

✓
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.Nc.1241/94.

Dt. of Decision : 25-07-97.

A.Venkata Reddy

.. Applicant.

Vs

1. The Union of India, Rep. by the Director General, Dept. of Posts, Dak Bhavan, New Delhi-1.
2. The Member, Postal Services, O/o the Director General, Dept. of Posts, Dak Bhavan, New Delhi-1.
3. The Director of Postal Services, A.P. Northern Region, Hyderabad-1.

Sec. Bnd. Division, Begumpet, Hyd-16. --- .. Respondents.

Counsel for the applicant : Mr.J.V.Lakshmana Rao

Counsel for the respondents : Mr.N.V.Raghava Reddy, Addl.CGSC.

CORAM:-

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

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (JUDL.)

[Signature]

ORDER

ORAL ORDER (PER HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (JUDL.))

Heard Mr.J.V.Lakshmana Rao, learned counsel for the applicant and Mr.W.Satyamarayana for Mr.N.V.Raghava Reddy, learned counsel for the respondents.

2. The applicant while working as Postal Assistant was selected and deputed for Telegraph Training (Practical), Central Telegraph Office, Secunderabad for 3 months from 6-6-86 to 5-9-86. After completion of the said training the applicant submitted TA bill for Rs.750/- towards lodge expenses during his one month period of stay in a lodge i.e., 6-6-86 to 5-7-86. It is stated that the applicant during the balance period of 2 months practical training stayed in his friend's house. Along with the TA bill, he had submitted the receipt issued by M/s Hotel Yuvaraj, Hyderabad.

3. It appears that the respondents conducted preliminary enquiry as to the genuineness or otherwise of the said Hotel receipt submitted by the applicant with the Manager, Hotel Yuvaraj, and found that the receipt submitted by the applicant was not a genuine one.

4. Hence, he was served with a major penalty charge memo, a copy of which is annexed to the OA (i.e., Annexure-1). In annexure-1 to the charge memo, the disciplinary indicated that the charges would be substantiated by examining the Manager, M/s Hotel Yuvaraj, Hyderabad and I.P.C.(C), Hyderabad City Division, Hyderabad. However during the enquiry the Manager of the said Hotel was not examined.

5. Thereafter, the enquiry officer submitted his report dated 22-12-88 (Annexure-IV). The disciplinary authority considering the report imposed the punishment of reduction of pay of the applicant by two stages from Rs.1125 to Rs.1075/- in the time scale of pay of Rs.975-1660/- for a period of two years with immediate effect. This punishment was corrected as Rs.1150 to Rs.1100/- by means of a corrigendum issued under Memo No.E1/TE/AV dt.23-2-89. It was further directed that the applicant ^{could} not earn increment, during the said period.

6. Against that order of punishment the applicant preferred an appeal to the appellate authority. The appeal was rejected as time barred as per order dt. 2-3-90. Against the order of appellate authority, the applicant preferred a revision petition. The revision petition came to be dismissed as per order dated 26-3-91. The applicant filed a review petition which was also dismissed by the order dated 31-5-94.

7. The applicant has filed this OA challenging these four orders dated 23-1-89, 2-3-90, 26-3-91 and 31-5-94, praying to set aside the same and for consequential benefits.

8. The respondents have filed a counter stating that the Manager, Hotel Yuvaraj, Hyderabad remained absent inspite of service of notice on him, that the disciplinary authority felt it was not fit case for production of the said witness invoking the provisions of the Enforcement of Attendances of witnesses and Documents Act, 1972 that thus the enquiry officer dispensed with the presence of the Manager, Hotel Yuvaraj, Hyderabad, that to that effect a note was made in the proceedings dated 23-7-88 that taking into consideration the report of the investigating officer dt. 22-12-88, proceedings were issued by imposing punishment that during the course of preliminary enquiry Inspector of Post Office (C), Hyderabad City Division, had contacted the Manager, Hotel Yuvaraj that the said Inspector had confronted the receipt issued by the Cashier of the said hotel (bearing No.8229 dated 5-7-86) that the Manager denied having issued the said receipt for 30 days' stay from 6-6-86 to 5-7-86 that he ~~had~~ further made it clear that the applicant stayed in the Hotel only for 3 days from 6-6-86 to 8-6-86 and was charged Rs.75/-. That Hotel Manager gave a letter to the said effect on 21-5-87 and that the authorities have properly analysed the evidence and imposed the punishment and that there are no grounds to interfere that the impugned orders.

Jai

D

..4

9. It is an admitted fact that the Manager Hotel Yuvaraj was the material witness to speak to the fact whether the receipt bearing No.8229 dt. 5-7-86, ^{Wage} a genuine one or not. The respondents have produced a copy of the said receipt. It is at annexed ^{use} R-2. We have perused the annexure R-2. On going through it clearly indicates that the receipt was issued by the Cashier, Hotel Yuvaraj, Hyderabad. Neither the Manager nor the cashier was examined during the enquiry. It is the case of the disciplinary authority that this receipt is a bogus one. No interpolation or correction are noticed in Ex-R-2. The proper person to speak to the receipt was the Cashier of the said hotel. The cashier of the said hotel was not contacted by the Inspector of Post Offices.

10. The Inspector of Post Offices appears to have contacted one Mr. Gopi Kumar, parter of the said hotel. The report of the Sr. Postmaster is at exhibit R-1. The Inspector of Post Offices has not recorded the statement of Gopi Kumar. The Inspector of Post offices has not ascertained the person who signed on exhibit ^{R-2} as the cashier of the Hotel. The Inspector of Post offices has not ascertained the name of the Cashier. It is stated that there were three Managers working in the said hotel. Their names were also not ascertained by the Inspector. No responsible person of the Hotel was examined during the enquiry. It is surprising to state that the hotel authorities failed to produce the duplicate copy of the receipt and they said that the same was not traceable. In fact within a period of 6 months, Inspector Post Offices contacted the hotel authorities. It is strange to believe that hotel authorities had destroyed or misplaced the duplicate receipt book. One of the circumstances that was stated on behalf of the disciplinary authority was that the hotel had not permitted any person to stay beyond 10 days. Even this fact was not substantiated ^{during} the course of the enquiry.

11. As already observed exhibit R-2 does not contain any interpolation or correction. Further the I.P.O. had not ascertained

JL

D

the room number written on the receipt was occupied by any person during the said period or not. From the receipt it is disclosed that it ~~referred~~ to Room No.48. The Inspector of Post Offices has not made enquiries whether the hotel had 48 rooms for lodging purposes. The Inspector has not ascertained as to who all had occupied the said room between 5-6-86 and 5-7-86 if the Inspector of Post offices had ascertained the names of occupants ^{of} the said room atleast then one could have understood that the receipt exhibit R-2 is a bogus one. In the absence of such materials it will not be proper to conclude that exhibit R-2 is a bogus one. It was for the disciplinary authority to place on record the material sufficient enough to come to the conclusion that exhibit R-2 is a bogus one and not reliable.

12. The other circumstances relied upon by the respondents is that the applicant subsequently claimed TA relinquishing his claim for Rs.750/-. A rejoinder has been filed by the applicant wherein he has stated that he did so at the instance of the respondents. When that is so, merely because the applicant submitted a revised TA bill relinquishing the claim of Rs.750/- is not sufficient to come to the conclusion that the exhibit R-2 is a bogus one. Even to this stage, the applicant claims that he had stayed in that hotel and that exhibit R-2 was a genuine one issued by the hotel authorities.

13. The enquiry officer appears to have recorded in his proceedings about dispensing ^{with} the examination of the Manager of the Hotel. We feel that the enquiry officer should have taken all steps to secure the presence of the author of exhibit R-2. It was not necessary for any of the hotel authorities to come and testify before him. Atleast the enquiry officer should have ascertained from the hotel authorities the name of the person who had signed on exhibit R-2 as cashier and should have ascertained the address of the said person. It is not known how the enquiry officer felt that he could

JR

decide the genuineness or otherwise of exhibit R-2 in the absence of the material witness. In fact Annexure-IV to the Articles of charges indicated only two persons to be examined on behalf of the disciplinary authority. The other witness is the postal official. The postal official is not a competent person to testify the genuineness or otherwise of exhibit R-2.

14. The enquiry officer appears to have relied upon the exhibit R-1 report of the Sr. Postmaster, Hyderabad. In our opinion that document is not a proof to hold that the exhibit R-2 is a bogus one. That may be a document ~~written~~ which may have disclosed the existence of a prima-facie case to proceed against the applicant.

15. During the course of arguments the learned counsel for the applicant submitted that the disciplinary authority had not examined the Manager of M/s Hotel Yuvaraj, Hyderabad to prove that the Ex-R-2 receipt produced by the applicant was a bogus one. Even though the Manager was cited as a witness in the Annexure-IV to Articles of charges without examining the said material witness, the enquiry officer came to the conclusion that the certificates produced by the applicant along with the TA bill was not a genuine one.

16. The enquiry officer relied upon the statement of the partner of Hotel Yuvaraj during the preliminary enquiry. The enquiry officer should have summoned the partner or cashier, ^{of M/s} Hotel Yuvaraj to testify whether the applicant had stayed in his hotel as per the receipt or he had stayed only for 3 days, to state whether the receipt issued was issued by him or was issued by any of his servants in the Hotel and should have offered the said witness to the applicant for cross-examination.

17. The principles of natural justice require that before holding a person for misconduct he must be given opportunity to substantiate his defence. When the authorities stated that the certificate produced by the applicant along with the TA bill is not genuine and also stated that they are going to examine the Hotel Manager, then they should have examined the Manager M/s Hotel Yuvaraj during the enquiry in presence of the applicant. Without examining the Manager, Hotel Yuvaraj and without offering him to the applicant

for his cross-examination the enquiry officer could not have recorded a finding that the receipt produced by the applicant was not a genuine one.

18. The learned counsel for the respondents during the course of his arguments stated that a Inspector was sent to the Hotel who made enquiry with the hotel Yuvaraj and was satisfied that the receipt produced by the applicant along with the TA bill was not a genuine one and that the applicant had stayed in the Hotel only for 3 days. Even the said Inspector who conducted the preliminary inquiry was neither cited as a witness nor was examined. The ~~same~~ ~~same~~ case to proceed against the applicant. It cannot, in our humble opinion, establish the case of the disciplinary authority. The disciplinary authority must place cogent evidence to substantiate the charge. Then alone the applicant may have the chance to rebut the same in his defence. In the instant case, that kind of evidence was not at all available. We feel that the Manager or the cashier who was supposed to have issued the receipt in question was a relevant and material witness. We feel non-examination of the Manager or the Cashier of the hotel is fatal to the disciplinary proceedings.

19. In the absence of the said evidence no inference could be drawn as to the genuineness or otherwise of the hotel receipt.

20. We are conscious of the fact that the strict rules of evidence are not applicable to the disciplinary proceedings. That does not take away the examination of material witness during the enquiry. In the instant case, the evidence of the author of exhibit R-2 or of the hotel authorities was absolutely necessary for the respondents to conclude or decide the genuineness or otherwise of the same. Therefore non examination of the said witness is fatal to the proceedings.

Te

..8

21. We feel that this is a case of no evidence and hence the impugned orders are not sustainable in law.

22. Therefore we feel that the disciplinary authority had failed to produce the material witness during the enquiry. We cannot accept the contention of the respondents.

23. We are constrained to interfere with the finding recorded by the disciplinary authority, the appellate authority the revisional authority and the reviewing authority.

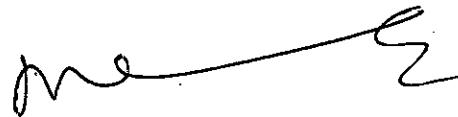
24. From the reasons stated above, the OA is allowed and the orders dated 23-1-89 passed by the disciplinary authority, dated 2-3-90 passed by the appellate authority, dated 26-3-91 passed by the revisional authority and order dated 31-5-94 passed by the

25. Consequential benefits on that account has to be given to the applicant within a period of 3 months from the date of receipt of a copy of this order.

26. No order as to costs.


25.7.97

(B.S.JAI PARAMESHWAR)
MEMBER (JUDL.)


(R.RANGARAJAN)
MEMBER (ADMN.)

Dated : The 25th July, 1997.
(Dictated in the Open Court)

Amr.
7.8.97
DNCI

spr

26/7/8/97
⑨

TYPED BY
C.O.M.P. REC'D. BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD.

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

AND

THE HON'BLE SHRI B.S. SHRI P.R. MEGHJEE :
(M) (J)

Dated: 25-7-97

ORDER/JUDGEMENT

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

in

C.A. NO. 1241/94

~~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

