respondent No.3 by order dt.6-7-92 (Annexure-III to OA). The operative portion of the order reads as follows :-

"(5) In view of the foregoing, I hereby order that the penalty of removal of the appellant, from service, imposed by the SSPs, Prakasam DnI, is quashed with immediate effect. This will be without prejudice to any future action that may be taken against the appellant.

(6) I further direct that the SSP, Prakasam Dn. may issue a Memo. of charges afresh correctly and proceed against the appellant for the irregularities/lapses committed by him as per rules. The appellant will however continue under put off duty till such time the proceedings now proposed are finalised."

Against this, the respondent No.4 in pursuance of the order of the respondent No.3, instituted fresh proceedings for the same charges and on the basis of the fresh proceedings, the applicant was removed from service by Respondent No.4 by his order dt.8.2.94 (Annexure-IV to OA). Against this order, the

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....3.

applicant filed an appeal to Respondent No.3. That appeal was disposed of by Respondent No.3 by his proceedings dt.30-6-94 (Annexure-VI to OA). By that order, the punishment of removal from service was revised to Censure. Thereafter Respondent No.2 reviewed the case of the applicant and issued a showcause notice dt.30-8-94 whereby it was sought to revise the said penalty to that of removal from service.

3. This O.M. is in response to the showcause notice dt.30-8-94 issued by Respondent No.2 proposing revising penalty ~~from removal~~ to censure.

4. An interim order was passed in this O.A. on 20-9-94. By the interim order, the impugned order dt.30-8-94 was kept in abeyance and the status quo was ordered to be maintained.

5. In view of the interim order dt.20-9-94, the applicant is still continued in service. The main contention of the applicant in this O.A. is that he has got three months time to appeal against the order of censure which was issued on 30-6-94. That three months time ~~will expire~~ only on 30-9-94. Hence the issue of showcause notice before the expiry of three months is premature and cannot be sustained. In this connection, the applicant relies on Rule 16 of EDA Conduct and service rules. This rule is extracted below :-

" Provided that no case shall be re-opened under this rule after the expiry of six months from the date of the order to be reviewed except by the Central Government or by the Head of the Circle and also before the expiry of the time-limit of 3 months prescribed for preferring an appeal: "

*R*

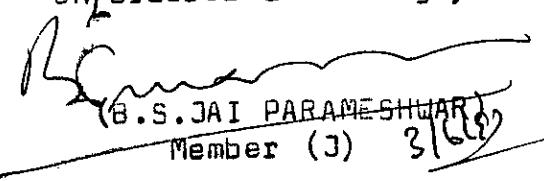
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It ~~xxxxxx~~ is also stated that even the showcause notice have to be issued after the expiry of 3 months and quoting rule 16 is incorrect.

6. The learned counsel for the respondents submits that there is no bar in issuing a show cause notice within the 3 months period but only the final order shall not be issued before the expiry of 3 months. But the spirit of the rule has to be considered. The applicant has got a channel for redressal of his grievance. If a pre-empting action is taken before the statutory period of appeal is over then, when the appeal is submitted, it may be possible that the appellate authority <sup>might</sup> ~~be~~ <sup>have</sup> prejudiced ~~to~~ <sup>by</sup> the show cause notice issued already. Hence it has to be held that even the show cause notice has to be issued after only/the expiry of 3 months period as embodied in the provisions of the impugned proceedings dt.30-8-94 is contrary to rules and has to be set aside. But setting aside of the impugned proceedings is only on <sup>technical</sup> ~~the taken~~ grounds. Hence liberty has to be given to the respondents to proceed by issue of fresh proceedings if they are so advised.

7. In the result, the impugned memorandum dt.30-8-94 is set aside. But liberty is given to the respondents to proceed by initiating fresh proceedings in the place of the impugned proceedings, if they are so advised.

8. ~~is~~ <sup>is</sup> ordered accordingly. No costs.

  
(B.S.JAI PARAMESHWAR)  
Member (J) 31(6)

  
(R.RANGARAJAN)  
Member (A)

  
D.R. (J) 16/68

Dated: 3rd June, 1997.  
Dictated in open court

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17/97  
TYPED BY  
COMPARED BY

CHECKED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD

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

THE HON'BLE SHRI B.S.JAI PARAMESHWAR:M  
(J)

DATED:

3/6/97

ORDER/JUDGEMENT

M.A./R.A/C.A. NO.

in  
D.A. NO. 1145/94

Admitted and Interim directions  
Issued.

Allowed

Disposed of with directions,

Dismissed

Dismissed as withdrawn.

Dismissed for default

Ordered/Rejected.

No order as to costs.

YLKR

II Court.

