

(16)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD.

* * *

M.A. No. 718/93

in
O.A. Sr. 1068/93

Dt. of Decision : 12.4.1994

OA 511/94

N. Ramulu

.. Applicant.

Vs

1. The Director,
Hyderabad - 500 252.
2. The Deputy Director (Admn.),
Appellate Authority,
SVP National Police Academy,
Hyderabad - 500 252.
3. ^{Sri. J. Mahapatra} The Assistant Director, (Admn.)
SVP National Police Academy,
Hyderabad - 500 252.

.. Respondents.

Counsel for the Applicant : Mr. S. Ashok Anand Kumar

Counsel for the Respondents : Mr. N.R. Devaraj, Sr. CGSC.

CORAM:

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

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

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M.R.No.718/93

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O.A.Sr.1068/93

Dt. of decision: 12.4.1994.

OA.511/94

Judgement

{As per the Hon'ble Sri A.B. Gorthi, Member (Admn.) }

The applicant, who was dismissed from service after a departmental disciplinary enquiry, prays by means of this application, that the penalty of dismissal as also ~~the order of the appellate authority confirming the~~ penalty be set aside and that he be reinstated in service with all consequential benefits.

Police Academy. On 7th June, 1989, being unwell, he could not report for duty in time. His request for leave was turned down and he was served with a Charge Memo. dt. 22-6-89. During the inquiry he was not provided with a defence helper nor the document of the charge was supplied to him. He was not allowed to cross examine Mr. Dulichand, the lone witness examined by the Enquiry Officer. The enquiry was conducted in Hindi, a language which he does not understand. After the enquiry, a copy of the Enquiry Officer's report was given to him. However, the Disciplinary Authority without applying his mind to the explanation offered by him, awarded the penalty of dismissal. In deciding upon the penalty the past record of absent^{-eeism} of the applicant was taken into consideration. His appeal was rejected on 27-2-1990. He then submitted "mercy appeals to various authorities", but without any relief.

3. The respondents in their reply affidavit stated that the applicant, who was a habitual absentee, once

again absented without leave on 7-6-89. Accordingly he was charged on this count, firstly for being absent without permission on 7-6-89 and secondly for being in the habit of absenting himself without applying for leave. The periods of absence during 1988-1989 were listed in the second charge. During the enquiry the applicant neither asked for a defence helper nor did he demand for production of any documents. Only one witness, namely Shri Dhuli Chandra, the Riding Master, was examined during the enquiry. The document that was adduced in evidence was a list of dates on which the applicant was absent in the past. During the enquiry, the applicant merely contended that he remained sick on all those dates. As regards the applicant's contention that he was illiterate and that the enquiry was held in Hindi, the respondents denied the same and stated that the applicant himself desired the enquiry to be held in Hindi, as would be evident from his statement to the Enquiry Officer.

3. Learned counsel for the applicant assailed the validity of the penalty on several grounds. Firstly he contended that the charge memo was signed by the Assistant Director (Adj.) whereas his penalty was imposed by the Asst. Director (Administration), the latter describing himself as the "Disciplinary Authority". The officer who signed the Charge Memo, being also of the rank of Assistant Director and concerned with Discipline in the Academy, was found nothing irregular in his signing the Charge-sheet.

4. The next issue agitated by the applicant's counsel is that the Enquiry Officer was biased against the applicant and acted as both Enquiry Officer and Presenting Officer. The Enquiry Report shows that as one witness was examined only

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4. The next issue agitated by the applicant's counsel is that the Enquiry Officer was biassed against the applicant and acted as both Enquiry Officer and Presenting Officer. The Inquiry Report shows that ^{only} one witness was examined

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and one document produced in support of the charges. The Inquiry Proceedings do not disclose any such bias on the part of the Enquiry Officer. Merely because no Presenting Officer was detailed and the Enquiry Officer himself acted as the Presenting Officer, neither we can infer that he was biased nor we find that it resulted in any such irregularity as would vitiate the inquiry proceedings.

5. Admittedly, the disciplinary authority took into consideration the past record of the applicant's frequent spells of absence in coming to the conclusion that the applicant deserved to be awarded the major penalty of dismissal from service. Learned counsel for the applicant asserted that the disciplinary authority had no authority or jurisdiction to proceed so. In support of his contention he

State of Mysore Vs K. Manohar Gowda
AIR 1964 SC 506. Relevant portions of the judgement are reproduced below.

"Under Art. 311(2) a Government servant must have a reasonable opportunity not only to prove that he is not guilty of the charges levelled against him, but also to establish that the punishment proposed to be imposed is either not called for or excessive. The said opportunity is to be a reasonable opportunity and, therefore it is necessary that the Government servant must be told of the grounds on which it is proposed to take such action. If the grounds are not given in the notice, it would be well nigh impossible for him to predicate what is operating on the mind of the authority concerned in proposing a particular punishment; he would not be in a position to explain why he does not deserve any punishment at all or that the punishment proposed is excessive. If the proposed punishment is mainly based upon the previous record of the Government servant and that is not disclosed in the notice, it would mean that the main reason for the proposed punishment is withheld from the knowledge of the Government servant.

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The second show cause notice did not mention that the Government intended to take the previous punishments of the Government servant into consideration in proposing to dismiss him from service. On the contrary, the said notice put him on the wrong scent, for it told him that it was proposed to dismiss him from service as the charges proved against him were grave. But, a comparison of the order of dismissal showed that but for the previous record of the Government servant, the Government might not have imposed the penalty of dismissal on him and might have accepted the recommendation of the Enquiry Officer and the Public Service Commission to reduce him in rank. This order, did not to dismiss the Government servant from service. This notice clearly contravened the provisions of Art. 311(2).

This order will not preclude the Government from holding the second stage of the enquiry afresh and in accordance with law.

The Enquiry Officer in that case recommended only reduction in rank whereas the disciplinary authority (the Government) considered that the government servant was unfit to be retained in service and as such proposed to enhance the punishment to that of dismissal from service. The show cause notice issued for the purpose was under challenge, as it did not disclose that the government intended to take the previous punishments of the government servant into consideration in proposing to dismiss him from service. On the other hand, in the case before us, the past record of the applicant was the subject

notice of it and he, in fact, did not dispute that he was being regularly absent in the past also but merely contended that he was frequently falling sick and was being kept under medical treatment. In view of this, the judgement of the Supreme Court in Manche Gowda's case (supra) cannot have any

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any discrimination of national justice in coming into account
discriminately and/or not equally stated principles of justice
portion. In some circumstances it cannot be said that the
objectively to make this subject of the matter in its course
on different occasions." The applicant was given notice
as he was "being finally of remaining present from his duties
the applicant as notice for retention in Government service
discriminately and/or not equally stated that he considered
upon him on 3-12-80 prior to the imposition of benefit the
second charge (Article II). Moreover, in the notice relating
case herein, the best conduct formed the substance of the
justice. As already noted by us, in the case of the appli-
and hence there was violation of the principles of justice
was taken into account without the notice to the employee
set aside for the reason that the best conduct of the employee
8. In both the cases referred to above, the benefit was
discriminately and/or not equally to make to be unfair."

But of national justice and, therefore the order of the
and/or not equally. In my view, this amounts to violation of justice
which would amount to this to the notice of the discrimination
rule was administratively modified on 8-8-1980 (Ann. 1) and as
administratively the Department for the earlier incident in
it is the petitioner's case (see para 13 of A.P.) and
not communicated in the second from case notice of 10-2-80
final order on 1-9-1982. The said fact was administratively
in relation to the question of Departmental rules relating to
of the petitioner has been definitely taken into account
rule 111. It was observed herein that "the best conduct
reference to the of Departmental rule 121 and rule 122(3)
14. Another case upon which the applicant's conduct was
being referred to this case."

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direct application to this case.

7. Another case upon which the applicant's counsel placed reliance is that of Rattanlal Koul Vs J&K Bank Ltd. 1989(3) ALT 177. It was observed therein that "the past conduct of the petitioner has been definitely taken into account in arriving at the quantum of punishment while passing the final order on 7-6-1985. The said fact was admittedly not communicated in the second show cause notice dt.16-5-84. It is the petitioner's case (see para 13 of W.P.) that subsequently the punishment for the earlier incident in 1976 was substantially modified on 8-8-1979 (Ann.V) and he would have brought this to the notice of the disciplinary authority. In my view, this amounts to violation of principles of natural justice and, therefore the order of the disciplinary authority is liable to be quashed."

8. In both the cases referred to above, the penalty was set aside for the reason that the past conduct of the employer was taken into account without due notice to the employee and hence there was violation of the principles of natural justice. As already noted by us, in the case of the applicant herein, the past conduct formed the substance of the second charge (Article II). Moreover, in the notice served upon him on 2-12-89 prior to the imposition of penalty the disciplinary authority clearly stated that he considered the applicant as unfit for retention in government service as he was "found guilty of remaining absent from his duties on different occasions". The applicant was given adequate opportunity to meet this aspect of the matter in his explanation. In these circumstances it cannot be said that the disciplinary authority either acted irregularly or violated any principles of natural justice in taking into account

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the past conduct of the applicant in deciding upon the punishment.

9. The last contention of the applicant's counsel is that the penalty was too severe and disproportionate to the gravity of the charges. In this context reference was made to Union of India Vs. Giriraj Sharma, AIR 1994 SC 215. The facts of the case are that ^{the} government servant overstayed leave for 12 days for which he sought prior permission by a telegram but such permission was refused. In the circumstances, it was held that the penalty of dismissal was too severe. Relevant passage from the judgement is reproduced:

" The incumbent while admitting the fact that he had over-stayed the period of leave had explained the circumstances in which it was inevitable for him to continue on leave as he was forced to do so on account of unexpected circumstances. We are of the opinion that the punishment of dismissal for over-staying the period of 12 days in the said circumstances which have not been controverted in the counter is harsh since the circumstances show that it was not his intention to wilfully flout the order, but the circumstances force him to do so. In that view of the matter the learned counsel for the respondent has fairly conceded that it was open to the authorities to visit him with a minor penalty. If they so desired, but a major penalty of dismissal from service was not called for. We agree with this submission."

10. There is difference between ~~between~~ a single instance of absence and repeated instances of absence despite adequate warning. Respondents have annexed to the reply affidavit a memo dt. 4-5-89 cautioning the applicant ^{being} that in view of his frequently/absent from duty, any further absence without leave or intimation would result in termination of his services. The persistent misconduct

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of the applicant, in the face of such stern warning would justify the deterrent penalty that was imposed.

11. For the reasons aforestated we find no merit in this application and it is therefore ^{rejected} dismissed, at the stage of admission itself.

12. As the O.A. was filed well outside the period of limitation laid down, it is accompanied by M.A.No.718/93 seeking condonation of delay. The reasons given in the M.A. are that the applicant is illiterate and was submitting mercy petitions to various authorities, before approaching the Tribunal. As we have examined the O.A. on merits and are dismissing it, no useful purpose would be served by allowing the M.A. The same is also dismissed.

(A.B. Gorthi)
Member (Admn.)

(V. Neeladri Rao)
Vice Chairman

Dt. 12 April 94

Dy. Registrar (Judl.)

Copy to:-

1. The Director, SVP National Police Academy, Hyderabad-252.
2. The Deputy Director (Admn.), Appellate Authority, SVP National Police Academy, Hyderabad-252.
3. The Assistant Director, (Admn.), SVP National Police Academy, Hyderabad-252.
4. One copy to Sri. Ashok Anand kumar, advocate, Advocates Associations, High Court Building, Hyd.
5. One copy to Sri. N.R. Devaraj, Sr. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
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M.P. 7/8/93
OASD 1068/93
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COMPARED BY

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

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

AND

THE HON'BLE MR. A. B. GORTHI : MEMBER (AD)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

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

Dated: 12/4/1994

ORDER/JUDGMENT

M.A./R.A./C.A./No. 7/8/93

O.A. No. 5 in 1068/93

OA 511/94.
T.A. No. (w.p.)

Admitted and Interim Directions
Issued.

Allowed

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.

pvm

