

48

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.371/94

Date of Order: 21.2.97

BETWEEN :

Syed Maqbool

.. Applicant.

AND

1. Assistant Mechanical
Engineer (Diesel)
Locoshed, S.C.Rly.,
Kazipet, Warangal Dist.
2. Senior Divisional Mechanical
Engineer (Diesel), S.C.Rly.,
Diesel Locoshed, Kazipet,
Warangal Dist.
3. Divisional Railway Manager,
S.C.Rly., Secunderabad.

.. Respondents.

Counsel for the Applicant

.. Mr. S. Lakshma Reddy

Counsel for the Respondents

.. Mr. W. Satyanarayana
for
Mr. N. R. Devraj

CORAM:

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

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

JUDGEMENT

X Oral order as per Hon'ble Shri B.S.Jai Parameshwar, Member (J) X

Heard Mr. S. Lakshma Reddy, learned counsel for the applicant and Mr. W. Satyanarayana for Mr. N. R. Devraj, learned standing counsel for the respondents.

2. The applicant was working as a Diesel Cleaner at Kazipet. He remained absent from duties from 14.7.83 onwards. It is stated that he was ~~mentally~~ ^{mentally} ~~medically~~ ^{and} ill had informed the authorities about his illness. However on 10.10.93 a major penalty charge memo was issued for his unauthorised absence from 14.7.83. The said charge memo was served on the applicant on 9.12.93. The applicant appeared before the Enquiry Officer on 12.3.84. Thereafter he remained absent. Hence there was no alternative

.. 2 ..

for the enquiry officer but to conclude the proceedings against the applicant ex-parte. Accordingly the enquiry officer submitted his report on the said charge memo. The disciplinary authority considered the findings of the enquiry officer and imposed the punishment of removal from service on the applicant effective from 16.6.84. Against the said order of punishment, an appeal was preferred by the applicant. The same was dismissed on 31.10.84. On 16.5.88 the applicant preferred a revision petition against the orders of the appellate authority. The ^{Revisional} appellate authority dismissed the revision petition by his order dt. 18.1.90. By these orders the appellate authority and the revision authority confirmed the order of removal from service imposed by the disciplinary authority. The applicant questioned the said orders in OA.366/90 before this Bench of the Tribunal. On 1.1.91 this bench accepted the OA, quashed the orders of punishment imposed on the applicant and directed the respondents to continue the disciplinary proceedings and complete the same from the stage of furnishing a copy of the report of the enquiry officer to the applicant. It was also directed that the respondents, if they choose to continue the disciplinary proceedings, the manner as to how the period spent in the proceedings should be treated would depend on the ultimate result.

3. ^{Pursuant} Question to the directions contained in OA.366/90 the respondents choose to continue the disciplinary proceedings and furnished the copy of the enquiry officer to the applicant through the letter dt. 16.4.92 of the respondent No.1. He was given 15 days time to submit his explanation to the report of the enquiry officer. On 8.5.92 the applicant submitted a representation praying for extention of time to submit his representation. However he did not submit his representation.

..3

D

4. The disciplinary authority by his order dt. 2.6.92 removed the applicant from service. The said order of dismissal was served on the applicant on 5.6.92. Against the said order of punishment, the applicant preferred an appeal to the Respondent No.2. The Respondent No.2 by his order dt. 24/28.10.92 confirmed the punishment and rejected the appeal. Against the said order, the applicant submitted a revision petition on 9.12.92. The respondent No.3 rejected the revision petition and confirmed the punishment by his order dt. 26.3.93.

5. The applicant has filed this OA challenging the orders dt. 2.6.92, 24/28.10.92 and 26.3.93 passed by the Respondent 1-3 by which the removal of the applicant from service have been confirmed.

6. During the course of arguments the main contention advanced by the learned counsel for the applicant is that the respondents failed to pay the subsistence allowance to him and that he was put to considerable hardship, that hardship was the result ~~for~~ of non-submission of representation to the report of the enquiry officer and that therefore he was denied the principals of natural justice. In support of his submission the learned counsel for the applicant brought to our notice the observations made by the appellate authority in its order dt. 24/28.10.92. It is no doubt, and it is clear that on 8.5.92 the applicant had submitted representation praying for extention of time to submit explanation to the report of the enquiry officer and also prayed for payment of subsistence allowance. The observations made by the appellate authority are as under:-

"Shri Syed Maqbool was advised by AME/DSL/K2J i.e. Disciplinary Authority vide his letter No.C/M/DSL/K2J/DAR/83/SM dated 1.5.1992 that the time is extended up to 12.5.1992. He was also advised that subsistence allowance will be processed only on



submission of non-employment certificate by him as per the rules in the prescribed format. Shri Syed Maqbool sent his non-employment certificate through post dated 1.5.1992 which was received in this office on 6.5.1992 but not in format. He again submitted the non-employment certificate personally in office in prescribed format on 8.5.1992. Shri Syed Maqbool vide his letter dated 8.5.1992 in response to letter dated 1.5.1992 asked for further extension of time of 15 days from 12.5.1992. He also stated therein that non-employment certificate is enclosed but no enclosure was received with this letter".

7. Further, elaborating the said contention the learned counsel for the applicant submitted that non-payment of subsistence allowance caused much hardship to him that thereby he was deprived of having legal assistance and to submit the ^{Explanation} ~~extension~~ to the report of the enquiry officer in time. Thus he placed reliance on the observations made by the Hon'ble Supreme Court of India in the case of Ghanshyam Das Shrivastava Vs. State of Madhya Pradesh reported in 1973 (1) SIR 636. The Hon'ble Supreme Court of India in the said case considered the fact of non-payment of subsistence allowance to an employee who was facing the disciplinary proceedings. In that case the Hon'ble Supreme Court has observed as follows:-

"It is true that his affidavit does not give any particulars about his sources of income and the estimate of expenses to be incurred in the enquiry. But it would prima facie suggest that he had no other sources of income except his pay. If he had no sources of income, he could not invent them for the purpose of mentioning them in the affidavit. More significantly, the Government affidavit does not allege that he had any other source of income except pay. The fact that he had been drawing a monthly pay of Rs.300/- till October 1964 would not necessarily show that he had sufficient money to enable him to go to Jagdalpur to attend the enquiry in February, 1965. He was suspended on October 30, 1964 and thereafter he did not get subsistence allowance until March 20, 1965. Having regard to the prevailing high prices, it is not possible to draw any adverse inference against him from the mere circumstances that he had been receiving a monthly pay of Rs.300/- till October 1964. The fact that he filed a writ petition immediately on the passing of the order of dismissal and thereafter came in appeal to this Court, would not establish that he had enough resources to enable him to attend the enquiry. It seems to us that on the whole the High Court has gone by conjectures and surmises. There is

... 5 ...

nothing on the record to show that he has any other source of income except pay. As he did not receive subsistence allowance which was made to him on March 20, 1965 after a part of the evidence had already been recorded on February 9, 10 and 11, 1965. The enquiry proceedings during those days are vitiated accordingly. The report of the Enquiry officer based on that evidence is infected with the same defect. Accordingly, the order of the Government dismissing him from service cannot stand. It was passed in violation of the provisions of Art. 311(2) of the Constitution for the appellant did not receive a reasonable opportunity of defending himself in the enquiry proceedings".

8. In the counter it is stated that the applicant was paid subsistence allowance of Rs.39,460/- on 11.9.92. Admittedly as on 8.5.92 or at that time the respondents had not paid the subsistence allowance to the applicant. When they received the representation and also the certificate of non-payment during May 1992 we feel that the respondents were ^{employ} ~~expected~~ to clear the subsistence allowance atleast up to the month of May 1992. Non payment inevitably caused hardship to the applicant. Therefore his submission that on account of that hardship he could not obtain legal assistance and submit his explanation to the report of the enquiry officer has to be accepted. It has some substance. Therefore, on this short ground we feel it proper to set aside the impugned orders. The applicant shall be treated as on deemed suspension from 2.6.92. The respondents shall pay him the as per rules opportunity to submit his explanation to the report of the enquiry officer.

9. the
Had respondents informed the applicant after receipt of
the non-employment certificate and other particulars on 8.5.92
that they are going to process the same and pay the subsistence
allowance, then, atleast on the basis of the said assurance the
applicant could have taken steps to prepare by obtaining some
monetary assistance from somebody else or atleast convincing the
official who was preparing his reply that his efforts in preparing
the reply will not go waste. Then the respondents should have

.. 6 ..

waited till the subsistence allowance is paid before passing the impugned order. Without informing the applicant about the steps taken by them for payment of subsistence allowance ^{upto May 1992} they passed the impugned order on 2.6.92. It is their contention that the applicant by his letter dt. 8.5.92 had sought for 15 days time that within that time the applicant had not submitted his explanation. The main grievance of the applicant is that he was put to hardship and that on account of it he could not prepare his explanation. The respondent No.1 failed to consider this aspect of the case.

10. Thereafter the respondents may conclude the disciplinary proceedings in accordance with rules. Hence the OA is disposed of with the following directions:-

- (a) The impugned orders dt. 2.6.92, 24/28.10.92 and 26.3.93 are hereby set aside.
- (b) The applicant shall be deemed to have been under deemed suspension from the date of his removal from service i.e. from 2.6.92.
- (c) The respondents shall pay the subsistence allowance as per rules within a reasonable time.
- (d) The respondents shall give him an opportunity to submit his explanation to the report of the enquiry officer. Thereafter conclude the disciplinary proceedings in accordance with the rules.

11. No costs.

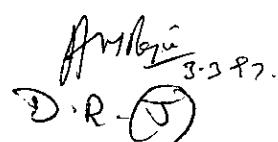

(B.S. JAI PARAMESHWAR)
Member (Judl.)

21-2-97


(R. RANGARAJAN)
Member (Admn.)

Dated: 21st February, 1997
(Dictated in Open Court)

sd


Amalg 3-3-97
D.R. (O)

28/2/97
TYPED BY
COMPARED BY
CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

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

AND

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

DATE: 21/2/97

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

in
O.A. NO. 371/96

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

YLKR

