

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 1061/94.Dt. of Decision : 02-11-95.

G. Appa Rao (died)
 Rep. by Legal Representative
 Smt. G. Sitasevi

.. Applicant.

Vs

1. Union of India, Rep. by the Director General of Health Services, Govt. of India, Min. of Health and Family Welfare, Nirman Bhavan, New Delhi - 110 001.
2. The Dy. Director General(St) Govt. of India, Ministry of Health and Family Welfare, West Block No.1, Wing No.6, R.K.Puram, New Delhi-110 066.
3. The Assistant Director General(St), Directorate-General of Health Services, West Block No.1, Wing No.6, R.K.Puram, New Delhi-110 066.
4. The Dy. Assistant Director General (M.S) Govt. of India, Ministry of Health and Family Welfare, Govt. Medical Stores Department, Behind ESI Hospital Campus, Erragadda, Hyderabad-500 038.
5. The Dy. Assistant Director General (M.S) Govt. of India, Ministry of Health and Family Welfare, Govt. Medical Stores Depot, No.37, Naval Hospital Road, Park Town, Madras-600 003. .. Respondents.

Counsel for the Applicant : Mr. T.V.V.S.Murthy

Counsel for the Respondents : Mr. N.V.Raghava Reddy,
Addl.CGSCSCORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

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

ORDER

As per Hon'ble Shri Justice V.Neeladri Rao, Vice Chairman

Heard Shri T.V.V.S.Murthy, learned counsel for the applicant and Shri N.V. Raghava Reddy, learned Standing Counsel for the respondents.

2. The applicant joined the service as against the vacancy reserved for Scheduled Tribe on the basis of his submission that he belonged to Scheduled Tribe. (The applicant died on 8.4.95 and hence, his LR has come on record. For the sake of convenience, the deceased will be referred to as applicant hereinafter).

3. Charge Memo dated 16.3.1987 (Annexure A-I to the OA) was issued to the applicant, by alleging that there was a mis-conduct on his part in falsely making a representation that to the effect, that he belonged to Scheduled Tribe, even though he does not belong to Scheduled Tribe. Another charge memo dated 5.4.89 (Annexure-A-11) was issued to the applicant by alleging unauthorised, clandestine dealing on the part of the applicant in discharging his official duties while working as Stores Superintendent in the Drug Section of the Government Medical Stores Depot, Hyderabad.

4. Those inquiries were continued even after the retirement of the applicant on 31.1.1993 on attaining the age of superannuation. This OA was filed praying for the following reliefs:
"To call for the relevant records relating to this case and to consider and quash the disciplinary proceedings pending against the applicant as there is

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no justification for continuing the same after his superannuation on 31.1.1993 and for reasons stated in the preceding paras as the proceedings are liable to be quashed with all consequential service and monetary benefits and direct the respondents to release all his retirement benefits ~~and~~ such as pension, commutation of pension, DCRG, etc. and pass such other order or orders as deemed fit and proper in the circumstances of the case."

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5. As per para 79 of P&T Man. Vol/disciplinary enquiry on cessation of service abates on the death of the delinquent employee.

6. Learned counsel for the applicant had not referred to any rule or sub-rule or OM to show that the pending disciplinary inquiry cannot be continued after the retirement of the applicant on superannuation. ~~As per~~ Rule 9 of CCS(Pension) Rules, 1972, reads to the effect that such inquiries can be continued, for by way of punishment, the pension can be reduced and DCRG also can be reduced or they may be completely withheld.

7. The learned counsel for the applicant vehemently argued that it was held by the Calcutta Bench of the CAT in TA 181 of 1988 Panchu Gopal Banerjee Vs Union of India (reported in (1992) 20 ATC 595) that if the inquiry in regard to the first charge memo was not completed within the stipulated period, the same stood abandoned. In the present case, the extended period in regard to the first charge memo had come to an end on 31.8.1989. But, the inquiry officer observed that for one reason or other, the inquiry could not be completed in regard to the said charge memo.

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8. But, in OA 317/90 which was filed by the applicant praying for quashing the charge memo dated 5.4.89, it was held by the Judgement dated 4.1.1991 that if the inquiry in regard to the charge memo could not be completed ^{with-} in two months from the date of receipt of that order, the applicant had to be reinstated. But, it is not stated that the said inquiry stands abandonned. Thus, there was no bar for continuation of the inquiry in regard to the second charge even though it could not be completed by March/April, 1991.

9. As the disciplinary inquiries were pending against the applicant, ~~→~~ the 'sealed cover' procedure had to be followed and the sealed cover can be opened only in case of exoneration. But, in this case which is of abatement of the inquiry, it cannot be stated whether the inquiry would have been ended in punishment or in exoneration. It was made clear that even if the order of censure is passed, the sealed cover cannot be opened. We feel that in a case of prolonged inquiry especially, in regard to the charge involving moral turpitude of an employee, it is not reasonable to infer that the delinquent employee would have been exonerated. So, it is not just and proper to give a direction to the respondents to open the sealed cover with reference to the consideration of the case of the applicant for promotion as Assistant Manager.

10. It is submitted during the course of arguments that the period of suspension ~~xxxx~~ was not regularised and the applicant had not been ^{sanctioned} ~~increment~~ since 1986.

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There was no occasion for the respondents to traverse the same for it was not so pleaded in the OA. We feel that instead of driving the LR of the deceased applicant to make a representation regarding the same, as it is just and proper to give a direction to the respondents to consider the same in accordance with rules, if proceedings have not so far been issued as to how the periods of suspension had to be treated and if no increment was sanctioned from 1986 onwards.

11. As the inquiries abated, the respondents have to pay the DCRG and amount due towards encashment of leave with interest at the rate of 12% per annum from 1.4.1995 till the date of payment of the same. The widow of the applicant (the LR on record) is entitled to the family pension from the date of death of the applicant.

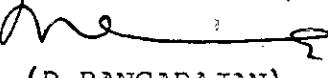
12. In the result, the OA is ordered as under:

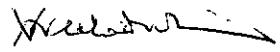
- i) DCRG amount and amount due towards encashment of leave have to be paid with interest of 12% per annum from 8.4.95 to the persons who are entitled to receive the same as per rules.
- ii) If no proceedings have been issued as to how the period of suspension has to be treated, the said proceedings have to be issued and if any amount is payable thereby, the same also will have to be paid by the respondents to the person(s) referred to in 12(i). If any amount is payable and if the same is not paid by 1.4.1996, the same will carry interest at the rate of 12% per annum from 1.4.1996

iii) If no increment was sanctioned from 1986 to the applicant and if the same is payable in accordance with rules in view of the abatement of the inquiry, the same have to be sanctioned and the amount due thereon has to be paid to the person(s) referred to in para ~~xxx~~ 12(i) by 1.4.1996, failing which, the same will also carry interest @ 12% per annum from 1.4.1996.

iv) If the increments have to be paid as per para 12(iii) referred to above, the revised pension has to be fixed and the difference in pension also has to be paid by 1.4.1996 failing which, the same will carry interest @ 12% per annum from 1.4.1996.

13. OA is ordered accordingly. No costs. //

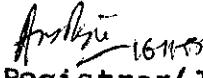

(R. RANGARAJAN)
Member (Admn)


(V. NEELADRI RAO)
Vice Chairman

Dated: 2nd November, 1995

Dictated in the open court

mvl


16/11/95
Deputy Registrar (J) CC

To

1. The Director General of Health Services, Govt. of India, Min. of Health and Family Welfare, Nirman Bhavan, New Delhi-1.
2. The Deputy Director General (St) Govt. of India, Ministry of Health and Family Welfare, West Block No.1, Wing No.6 R.K.Puram, New Delhi-66.
3. The Assistant Director General (St.) Directorate-General of Health Services, West Block No.1 Wing No.6, R.K.Puram, New Delhi-66.
4. The Deputy Assistant Director General (M.S) Govt. of India, Min. of Health and Family Welfare, Govt. Medical Stores, Dept., Behind ESI Hospital Campus. Erragadda, Hyderabad-38
5. The Deputy Assistant Director General (MS) Govt. of India, Ministry of Health and Family Welfare, Govt. Medical Stores Dept. No.37, Naval Hospital Road, Park Town, Madras-3.
6. One copy to Mr. T.V.V.S. Murthy, Advocate, CAT.Hyd.
7. One copy to Mr. N.V.Raghava Reddy, Addl.CGSC.CAT.Hyd.
8. One copy to Library, CAT.Hyd.
9. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE V.NEELADRI PAO
VICE CHAIRMAN

AND

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

DATED: 2-11-1995

ORDER/JUDGMENT

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

in

O.A.No. 1061/94

T.A.No.

(W.P.No.)

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

No order as to costs.

No Spcl Copy

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