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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.1544/94

Date of Order: 16.10.1997

BETWEEN:

Mrs. Durgamma

.. Applicant.

AND

1. The Scientific Advisor to
Raksha Mantri and Director
General, Defence Research and
Development Organisation,
Ministry of Defence, Govt. of
India, Defence Headquarters,
New Delhi.
2. The Director,
Defence Metallurgical Research
Laboratory, Research and
Development Organisation,
Ministry of Defence,
Hyderabad.



Counsel for the Applicant

.. Mr. Y. Suryanarayana

.. Mr. N. S. Devraj

.. Mr. N. S. Devraj

COMES:

HON'BLE SHRI K. RANGARAJAN : MEMBER (ADM.)

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

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X As per Hon'ble Shri B.S. Jai Parameshwar, Member (Judl.) X

None appeared for both sides. The applicant was also absent when this OA was taken up for hearing. We felt it ^{was} ~~is~~ to decide the same on the basis of the material available on record in accordance with Rule 15(1) C.A.T. (Procedure) Rules 1987.

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13. The respondents have filed their counter stating that N.Ramulu was not placed under deemed suspension that question of paying subsistence allowance did not arise that after the disposal of the SLP Ramulu was paid the arrears of allowance from 18.9.79 and payment was continued during the pendency of the SLP before the Hon'ble Supreme Court of India that SLP was disposed of on 10.4.90. The Hon'ble Supreme Court held that the Director can exercise powers of the disciplinary authority and remitted the matter. The writ Petition was transferred to the Tribunal in TA.No.23/91 that in compliance of the directions of this Tribunal in TA.23/91, the order modifying the punishment imposed on N.Ramulu that the version of the applicant that order of compulsory retirement can be retrospective from May 1990 appears to be aimed at extra pensionary benefits to avoid recovery of over payment.

14. The respondents further stated that only in accordance with the directions ^{of} with the Apex Court the deceased N.Ramulu was paid subsistence allowance that since the Apex Court upheld the order of dismissal and remitted the matter to the High Court, they felt it is not necessary to continue the payment of subsistence allowance to the applicant, that during the pendency of the TA N.Ramulu died on 11.7.91 that his legal representatives (The applicant herein) prosecuted the OA that as per the directions of this Tribunal the Appellate Authority decided the appeal dated 3.6.80 afresh and taking into consideration the death of N.Ramulu the appellate authority modified the order of removal to that of compulsory retirement that therefore there are no grounds to interfere with the order challenged herein.

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8. On 18.9.79 the disciplinary authority imposed the punishment of dismissal from service and served the same on Ramulu along with the report of the enquiry officer.

9. Sri N. Ramulu challenged the order of punishment in ..P.8658/81 before the Hon'ble High Court of Andhra Pradesh. On 7.7.82 the Hon'ble High Court allowed the Writ Petition. The respondents challenged the decision of the Hon'ble High Court before the Hon'ble Supreme Court of India in C.A. 2934/82. The Hon'ble Supreme Court had directed the respondents to pay subsistence allowance to Ramulu. Accordingly, the respondents paid subsistence allowance to him till May 1990. The Hon'ble Supreme Court accepted the writ petition to the Hon'ble High Court for fresh consideration. When the Writ Petition came up for fresh consideration before the Hon'ble High Court then this Tribunal was constituted.

10. Accordingly the writ petition came to be transferred to this Tribunal and was numbered as W.P. 11. During the pendency of the T.A. N. Ramulu died. His legal representatives came on record and prosecuted the T.A. This Tribunal allowed the T.A. and directed the appellate authority to decide the appeal dated 3.6.90 afresh by a speaking order (A-16).

11. On 19.8.94 the appellate authority decided the appeal. The appellate authority modified the sentence of dismissal to one of compulsory retirement. Copy of the order of the appellate authority is at Page-16 to the O.A.

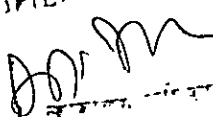
12. The applicants have challenged the order dated 19.8.94 passed by the appellate authority.

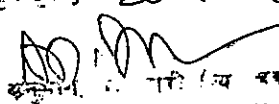
17. Having regard to the fact of death of N.Kamulu on 11.7.91 and having regard to the fact that in case his order of removal was to be maintained the applicants would be put to starvation and untold misery, the appellate authority has rightly modified the order of removal to one of compulsory retirement. Thus the appellate authority has done proper justice to the applicants.

18. Hence we find no merits in the OA and the OA is liable to be dismissed.

19. Accordingly the same is dismissed with no order as to costs.

CERTIFIED TO BE TRUE COPY


COURT OFFICER
HYDERABAD

किस सख्या	CASE NUMBER
निर्णय का तारीख	16-10-97
Date of order passed	16-10-97
प्रति तय्यार किया गया दिन	20-10-97
Copy भेजा गया	20-10-97
 Section Officer (J)	

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15. Even though the appellate authority had observed that principles of natural justice was not complied to the extent of not allowing the applicant to participate after 5.9.79 the appellate authority could not have done anything more since the employee N.Kamulu was dead by then. The order of the disciplinary authority is challenged on the ground that deceased Ramulu was served with the order of removal along with the copy of the enquiry officer's report. The order of removal is dated 18.9.79. As the law stood then there was no obligation on the part of the disciplinary authority to furnish a copy of the report to the delinquent employee. This was so in view of the amendment to the Constitution of India (Amendment) 1976. Therefore the applicants can have no grievance that the copy of the enquiry officer's report was furnished to the deceased N.Kamulu along with the order of removal dt. 18.9.79.

16. The appellate authority taking into consideration the death of the applicant and also lacuna found during the disciplinary proceedings felt it proper to reduce the quantum of punishment. In fact the deceased Ramulu had participated in the enquiry upto 5.9.79. Thereafter, only the presenting officer submitted the written ^{brief} ~~proof~~. Copy of the written ^{brief} ~~proof~~ submitted by the presenting officer could not be served on Ramulu because he remained absent. That goes to show that the enquiring authority had given full and adequate opportunity to the deceased N.Kamulu during the recording of evidence and considering documents. We do not think that the principles of natural justice was violated so as to warrant the appellate authority to set aside the entire disciplinary proceedings. The fact that the deceased N.Ramulu was unauthorisedly absent from 11.7.77 to 25.7.78 was established during the enquiry. The deceased N.Kamulu had not offered any satisfactory explanation for his unauthorised absence. He had submitted leave application only on 26.8.78.

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