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CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.L. NO. 277/95

Between:

Date of Order: 5-9-95

Ch. Narayanacharyulu.

.. Applicant.

and

1. Secretary, Ministry of Defence
DHQ PO. New Delhi-11
2. Chief of Naval Staff, Naval Headquarters,
New Delhi-11.
3. Director of Civilian Personnel,
Naval Headquarters, New Delhi-11.
4. Flag Officer Commanding-in-Chief
Eastern Naval Command, Naval Base,
Visakhapatnam-14.
5. Chief Staff Officer(P&A)
Eastern Naval Command, Naval Base,
Visakhapatnam-14.

Respondents.

For the Applicant :- Mr. Ch. Narayanacharyulu, Party-in-person.

For the Respondents: Mr. N.R. Devraj, Sr. CGSC.

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ORAM:

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

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

Recd &
2/9/95
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JUDGMENT

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

This OA was filed praying for quashing the order No.CE/9/03/7, dated 21.3.1990 of Respondent No.4 whereby the applicant was dismissed from service by way of punishment, ^{but} ~~and~~ 2/3rd of the pension was allowed as compassionate allowance, as affirmed by the appellate authority, the Respondent No.1 by order No.CP(L)'6022, dated 6.1.1995. The applicant further prays for treating the period from the date of suspension as on duty and for payment of full salary and allowances and for consideration of his case for promotion. The applicant also prays for a direction to the respondents to pay him Rs.6000/- towards expenses incurred by him in going to Delhi to appear before R.2 for personal hearing at the time of consideration of the appeal.

2, This is an unfortunate case where this matter has come up for consideration now in regard to a charge issued in 1985 (charge memo. issued to the applicant is the charge memo No.CE/9103/7, dated 9.10.1985). The following seven charges were framed as per the charge memo. dated 9.10.1985 issued to the applicant as referred to above:

"CHARGE I

That the said Shri Ch.Narayanacharyulu, UDC, Headquarters Eastern Naval Command, Visakhapatnam while working in Weapon Equipment Depot, Visakhapatnam as Incharge of Service Documents Section Civilian Staff of Weapon Equipment Depot, Visakhapatnam, between Nov 83 to 31 Oct 84 has fraudulently omitted to publish the 'LEAVE NOT DUE' particulars, granted to him by his Section Officer, as detailed below, in the Leave Orders:-

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70 (63)
12.11.1983 - 1 day
18.11.1983 to 26.11.1983 - 9 days
30.11.1983 - 1 day
07.12.1983 to 08.12.1983 - 2 days

Shri CH Narayanacharyulu, UDC, by his above act, had exhibited lack of integrity and conduct unbecoming of a Government servant, thereby, violating Rule 3 (1) (i) and (iii) of Central Civil Services (Conduct) Rules, 1964.

Charge II

That the said Shri CH Narayanacharyulu, UDC, Headquarters Eastern Naval Command, Visakhapatnam, while working at Weapon Equipment Depot, Visakhapatnam as Incharge of Service Documents Section of Civilian Staff of Weapon Equipment Depot, Visakhapatnam, between 12 Jan 84 to 31 Oct 84, had fraudulently tampered with 2nd page of Leave Order 8/83 dated 12 JAN 84 of the office copy of the Weapon Equipment Depot, Visakhapatnam, in that the said 2nd page of the said Leave Order was substituted/caused to have been substituted page, purporting to show, at Serial 35, as if his 'LEAVE NOT DUE' particulars, granted to him by his Section Officer concerned, as detailed below, had been published, whereas the real fact, the same were not published as revealed from the copy of the said order dated 12 Jan 84 held by the Area Accounts Office, Controller of Defence Accounts (Navy), Visakhapatnam:-

12.11.83 - 1 day
18.11.83 to 26.11.83 - 9 days
30.11.83 - 1 day
07.12.83 to 08.12.83 - 2 days

Shri CH Narayanacharyulu, UDC by his above act had exhibited lack of integrity and conduct unbecoming of a Government servant, thereby violating Rule 3(1)(i) and (iii) of Central Civil Services (Conduct) Rules, 1964.

Charge III

That the said Shri CH Narayanacharyulu, UDC, Headquarters Eastern Naval Command, Visakhapatnam while working at Weapon Equipment Depot, Visakhapatnam, as Incharge of Service Documents Section, of Civilian Staff of Weapon Equipment Depot, Visakhapatnam between the period from 01 Aug 84 to 31 Aug 84 had demanded from Shri K.Nookaraju, ASK, Weapon Equipment Depot, Visakhapatnam, for himself a bribe, other than legal remuneration amounting to Rs.3,000/- as a motive of reward for doing an act to wit, removal alleged fraudulent entries in the service documents of the said Shri K.Nookaraju/replacement of fraudulent documents from the Service Document of the said Shri K.Nookaraju, ASK.

(75) (67)

Shri CH Narayananacharyulu, UDC by his above act exhibited lack of integrity and conduct unbecoming of a Government Servant thereby violating Rule 3(1) (i) and (iii) of CCS (Conduct) Rules, 1964.

Charge IV

That the said Shri CH Narayananacharyulu, UDC, Headquarters Eastern Naval Command, Visakhapatnam, while working at Weapon Equipment Depot, Visakhapatnam as in-charge of the Service Documents Sections, of the Civilian Staff of Weapon Equipment Depot, Visakhapatnam between Aug 84 to Jun 85 had unauthorisedly passed on the official information pertaining to the alleged fraudulent entries of Shri K Nookaraju, ASK, Weapon Equipment Depot, Visakhapatnam to Visakha Trade Union Council, Visakhapatnam, which the said Shri CH Narayananacharyulu, UDC was not authorised to communicate.

Shri CH Narayananacharyulu, UDC by his above act, had violated the provisions contained in Rule 11 of CCS(Conduct) Rules, 1964.

Charge V

Eastern Naval Shri CH Narayananacharyulu, UDC, Headquarters Weapon Equipment Depot, Visakhapatnam, 'a' working in Service Documents Section of Civilian Staff on 01 Apr 85 did refuse to accept Official letter No.WED/0646/CHN dated 25 Mar 85 issued by the Officer-in-Charge, Weapon Equipment Depot, Visakhapatnam, regarding his explanation for unauthorisedly passing on the official information in connection with the alleged fraudulent entry in the Service Document of Shri K. Nookaraju, ASK to Visakha Trade Union Council, Visakhapatnam.

Shri CH Narayananacharyulu, UDC by the above act had exhibited conduct unbecoming of a Government Servant thereby violating Rule 3(1)(iii) of CCS(Conduct) Rules, 1964.

Charge VI

That the said CH Narayananacharyulu, UDC, Headquarters, Eastern Naval Command, Visakhapatnam, while serving in Weapon Equipment Visakhapatnam on 02 Apr 85, did refuses to accept 'WARNING LETTER' No.WED/0646/CHN dated 30 Mar 85 issued by the Officer-in-Charge, Weapon Equipment Depot, Visakhapatnam, for using improper and derogatory language against his superiors in his representation dated 05 Feb 85.

Shri CH Narayananacharyulu, UDC by his above act had exhibited conduct unbecoming of a Government Servant thereby violating Rule 3(1)(iii) of CCS(Conduct) Rules, 1964.

Charge VII

That the said Shri CH Narayananacharyulu, UDC, Headquarters, Eastern Naval Command, Visakhapatnam, is in the habit of refusing official letters issued to him from time to time, in that he had refused to accept the following letters issued by Weapon Equipment Depot, Visakhapatnam:-

- (a) WED/0646/CHN dated 26 Mar 85
- (b) WED/0646/CHN dated 30 Mar 85

Shri CH Narayananacharyulu, UDC by his above act had exhibited conduct unbecoming of a Government Servant thereby violating Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

2. The applicant submitted application dated 17.10.85 in reply to the above charge memo. requesting for the supply of the following documents:-

- (a) copy of complaint of Shri K.Nookaraju
- (b) complaint of O/I-C, WED(V) reg. tampering of official document.
- (c) Preliminary enquiry reports.

By letter dated 8.11.85, the applicant was informed by R-4 that as the above documents were not cited as documents in the charge memo. dated 9.10.1985, Disciplinary Authority is not expected to rely upon the same and hence they were not supplied to him; but, however, the applicant was informed that he was free to inspect the documents with prior appointment if so desires. The applicant had not chosen to inspect the same before ~~receipt~~ ^{before} the commencement of enquiry.

3. The enquiry was held from 4.7.1986. The applicant filed OA 584/87 on the file of this Bench praying for quashing the charge memo. and the enquiry by contending, inter alia, that (i) the charge sheet was not issued by the competent authority, i.e., the appointing authority; (ii) the disciplinary authority did not supply him the copies of the documents referred to in his application dated 17.10.1985 and (iii) that the charge memo. and the annexures thereto did not conform to Rule 14(4) of the CCS (CCA) Rules 1965. The enquiry was not stayed pending

the enquiry will be subject to the result of the OA. The enquiry report was submitted on 18.7.1988. The OA 584/87 was dismissed on 4.11.1988 by observing that Respondent No.5 was competent to issue the charge memo. and the statements of witnesses and the documents supplied indicated as to for which charge the relevant documents and witnesses were referred to and there was substantial compliance of Rule 14(4) of the CCS(CCA) Rules even though the witnesses and documents were not separately referred to ~~regarding each~~ in charge and the applicant has not established that any prejudice was caused to him when the documents and witnesses were not separately listed.

4. While the enquiry officer held the applicant guilty for all the charges other than charge-4, Respondent No.4, the appointing authority, held that charge-7 is also not proved and after accepting the findings of the enquiry officer in regard to other charges, he passed the order dated 14.2.1989 in CE 91/33/7/27-2-89 dismissing the applicant from service. Being aggrieved, the applicant filed OA 171/89 wherein he pleaded, inter alia, that (i) R.5 is not competent to institute disciplinary proceedings, (ii) R.4 is not competent to impose the punishment ^{as} and he had not been conferred with the powers of disciplinary authority as per Presidential Order dated 13.9.1979 and as he is also designated as appellate authority; (iii) copy of the enquiry report was not furnished to the applicant before imposing the penalty and ^{as}

(iv) exhibits P1, P2 and P9 were marked even though they were not referred to in the charge memo. and he was not given opportunity to inspect them and the complaint of PW.8 Shri Nookaraju in regard to Charge No.III was not furnished. The said OA was disposed of on 29.11.1989 wherein it was held that R.5 is competent to initiate disciplinary proceedings against the applicant and though R.4 is an authority higher than the designated disciplinary authority the order of R.4 imposing the punishment of dismissal of the applicant is valid. But the said OA was allowed by setting aside the order of punishment on the sole ground that the copy of the enquiry report was not furnished to the applicant before the penalty was imposed and the matter was remitted to the disciplinary authority to continue the disciplinary proceedings in accordance with law after furnishing the copy of the enquiry report to the applicant by observing that it is open to the applicant to raise the pleas raised in the OA by way of objections on receipt of the copy of the report of the enquiry officer. It was further held therein that the application of CCS (CCA) Rules, 1965 to the civilians in defence service is to follow the principle of audi alterum partem.

5. Thereafter the copy of the enquiry report was furnished to the applicant and he submitted his representation dated 30.1.1990 against the said report. Even after consideration of the said objections, R.4 passed the order dated 21.3.1990 as referred to hereinbefore. The same was assailed in OA 303/90 on the ✓

file of this Tribunal. Therein the applicant again pleaded that R.5 is not competent to initiate the disciplinary proceedings against him and R.4 has no power to pass the order of punishment as a disciplinary authority. He further pleaded that Art.311(2) of the Constitution of India and the CCS (CCA) Rules, 1965 are not applicable to the applicant. By order dated 8.3.1990 in the above OA, this Bench held that his plea regarding the competence of various authorities and the applicability of CCS (CCA) Rules, 1965 have already been settled in OA 171/89 and hence it is not open to the applicant to re-agitate them before this Tribunal by way of application under Section 19 of the A.T.Act. But as the applicant approached this Tribunal without exhausting the ^{of appeal} ~~remedies~~ available to him, he was permitted to prefer appeal within 45 days from the date of receipt of that order and the appellate authority was required to dispose of the same within three weeks of receipt of such an appeal within the time ^{intended} ~~prescribed~~. R.A. 26/91 filed by the applicant against the said order was dismissed on 26.9.1991. SLP thereon was dismissed on 25.9.1992.

6. Thereupon the applicant preferred appeal dated 6/12-10-1992. The same was dismissed by R.3, the Director of Civilian Personnel, Naval Headquarters, New Delhi on 21.4.1993 by holding it as time barred. It was challenged in OA 1276/93 on the file of this Bench. We held by order dated 27.5.1994 that as R.3 is equivalent in rank to R.4,

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R.3 cannot act as an appellate authority over the order passed by R.4 and hence we directed the Chief of Naval Staff (R.2) to dispose of the said appeal dated 6/12-10-1992. Therein we also observed that the appellate authority has to give personal hearing for consideration of the appeal as such a direction was given in OA 303/90. After the said appeal was dismissed by order dated 6-1-1995, this O.A. was filed.

inter alia

7. It was contended, for the applicant as under:

(i) The applicant was not given sufficient time to put forth his case before R.2 at the time of personal hearing and hence it was an empty formality when R.2 had given him personal hearing for consideration of the appeal.

(ii) The order dated 6-1-95 was prepared by R.3 and it was signed by R.2 and hence it cannot be held to be a case of consideration of appeal by R.2, the authority who has to dispose of the appeal as per the direction in OA 1276/93.

8. It is submitted that the applicant was personally heard by R.2. While it was submitted by the applicant that time given to him was not sufficient, the plea for R.2 (R.5 filed the reply statement in this OA by stating that he was authorised to file this reply statement on behalf of other respondents also) is that reasonable time was given to the applicant at the time of personal hearing. It may be noted that the applicant had also given written submissions to R.2 on the date of personal hearing. Anyhow, it is not stated even during the course of arguments in this O.A. as to what points the applicant wanted to highlight before R.2 at the time of personal hearing. Hence this contention is not tenable.

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9. On the right side of top margin of the order dated 6-1-95 (Annexure A-10) it was noted as under:

No.CP(L)/6022
Naval Headquarters
CP Directorate,
New Delhi-110 011.

R.2 is the Chief of Naval Staff, Naval Headquarters, New Delhi while R.3 is the Director of Civilian Personnel, Naval Headquarters, New Delhi. It was urged by the applicant that what was noted in the top of the right side margin in the order dated 6-1-95 indicates that it was prepared by R.3, the Director of Civilian Personnel and the signature of R.2 was obtained. But at page 18 of the reply statement filed by R.5 it was alleged as under:-

"The contention of the applicant that the order dated 6-1-95 was prepared by the Director of Civilian Personnel, R.3 and the signature of the Chief of Naval Staff, R.2 was obtained, is malafide and mischievous and casts aspersions on a very high dignitary."

contd...

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10. (i) 'Written submissions on accepting of additional documents as evidence' and (ii) 'Main points raised in OA 277/95 filed by Shri Ch.Narayanacharyulu, ex-UDC and comments thereon' were submitted for the respondents during the course of arguments. At serial No.5 in the item (ii) referred to above (main points raised in the OA 277/95 and comments thereon), it is noted as under:

Sl.No.5:

Point: The appellate authority signed the order which was prepared by DCP. It is not a speaking order as the live points raised by him were not considered.

Comment: It is irrelevant for the applicant regarding p.reparation of order. The order was issued by the competent authority which is a speaking order as can be seen from the order enclosed. All the points raised by him were considered and found not tenable by the appellate authority.

Thus it is not asserted that the order which was signed by Respondent-2 was prepared by R.2.

10. The appellate authority in a disciplinary proceeding is a ~~quasi~~ judiciary authority. It is for the appellate authority to take a decision in regard to all the points in issue, and it is for him to give reasons for arriving at the said decision. Thus it is for the appellate authority to prepare the order and the order prepared by some authority and signed by the appellate authority cannot be held as an order passed by the appellate authority.

11. When it was asserted for the applicant that the impugned order No.CP(L)/6022 dated 6-1-95 was not prepared by R.2 and he merely signed ~~and~~ the same was not categorically denied, ^{However} we are constrained to set aside the above order dt.6-1-95 and to remit it to R.2 for disposal by him in accordance with the law.

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12. But it is also necessary to refer to the contentions for the applicant that R.5 is not competent to issue the charge-memo.CE/9103/7 dated 9-10-85 to the applicant, and R.4 is not competent to act as disciplinary authority. As it was already held by this Bench in OA 171/89 that R.5 was competent to issue the charge memo. dt.9-10-85 to the applicant and R.4 was competent to act as disciplinary authority as against the applicant in regard to the above charge memo., it was rightly observed in OA 303/90 that it is not open to the applicant to re-agitate the same. Hence there is no need for the appellate authority (R2) to consider those contentions of the applicant.

13. It is seen from the order dated 6-1-95 of R.2 that it was stated for respondents that Shri K.Nookaxraju, PW.8 was removed from service after enquiry against him. But it is now stated for the respondents in their reply statement that the said order of removal was set aside by this Bench on the sole ground that copy of the enquiry report was not furnished to Shri Nookaraju, and after considering representation of Shri Nookaraju after the copy of the enquiry report was furnished to him, a penalty of reduction to lower post was ordered in regard to Shri Nookaraju.

14. In the view we have taken in regard to point (ii), the order dated 6-1-95 of R.2 was set aside and the matter is ~~is~~ remitted and hence we are not considering the other contentions raised by the applicant and all the remaining contentions of the applicant in his appeal representation, have to be dealt with by R.2 in accordance with the law.

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16. In the result the order No.CP(L)/6022 dated 6-1-95 of R.2 is set aside and the matter is remitted to R.2 for disposal of applicant's appeal representation in accordance with the law keeping in view the observations in this order.

17. The O.A. is ordered accordingly. No costs. //

SD/-

HHRN
M(A)

SD/-

HVRG
VC

CERTIFIED TO BE TRUE COPY

.....
Date..... 6/4/95
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

1. The Secretary, Ministry of Defence,
DHQ PO, New Delhi-11.

2. The Chief of Naval Staff, Naval Headquarters,
New Delhi-11.

3. The Director of Civilian Personnel,
Naval Headquarters, New Delhi-11.

4. The Flag Officer Commanding-in-Chief,
Eastern Naval Command, Naval Base,
Visakhapatnam-14.

5. The Chief Staff Officer (P&A)
Eastern Naval Command, Naval Base,
Visakhapatnam-14.

6. One copy to Mr.Ch.Narayananacharyulu, Party-in-person, 57-S-106/2
Gowrivayal, Kanchivaram,
Visakhapatnam

7. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.

8. One copy to Library, CAT.Hyd.

9. One spare copy.

PVM

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