

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.36/94

Date of Order:

21.2.1997

BETWEEN :

A.Sankar

.. Applicant.

AND

Union of India, Represented by :-

1. The Post Master General,
Kurnool.
2. The Director of Postal Services,
A.P.S.R., Kurnool.
3. The Superintendent of Post Offices,
Kurnool Division, Kurnool.

.. Respondents.

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Counsel for the Applicant

.. Mr.K.S.R.Anjaneyulu

Counsel for the Respondents

.. Mr.V.Rajeswara Rao
for
Mr.N.V.Ramana

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CORAM:

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

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

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J U D G E M E N T

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

Heard Mr. K.S.R. Anjaneyulu, learned counsel for the applicant and Mr. V. Rajeswara Rao for Mr. N.V. Ramana, learned standing counsel for the respondents.

2. The applicant in this OA has challenged the memo bearing No. ST-IV/13-18/93, dt. 15.12.93 (A-1) in so far as ^{it} relates to the issuance of a fresh charge sheet under Rule 14 of C.C.S (C.C.A.) Rules 1965 by the disciplinary authority as arbitrary, illegal and untenable and as a consequential direction to the respondents to refund the amount recovered by him, as a consequence ^{Vide} order of the punishment issued by the Superintendent of Post Offices, Kurnool in memo No. Bgt/Mis/Deal/Rule 14/AS, dt. 15.6.93 (A-11).

3. The brief facts of the case are as under:-

During the year 1991 the applicant was working as ^a Postal Assistant, Head Office, Kurnool. He and the members of his family travelled to Tirupati and returned to Kurnool under ITC scheme. Under the said scheme the applicant had taken an advance of Rs.450/- for the said journey. The applicant submitted the bill for Rs.530/- claiming to have travelled to Tirupati on 10.6.91 and have performed return journey to Kurnool on 12.6.91. To substantiate his claim the applicant had also furnished the tickets and the ticket numbers in the bill. The respondents got verified the authenticity of the ^{Tickets} bill submitted by the applicant through PRI (P) Kurnool. The PRI (P) Kurnool during his enquiry found that the tickets produced by the applicant were infact issued on 2.6.91 and 4.6.91 respectively. Thus he felt that the said tickets could not have been used by the applicant for his journey on 10.6.91 and 12.6.91. ^{on 7.1.92} The applicant refunded the sum of Rs.450/- subsequently as directed by PMG in his letter No. Vig./5/Misc. dt. 25.11.91.

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4. On 2.4.92 the respondent No.3 served a minor penalty charge memo as per Annexure-2. The applicant submitted his explanation to the charge on 13.4.92. His explanation is as per Annexure-3. The respondent No.3 considering his explanation imposed punishment on the applicant the stoppage of one annual increment for a period of six months without having cumulative effect.
5. The Respondent No.2 vide his memo No.Vig./5/Misc, dt. 1.9.92 remitted the case to the S.P.O. with a direction to initiate disciplinary proceedings against the applicant as contemplated under rule 16 of the CCS (CCA) Rules. Thus a major penalty ~~of~~ charge memo was issued to the applicant on 11.11.92 as per Annexure-7. The Respondent No.3 before issuing a major penalty charge memo cancelled his earlier punishment vide his memo dt. 11.11.92 (A-6). The applicant participated in the enquiry. He submitted his written brief as per Annexure-8.
6. The enquiry officer submitted the report of the enquiry. A copy of the report of the enquiry officer was furnished to the applicant on 28.5.93. The applicant submitted his representation. The Respondent No.3 by his proceedings dt. 15.6.93 imposed punishment of reduction of pay by 2 stages i.e. from Rs.1270-1210 in the time scale of pay of Rs.975-1660 for a period of one year without postponing the future increments. Against the said order of punishment the applicant preferred an appeal to the Respondent No.2. The Respondent No.2 passed the impugned order.
7. The applicant has challenged the impugned order on the grounds that direction of the Respondent No.2 to the Disciplinary Authority to issue a fresh charge sheet for the 3rd time is untenable, that there is no provision in Rule 29 of the CCS (CCA)

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Rules for the Revision Authority to take action beyond a period of 6 months that issue of punishment also must be completed within the period of 6 months that the Article of Charges served on him under Rule 14 ^{by} for the Respondent No.3 was defective, vague and had not indicated any misconduct committed by him that such a charge sheet was liable to be set aside ~~that~~ of India in its O.M. No.39/2/68/Estt(A), dt. 14.5.68 stipulates a condition that the revision authority can set aside the original order of penalty only at the final stage when orders were issued modifying the penalty. Therefore, the impugned order is final and as such cannot direct the disciplinary authority to issue fresh charge sheet ~~for the disciplinary authority.~~

8. In the counter the respondents have submitted that against the order of punishment dt. 15.6.93 the applicant preferred an appeal on 26.6.93 that the appeal was addressed to the PMG, Kurnool, that the DPS, ^Kurnool set aside the revised punishment order dt. 15.6.93 on the ground that the order of ^{the} SPO was technically not proper that the original punishment was not set aside ^{but} only cancelled that SPO was not competent to revise his own order in accordance with Rule 130 of Vol. III that the DPS, Kurnool conveyed order dt. 15.12.93 that the DPS Kurnool ordered a fresh charge sheet to be issued by the disciplinary authority bring^{ing} the irregularities committed by the applicant in a specific and definite charge, that the applicant received the memo dt. 15.12.93 vide his letter dt. 8.1.94 to issue orders for restoration of his pay w.e.f. 15.6.93 that the SPO, Kurnool through his letter dt. 10.1.94 requested the DPS, Kurnool to intimate whether the pay of the applicant could be drawn effective from 15.6.93 that in the meantime the applicant filed this OA that the SPO, Kurnool in his memo dt. 2.2.94 issued the charge sheet under Rule 14 of CCS (CCA) Rules

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that the appellate authority examined the grounds raised by the applicant in his appeal dt. 26.6.93 that the records showed that the applicant left Kurnool on 10.6.91 on 7.00 P.M. and reached Tirupati on 11.6.91 by 5.30 A.M. that during his return journey he left Tirupati on 12.6.91 at 8.00 P.M. and reached Kurnool on 13.6.91 by 7.00 A.M. that according to the enquiry records the bus left Kurnool at 8.30 P.M. on 10.6.91 and reached Tirupati at 5.15 A.M. following next day and in the return journey the conductor who issued tickets at depo^{sed} that the bus left Tirupati at 5.00 P.M. But according to the movement in the bill the applicant was at Tirupati only on 12.6.91 at 5.00 P.M. that through the arrival and departure timings furnished by the applicant in the bill were found to be not correct that it cannot be imagined that the said particulars were due to clerical mistake that the timings mentioned in the bill did not tally with the timings deposed by the conductor or ^{the} witnesses examined on behalf of the applicant that further the applicant in his letter dt. 4.1.92 had categorically stated that he actually travelled from Kurnool to Tirupati by RTC bus on 4.6.91. Thus the applicant was giving different ^{Versions} portions on different occasions that this was not fully brought out in the charge issued by the SPO, Kurnool that the charge framed was also not distinguished. ^{It and} Pointing out the lapses on the part of the applicant, that the charge sheet was defective that hence the appellate authority while disposing the appeal was ^{trained} ~~considered~~ to set aside the punishment by the impugned order ^{and} that therefore there are no grounds to interfere with the impugned order.

9. The learned counsel for the applicant relied upon the decision in the case of V. Jayarajavalli V. Union of India and another reported in (1991) 16 ATC 599. The Madras Bench of the Central Administrative Tribunal considered and held that the appellate authority cannot cancel the charge sheet so as to

allow the disciplinary authority to fill up the lacuna in evidence.

10. As against this the learned counsel for the respondents relied upon the decision in the case of State Bank of India and others V. Samarendra Kishore Endow and another reported in (1994) 2 SCC 537 and the Union of India and others V. Upendra Singh reported in AIR 1994 SC 1060 considering the impugned order dt. 15.12.93 by which the appellate authority ordered as follows:-

"In this case, the original punishment order was effective as this was neither set aside nor cancelled. The SPOs, Kurnool was not competent to revise his own orders in accordance with Rule 130 of Volume III. Hence the orders issued by the SPOs, Kurnool in his memo. Bgt/LTC/Deal/Rule-14/AS dated 15.6.93 are superfluous and improper and have no validity whatsoever. It is thus clearly seen that the orders of the SPOs, Kurnool in memo No. Bgt/LTC/Deal/Rule-14/AS dated are technically not in order. Therefore, the undersigned hereby sets aside the said order without prejudice to further action to be taken as proposed in this office memo No. Vig/5/Misc. dated 1.9.92.

The case was further examined. It is found that the disciplinary authority has not brought out the irregularity committed by the official in clear terms in the charge levelled against the official. Hence the charge sheet itself is defective. Hence, taking action against the official on the defective charge sheet will be ultravires.

I, the undersigned, hereby order the cancellation of the charge sheet issued in SPOs, Kurnool memo No. Bgt/LTC/Deal/Rule-14/AS dated 13.10.92 without prejudice to further action that may be taken against the said Sri A. Sankar and also simultaneously order that a fresh charge sheet be issued by the disciplinary authority bringing out the irregularities committed by the official into a definite charge".

11. The facts are not in dispute. The applicant submitted LTC TA bill containing certain particulars which were found to be incorrect. Further the applicant has repaid the advance of Rs.450/- taken by him from the department on 7.1.92. ^{The applicant is a graduate.} From the material placed on record there is a prima facie misconduct on the part of the applicant.

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12. In the first instance the disciplinary authority proceeded against the applicant under Rule 16 of the CCS (CCA) Rules. The revising authority felt that proceeding against the applicant under Rule 16 for the above misconduct would not be proper and that he should be proceeded with under Rule 14. Thus the revising authority set aside the punishment imposed on the applicant earlier and directed the disciplinary authority to issue a fresh charge sheet.

13. Thereafter the disciplinary authority issued fresh charge sheet out of which the present impugned order has arisen.

14. Even in the impugned order the appellate authority has chosen the set aside the punishment directing the disciplinary authority to issue fresh charge sheet and to proceed afresh. It is this portion of the order that has been challenged by the applicant in this OA. Infact the case decided by the Madras Bench is more or less applicable to facts and circumstances of the case on hand. The Madras Bench in paras 13 to 15 has observed as follows:-

"13. It emerges from the above that the respondents have not taken the aforesaid steps and if at this distance of time, the respondents are allowed to redo the enquiry by producing the said documents and the evidence, in our opinion this would amount to filling up the gap in the enquiry, which is prohibited under the disciplinary rules. Since the order of remand would enable the presenting officer to fill up the lacuna the order of remand is liable to be set aside.

14. The learned counsel for the respondents relied upon the decision of the Hyderabad Bench of the Central Administrative Tribunal rendered in Shyam Dev v. Union of India and submitted that the application under Section 19 of the Administrative Tribunals Act, against the order of remand would not be maintainable. This is because that an order of remand is not a final order. In this connection, it is pertinent to point-out that this Tribunal rejected a similar contention in Chief Commissioner of Income Tax v. T. Doraiswami of which one of us was a party (Shri N.R. Chandran). The decision cited by the learned counsel for the respondents, viz., Shyam Dev v. Union of India, does not lay down as a general proposition that an application would not lie against a similar order, but on

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the facts and circumstances of the aforesaid case, the Hyderabad Bench of the Central Administrative Tribunal did not entertain the application. Hence the afore-said decision does not advance the case of the respondent.

15. As a result of the careful analysis of the rival pleadings, we hold that the order of the appellate authority dated 13.6.1989 insofar as it remits the matter again for a fresh enquiry again would not be in order. We are also of the view that it would amount to harassment and would enable the presenting officer to fill up the lacuna in the case by introducing new evidence. Accordingly, we direct the appellate authority to take up the appeal on file and consider the appeal on the basis of available material and pass orders on merit without taking into account the material which have not been disclosed to the applicant".

15. In this case the appellate authority ordered for issue of fresh charge sheet against the applicant for the 3rd time. We feel that the same certainly causes harassment to the applicant. The appellate authority should have considered the appeal on merits bearing in mind that strict rules of evidence are not applicable to the disciplinary proceedings. The appellate authority could have taken into consideration the *Varying* differing versions given by the applicant on different occasions to suit his own convenience. The appellate authority could have also taken into consideration about the repayment of Rs.450/- the advance taken by the applicant for availing LTC. Therefore we feel that the appellate authority was not justified in cancelling the charge sheet and directing the disciplinary authority to issue fresh charge sheet. This indicates that the appellate authority desires to give an opportunity to the disciplinary authority to fill up the lacuna that has kept in the proceedings. The appellate authority should have considered the appeal on merits strictly in accordance with Rule 27 of the CCS (CCA) Rules.

16. Hence considering that the impugned order causes unnecessary harassment to the applicant, We feel it proper to direct the *appellate* authority to consider the appeal dt.

26.6.93

on merits and in accordance with the rules..

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17. The decisions relied upon by the learned counsel for the respondents are not strictly applicable to the facts of this case. We are not setting aside the punishment or the appellate authority to the disciplinary authority to issue a fresh charge sheet and to proceed afresh against the applicant undoubtedly causes harassment to him.

(A) The impugned order dt. 15.12.93 is set aside in its entirety.

(b) The appellate authority^{shall} consider the appeal dt. 26.6.93 in accordance with the rule 27 of the CCS (CCA) Rules.

(c) Since we have directed the appellate authority to consider the appeal of the applicant on merits, afresh, we feel the prayer of the applicant to pay him back a sum of Rs.450/- does not arise.

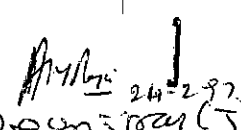
19. The OA is ordered accordingly. No costs.


(B.S. JAI PARAMESHWAR)
Member (Judl.)


(R. RANGARAJAN)
Member (Admn.)

Dated: 21 February, 1997

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24-2-97
Dy. Registrar (T)

21/3/97
TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL BENCH: HYDERABAD

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

AND

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

DATED: 21/2/97

Order/Judgement
R.P/C.P/M.A.NO.

O.A.NO.

26/04

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
DISMISSED FOR DEFAULT
ORDERED/REJECTED
NO ORDER AS TO COSTS.

II COURT

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