

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD
AT HYDERABAD

OA No. 333/94

Date of Decision: 28-4-97

BETWEEN:

S. Janardhana Rao, I.A.S. .. Applicant

AND

1. State of Andhra Pradesh
Rep. by the Chief Secretary
to the Government,
General Admn. (SC-D) Department,
Secretariat,
Hyderabad
2. Sri T. Padmanabhan, I.A.S.,
Chairman,
Commissionerate of Inquiries,
Room No.402, GAD (SC) Cell,
Secretariat,
Hyderabad.

Counsel for the Applicant: Mr. V. Venkata Ramanaiah

Counsel for the Respondents: Mr. P. Naveen Rao

22 Derby.

CORAM:

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

THE HON'BLE SRI B.S. JAI PARAMESHWAR: MEMBER (JUD.)

72

174

ORDER

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

None appeared for the applicant. Even the applicant was absent when this application was taken up for hearing. Heard Sri P. Naveen Rao, learned counsel for the State Government. Senior standing and Sri N.R. Devaraj learned counsel for Respondent-2.

This is an application filed under Section 14 of
the Environment (Protection) Act. The application was filed
on 17th March, 1994.

The reliefs sought for in this OA are as under:-

- A. To declare the ruling of the 2nd respondent in his proceedings bearing ref. C.No.231/COI-CH/92 Dt. 21.2.94 (Annex.I) as ab intio void, illegal and inoperative;
- B. To declare that the ~~entire~~ ^{entire} introduction of additional oral and documentary evidence as requested by the Presenting Officer's memos dt.6.10.93, 23.12.93 and 24.12.93 (Annex. II, III & IV) as void, illegal and ultra vires rule 8 (16) of the All India India Services (Disc. & Appeal) Rules 1969;
- C. To direct the 2nd respondent to conduct and proceed with the enquiry without reference to any of the documents or witnesses cited produced or examined as a consequence of the Presenting Officer's memos dt. 6.10.93, 23.12.93 and 24.12.93 (Annex. II, III & IV).

Facts which are not in dispute may, in brief, be stated as follows:-

The applicant is an IAS Officer borne in the State of Andhra Pradesh. Between 22.7.87 and 18.1.90 he was working as Secretary to the Commissioner for Survey & Settlement and Land Revenue, Andhra Pradesh. It appears certain he committed irregularities and dereliction to duty while working in

32

the said post. A memo dt.17.3.91 was issued to him to explain the said irregularities. The applicant denied to have committed the said irregularities by letters Dt.15.4.91 and 20.7.91. The Respondent-1 was not satisfied with the replies furnished by the applicant. Hence by the G6 RT No.4702/Gen. Admin(SCD) the Disciplinary Authority dt.9.10.91 served memorandum of charges on the applicant.

The applicant denied the charges through his representation dt.14.11.91. The respondent-2 was appointed as the Inquiry Officer to inquire into the charges levelled against the applicant.

The inquiry commenced from 6.10.92. On 6.10.93 the presenting officer filed a Memo seeking permission of the respondent-2 to examine certain witnesses. The applicant protested to the said memo. However, the respondent-2 granted the prayer and witnesses stated in the memo were examined in the inquiry.

On 23.12.93 and 24.12.93 the presenting officer filed 2 memos. The copies of the said memos are at Annexures 3 & 4. Through the said memos the presenting officer sought permission to examine 3 additional witnesses and also for summoning the original files from the office of the commissioner, Survey & Settlements, Hyderabad. The applicant submitted his objections to the said memos. After considering the various contentions advanced by the applicant, the Respondent-2 by his order Dt.21.2.94 accepted the 2 memos and permitted the presenting officer to examine additional witnesses and also to secure records described in the memo Dt.24.12.93.

dt.21.2.94

It is this order of the Respondent-2 that has been challenged by the applicant in this OA on the following grounds:

Tr,

..4

That Rule 8 of the All India Services (Discipline & 1969 (in short) the Rules 1969, Appeal) Rules deals with the procedure to be followed for imposing major penalties that the roving inquiries accompanied by fishing expeditions are prohibited that the charge memo dt.9.10.91 contained in which 12 records/documents proposed to be let in on behalf of the disciplinary authority specify the names of the persons to be examined as witnesses indicates casual, indisciplined approach lacking in application of mind relative to the gravity and solemnity of disciplinary inquiry that Sub-rules 4 & 5 read with Sub-rule rules 15 & 16 of the Rule 8 of the Rules 1969 authorise the introduction of further evidence only after the originally cited evidence has been substantially let in in the inquiry and at the stage "before the close of the case on behalf of Disciplinary Authority" that the Rules do not warrant the impugned conduct that the procedure followed by the second respondent has caused substantial prejudice to him that the second respondent overstepped his limits of jurisdiction in passing the impugned order dt.21.2.94 (Annexure-I) that the second respondent misdirected himself by assuming without any authority that note to Sub-rule 16 is a subservient to a rule or a sub-rule that the second respondent erred in in failing to ~~.....~~ and limited by the note that the note is a clear mandate and cannot be jettisoned by a spurious reasoning that the second respondent failed to see that sub-rule 16 is itself a substantial approach to applicant that availability of ample liberty to test such evidence will not impute the legality of permitting impermissible evidence. That the characterisation of sub-rule 16 is inaccurate and demonstrably erroneous that the discretion available under sub-rule 16 can only be

exercised to permit introduction of evidence at a point of time which can be characterised as a close of the disciplinary authority's case. In respect of evidence which provides a sort of continuance to any inherited gap in the evidence already introduced by the disciplinary authority and not in respect of evidence which per se builds up a substantive case or which has the propensity to fill up the gap in the existing evidence. That sub-rule 16 operates at a specific and manifest time frame of the enquiry. That the second respondent failed to appreciate sub-rule 16 read with Note and to determine whether the additional oral and documentary evidence sought to be produced by the Presenting Officer fell within the ambit of gap in evidence or inherent lacuna and has thus acted in excess of his powers and that the order Dt.21.2.94 is illegal and inoperative.

The respondents have filed the counter stating that the request was granted that on 23.12.93 and 24.12.93 the presenting officer presented 2 memos to respondent-2 that the respondent-2 after considering objections of the applicant to the said 2 memos passed the order Dt.24.2.94 accepting the request of the presenting officer that the second respondent in his judicial capacity considered the scope and ambit of Sub-rule 16 of Rule 8 of the Rules 1969, that the Sub-rule 16 permits certain action before close of the case on behalf of Disciplinary Authority that whether the principles of natural justice are meant only for the delinquent officer or also for the disciplinary authority has to be considered that the said principles are equally applicable to the Disciplinary authority as well that the applicant has not been prejudiced in any manner what so ever by the impugned order Dt.21.2.94, that he would be given sufficient opportunity to inspect the files, though they are meant to cross examine the additional witnesses that they relied on the judgement of the honourable High Court of Andhra pradesh reported in A.I.R. 60 AP page 329

wherein it is observed that there is no provision in the Criminal Procedure Code which obliges the police to give the list of all or any of the witnesses proposed to be examined although as a matter of practice the list of witnesses is furnished that practice is no doubt a desirable one that the purpose of the Presenting officer in submitting the 2 memos Dt.23.12.93 and 24.12.93 was with reference to a very important matter which form vital link between the evidence necessary for establishing charges that the presenting officer was justified in submitting the 2 memos that the Respondent-2 bearing in mind the principles of natural justice accepted the same by the impugned order ~~Dt.21.4.94 and that~~ the impugned order is quite legal valid and according to law having regard to the facts and circumstances of the case.

As already observed the applicant remained absent when the case was taken up for hearing. Since the O.A. was filed in 1994 and since this Bench felt it proper to decide the OA on the basis of the material available on record in accordance with the rule 15 (1) of the CAT (Procedure) Rules 1997.

In order to consider the various contentions raised by the applicant we feel it proper to reproduce here in Sub-rule 16 of Rule 8 of the Rules 1969. Sub-rule 16 reads as follows:

" If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the member of the Service or may itself call for new evidence or recall and re-examine any witness and, in such case, the member of the Service shall be entitled to

Br

have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give to the member, of the service an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the member of the Service to produce new evidence if it is of opinion that the production of such evidence is necessary in the interests

Note.- New evidence shall not be permitted or called for any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally. "

Sub-rule 16 is intended to give sufficient opportunity to both the disciplinary authority and to the delinquent employee. It does not mean that the disciplinary authority must invoke this rule only after some evidence is let in. As already observed while furnishing the articles of charges to the applicant, the Disciplinary Authority failed to indicate the witnesses proposed to be examined in support of the charges. The note under Sub-rule 16 is intended to avoid filling up the lacuna by both the Disciplinary Authority and the Delinquent employee. The Sub-rule contains the provisions similar to order XVIII Rule 17 of the code of the Civil Procedure. Merely because the Disciplinary Authority by inadvertence failed to furnish the list of witnesses to be examined in support of the charges levelled against the applicant along with the articles of charges the Disciplinary Authority cannot be prohibited from adducing evidence in support of the charges. Too technicalities should not be considered in the disciplinary proceedings. The disciplinary proceedings are intended to ascertain the conduct of the delinquent employee. Strict rules of evidence are not applicable to the disciplinary proceedings.

Disciplinary proceedings by their very nature are fact finding bodies. They are only guided by the principles of natural justice and preponderence of probabilities. Therefore, sub-rule 16 must be given a liberal interpretation while considering the case of the Disciplinary authority or the case of the delinquent employee. The learned counsel for the respondents fairly submitted the liberty must be given both the disciplinary authority and to the delinquent employee in invoking sub-rule 16.

The presenting officer is the proper person to place necessary material on record in support of the charges. In the present case the Presenting Officer noting that the Disciplinary Authority had ~~had~~ failed to enclose an annexure containing the list of witnesses proposed to be examined by it in support of the charges has rightly performed his duty in filing the memo Dt.6.10.93 and examining the witnesses on behalf of the disciplinary authority.

On 23.12.93 the Presenting Officer submitted a memo to the Respondent-2 expressing his intention to examine certain additional witnesses in support of the charges levelled against the applicant. Again on 24.12.93 the Presenting Officer submitted a memo requesting the Respondent-2 to summon the original records. It is to be noted that the Disciplinary Authority had already furnished to the respondent -2 the xerox copies of the records detailed in the memo Dt.24.12.93. Probably, the Presenting Officer felt necessity of original records to confront them to the witnesses detailed in the memo dated 23.12.93. In fact the copies of the memos Dt.23.12.93 and 24.12.93 are at Annexures IV & III.

In Annexure-III the P.O. has summoned the originals of 6 files in support of charges 1 to 3 levelled against the applicant. The xerox copies of these documents are already available with Respondent-2.

Annexure-IV is the memo Dt.23.12.93. Through the said memo the presenting officer desired to summon 3 witnesses. These 3 witnesses are to be examined with reference to the 6 documents detailed in Annexure-III.

The applicant will be given sufficient opportunity to inspect the documents and to cross-examine the witnesses proposed to be examined by the presenting officer. In fact the applicant has already inspected the xerox copies of the documents detailed in Annexure IV.

Having regard to the circumstances and also the object behind which these 2 memos have been filed we feel that the presenting officer rightly and justifiably invoked sub-rule 16 of Rule 8 of the Rules 1969 to substantiate the charges. The respondent-2 having considered the object of sub-rule 16 in proper perspective has accepted the two memos filed by the Presenting Officer.

We do not find any illegality or infirmity in the impugned order Dt.21.2.94. The presenting officer has performed his duty in accordance with the Rules 1969. The Respondent-2 exercised his discretion properly in accepting the 2 memos.

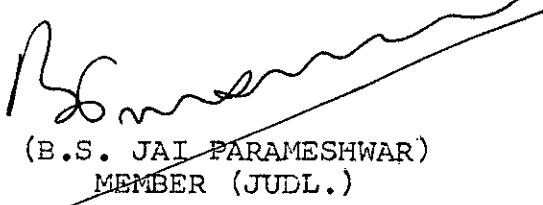
We find no merit in this OA. There are no convincing reasons to interfere with the order Dt.21.2.94 passed by the Respondent-2.

3

The OA is filed during 1994. Nearly 3 years have elapsed and the applicant had obtained the stay of the further proceedings in the inquiry. Hence we feel it proper to direct the respondent-2 to conclude the inquiry as expeditiously as possible.

We have no doubt in our mind that the applicant will cooperate with the inquiry.

With these observations we hereby dismiss the OA but with no order as to costs.


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


(R. RANGARAJAN)
MEMBER (ADMN.)

Date 28/4/97


KSM
2-5-97
0701

KSM

26/97

TYPED BY
COMPIRED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

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

DATED: 28/4/97

ORDER/JUDGEMENT

R.A/C.P/M.A.No.

in

D.A. No. 333/94

~~ADMITTED INTERIM DIRECTIONS ISSUED~~
~~ALLOWED~~

~~DISPOSED OF WITH DIRECTIONS~~

~~DISMISSED~~

~~DISMISSED AS WITHDRAWN~~

~~ORDERED/REJECTED~~

~~NO ORDER AS TO COSTS~~

YLR

II COURT

