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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.A.NO. 58/94.

Date of Order: 8-12-1995

Between:

S.A.Karimullah.

.. Applicant

and

1. The Telecom District Engineer,
Cuddapah, A.P.
2. The Sub Divisional Officer,
Telephones, Cuddapah, A.P.
3. The Enquiry Officer, J.T.O.
Trunks I.O.Cuddapah, A.P.

Respondents.

For the Applicant :- Mr. Syed Shareef Ahemd, Advocate.

For the Respondents: Mr. N.V.Raghava Reddy,
~~xx~~./Add.CGSC

CORAM:

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

THE HON'BLE MR.RARANGARAJAN : MEMBER(ADMN)

JUDGEMENT

Dt: 8.12.95

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN)

Heard Shri Syed Shareef Ahmed, learned counsel for the applicant and Shri N.V.Raghava Reddy, learned standing counsel for the respondents.

2. The applicant was engaged as Casual Labourer in April 1981. On completion of one year of service, he was conferred temporary status.

3. Charge Memo dated 12.2.93 was issued to the applicant with the following charge:-

"

CHARGE

Whereas according to the report of Sub-Inspector of Police, Chinnachowk Police Station, Cuddapah dt.29.1.1993, that on 29.1.93 between 4 AM and 5 AM Sri S.A.Karimulla and Shri V.Siva Reddy were caught by the beat-constables of Chinnachowk Police Station under suspicious ground while they were at a Telephone Pole near Buddayapalli cross roads and that further the police recovered a telephome set from Sri S.A.Karimullah. Therefore, it is alleged that Sri S.A.Karimullah has indulged in the activities of making unauthorised STD calls and thus exhibited an act of grave misconduct."

4. After the Inquiry the applicant was removed from service by the order dated 23.7.93 by invoking Proviso to rule 5(1) of CCS (Temporary Service) Rules. The appeal thereon was dismissed by the order dated 24.11.93. Being aggrieved, the

applicant preferred this OA on 18.1.94.

5. The main contentions for the applicant are that the impugned order of removal is punitive and it is vitiated as the said order was passed without furnishing copy of the Inquiry report to the applicant so as to enable him to submit his representation as against the findings in the report of the Inquiry Officer.

6. It is urged for the respondents that as the applicant is not a regular employee, the concerned authority is empowered to pass the order under the Proviso to Rule 5(1) of CCS (TS) Rules and it is not necessary to furnish a copy of the report of the Inquiry Officer when the said removal was under the Proviso to Rule 5(1) of CCS (TS) Rules.

7. It is true that on the face of the order dated 23.7.93, it cannot be stated that any stigma is attached. But the question as to whether the particular order was punitive or not has to be considered on the basis of the record in pursuance of which the impugned order of removal was issued. It is manifest from even the reply statement filed that the impugned order dated 23.7.93 was issued only on the basis of the report of the Inquiry Officer which was accepted by the competent authority. The inquiry was conducted on the basis of the report of the Sub Inspector of Police, Chinnachowk Police Station, Cuddapah to the effect that on 29.9.93 the applicant along with another ~~were~~ were found between 4 AM and 5 AM at a telephone pole near Buddayapalli cross roads under suspicious circumstances and they recovered a telephone set from the applicant. Thus the Inquiry was conducted for the misconduct alleged. Hence the removal has

to be held as a punitive one. The removal in such a case can be on the basis of the inquiry in accordance with the CCS (CCA) Rules and it cannot be passed by invoking proviso to Rule 5(1) of CCA (TS) Rules.

8. As the competent authority passed the order under the the Inquiry Officer was not furnished to the applicant before that order was passed. But as we held that the removal is punitive, it has to be held that there is infirmity in passing the impugned order ^{in not furnishing the copy of inquiry report,} and as such it has to be set-aside by giving liberty to the competent authority to complete the inquiry and pass appropriate order under CCS (CCA) Rules after furnishing copy of the Inquiry report to the applicant and after considering his representation, if any, on receipt of the said report.

9. As it is a case of Temporary Service Mazdoor and as the possibility of having gainful engagement otherwise cannot be ruled out, it is just and proper to deny back wages for the period from the date of removal till the date of reinstatement in pursuance of this order. In order to ensure that those who are working shall not be affected, it is just to order that the applicant has to be taken into service in the next vacancy in the unit in which he was working by the date he was removed from service. But in case the applicant is going to be exonerated, the period from the date of removal till the date on which he has to be engaged as per this order has also to be reckoned for the purpose of seniority for consideration for regularisation.

10. In the result, the OA is disposed of as under:-

[Signature]

To

1. The Telecom District Engineer,
Cuddapah, A.P.
2. The Sub Divisional Officer, Telephones,
Cuddapah, A.P.
3. The Enquiry Officer, J.T.O.
4. One copy to Mr. Syed Shareef Ahmed, Advocate,
3-6-725, St.No.11, Himayatnagar, Hyderabad-29.
5. One copy to Mr. N.V.Raghava Reddy, Addl.CGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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(i) The order dated 23.7.93 removing the applicant from service which was confirmed by the order dated 24.11.93 is set-aside. But this order does not debar the competent authority to continue the inquiry and pass appropriate order in accordance with the CCS (CCA) Rules after furnishing copy of the report of the Inquiry Officer to the applicant and after consideration of the explanation of the applicant, if any, in regard to the findings in the said report of the Inquiry Officer;

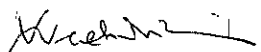
(ii) The applicant has to be engaged if any vacancy exists on the date copy of this order is produced before R-2 and in a vacancy that may arise later if no vacancy existed by then, without retrenching any of those who are working in the said unit;

(iii) In case the applicant is going to be exonerated, the period between the date of removal till the date of his engagement as per this order counts for seniority for consideration for regularisation.

(iv) The period from the date of removal till the date of engagement of the applicant as per this order does not count for increment and he is not entitled to the wages for this period.

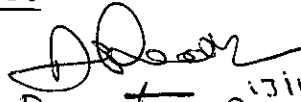
12. The OA is ordered accordingly. No costs.//


(R. RANGARAJAN)
MEMBER (ADMN.)


(V. NEELADRI RAO)
VICE CHAIRMAN

Dated: 8th December, 1995.
Open court dictation.

vsn


Deputy Registrar (DCC)

cc by 14/12/95
13/12
TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELAKANDAN
VICE CHAIRMAN

AND

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

DATED: 8 - 12 - 1995

~~ORDER~~/JUDGMENT

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

in

O.A.No.

58/94

T.A.No.

(W.P.No.)

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions.

~~Dismissed.~~

Dismissed as withdrawn.

Dismissed for default.

Ordered/Rejected.

No order as to costs.

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No Spare Copy

