

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 326/91

DATE OF JUDGEMENT: 10th June 1993

Between,

CH Narayanacharyulu

.. Applicant

and

1. - The Secretary, Min. of Defence
DHQ PO New Delhi - 110011
2. Chief of the Naval Staff,
Naval Headquarters DHQ PO, New Delhi-11.
3. The Flag Officer Commanding-in-Chief,
Eastern Naval Command, Naval Base,
Visakhapatnam-530014.
4. The Chief Staff Officer (P&A)
Eastern Naval Command, Naval Base,
Visakhapatnam

.. Respondents

Counsel for the Applicant

; Party-in-person

Counsel for the respondents

; Mr. Devraj, Sr CGSC

CORAM.

HON'BLE SHRI A. B. GORTHI, MEMBER (ADMIN)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

(Judgement of the Division Bench delivered by Hon'ble Shri.
T. Chandrasekhara Reddy, Member (Judl.).

This is an application filed by the applicant
herein under Section 12 of the Central Administrative Tribu-
nals Act to quash the order of dismissal of the applicant dated
21.3.90 issued by the third respondent and to pass such
other orders as may deem fit and proper in the circumstances
of the case.

2. The facts giving rise to this OA in brief may be
stated as follows.-

3. The applicant while working as UDC in Weapon Equipment Depot, Eastern Naval Command, was transferred to the Headquarters Eastern Naval Command by the order dated 5.7.85 and he reported for his duties in the HQrs Eastern Naval Command on 8.7.85. On 10.7.85, he was suspended from service by the 2nd respondent herein. On 9.10.85 he was served with a charge memo under Rule 14 of the CCS(CCA) Rules 1965. Seven charges were framed as against the applicant. The first charge being that the applicant fraudulently omitted to publish his 'leave not due' particulars for certain dates on which he had been granted leave. The second charge being that he fraudulently tampered with the second page of the leave order dated 12.1.84, substituted the same by another page to show as leave not due particulars granted to him, have been published whereas the same were not in fact published. The third charge being that he had demanded from one Mr. Nookaraju, ASK a bribe of Rs.3000 for the purpose of removal of fraudulent entries in the service documents of the said Mr Nookaraju. The fourth charge being that the applicant had unauthorisedly passed official information pertaining to the alleged fraudulent entries of Sri. K.Nookaraju to the Visakha Trade Union Council. The fifth charge being that the applicant had refused to accept the official letter dated 25.3.85 issued by the Officer-in-Charge, Weapon Equipment Depot, Visakhapatnam calling for the applicant's explanation for unauthorisedly passing official information to Visakha Trade Union Council in regard to the Service document of Sri K.Nookaraju. The sixth charge being that the applicant refused to receive warning letter dated 30.3.85 for using improper and derogatory language in his representation dated 5.2.85. The seventh charge was that he was in the habit of refusing of official letters and the instance cited were dated 26.3.85 and 30.3.85. A regular Officer was appointed to inquire into the said charges as against the applicant. The Enquiry Officer, after conducting inquiry

passed against the applicant and bringing the applicant under deemed suspension. In view of the directions of this Tribunal in OA 171/89, the applicant was given opportunity to submit his objections to the enquiry report by the Disciplinary Authority and also to raise the contentions referred to in para 6 of the judgement passed in OA 171/89. The applicant submitted his objections on 30.1.90. The applicant filed OA 303/90 against the deemed suspension order dated 5.1.90 as illegal. The applicant also filed OA 154/90 challenging the competence of the disciplinary authority to impose major penalty. Both the OAs were dismissed by this Tribunal. The 4th respondent imposed on the applicant, the penalty of dismissal from Service as per his orders dated 21.3.90. The applicant questioned the said order dated 21.3.90 by filing OA 303/90 contending therein that Article 309 and Article 311(2) and CCS/CCA rules are not applicable to him who is a defence personnel. The applicant also raised the same contentions raised in OA 171/89 in OA 303/90. All the contentions raised by the applicant were negatived for a second time vide judgement dated 8.3.91 passed in OA 303/90. In the said order dated 8.3.91, the Bench held if the applicant was aggrieved by the dismissal order dated 21.3.90, the next course open to him was to appeal to the appellate authority which the applicant had not chosen to do so and as the applicant had not exhausted all the departmental remedies available to him before approaching this Tribunal even though the time limit for preferring an appeal was well over, directed the applicant, if he desired to prefer an appeal within 45 days from the date of receipt of order passed in OA 303/90 before the competent appellate authority. A direction was also given in the said order to the appellate authority to dispose of the appeal of the applicant within the time limited allowed to the applicant. The order passed in OA 303/90 also directed the respondents to give a personal hearing to the applicant if the applicant

desired the same. As against the orders passed in OA 303/90 the applicant preferred an appeal in Supreme Court instead of appealing to the competent appellate authority. The Hon'ble Supreme Court as per its order dated 25.9.92 dismissed the SLP filed by the applicant. ~~The~~ After dismissal of the said SLP by the Hon'ble Supreme Court, the applicant had ~~preferred~~ ^{preferred} an appeal to the competent appellate authority on 12.10.92. This Bench was informed that the said appeal was rejected by the competent authority as time barred. The present OA is filed to set aside the dismissal order dated 21.3.90 passed by the 3rd respondent as already indicated above.

5. Counter is filed by the respondents opposing this OA.

6. We have heard ~~Party~~-in-person and Sri NR Devraj, Standing counsel for the respondents.

7. The main argument on behalf of the respondents is that this OA is liable to be dismissed on the principles of res-judicata/constructive resjudicata. Now, the main question that has got to be decided in this OA is whether this OA is hit by principles of resjudicata in view of the judgement in OA 171/89. The main contention of the applicant is, that the third respondent Flag Officer Commanding-in-Chief, Eastern Naval Command, Visakhapatnam is designated as only appellate authority as per presidential orders dated 13.9.79, and, it is not open to the third respondent to exercise the powers of disciplinary authority and as such, the third respondent was not competent to pass orders of dismissal dated 21.3.90, as against the applicant.

8. As already pointed out, while narrating the facts of this OA, OA 171/89 was filed challenging the dismissal order dated 27.2.89. The very same pleas that were advanced in the earlier OA 171/89 have been advanced in the present OA 326/91 also. Exhibit A4 to this OA (326/91) is the copy of the judgement passed in OA 171/89. As could be seen from para 6 of the judgement passed in OA 171/89, the contentions that was raised there was that the third respondent herein was not the competent authority to impose the punishment of removal from service,

since he had been vested only with the powers of appellate authority as per Presidential Order dated 13.9.79. The Bench that dealt the matter in OA 171/89 after refering to the decisions reported in AIR 1958 Calcutta 49 Monmotha Nath Vs Director of Public Instruction and AIR 1965 SC 1103 State of Madras Vs.C. Sundaram and AIR 1982 SC 1407 Sampuran Singh Vs.State of Punjab had rejected the contentions of the applicant and had categorically held that the third respondent was competent to pass the said orders of dismissal as against the applicant.

9. As already indicated, the Bench in OA 171/89 after setting aside the dismissal order dated 27.2.89, remitted the matter back to the Disciplinary Authority for limited purpose of hearing the contentions of the applicant as naratted in para 6 of the judgement in OA 171/89. As could be seen from the para 6 of the judgement in OA 171/89, it is clear that the applicant had raised the contentions therein(O.A.171/89) that the documents not originally cited were marked in evidence without giving him inspection, that the complaint of Nookaraju forming the subject matter was never furnished to him. He has also raised the plea that due to non-furnishing of the enquiry report that he had been denied, reasonable opportunity. As already pointed out, the Enquiry Officer's report had been furnished to the applicant and the applicant had also submitted his objections for the same to the Disciplinary authority. It is only after complying with the directions in OA 171/89, that the order of dismissal dated 21.3.90 had been passed. As the present contentions raised by the applicant, namely 4th respondent herein was not competent to initiate disciplinary proceedings as against the applicant and that the third respondent was not competent to pass the order of dismissal as against the applicant, were the issues that were raised by the applicant in OA 171/89 also. As against the findings in OA 171/89 with regard to powers of 4th and 3rd respondents to initiate disciplinary proceedings and to pass order of removal as against the applicant, the applicant had not chosen to prefer an appeal to the Supreme Court. So, the said findings had become final. So, in view of

of the findings in OA 171/89, it has got to be held that the disciplinary proceedings initiated as against the applicant are valid in law and that the order of dismissal of the applicant by the third respondent is also valid in law and that the third respondent had every power to dismiss the applicant from service as a measure of punishment. No doubt, it is contended by the applicant that the said findings in OA 171/89 are erroneous. Even accepting for argument sake that the findings are erroneous, the erroneous findings also would bind the parties until they are set aside by the competent court of law. The fact that the applicant had not preferred an appeal as against the judgement in OA 171/89 as already pointed out is not in dispute. As the findings in OA 171/89 had become final, it is not open for the applicant to raise the very same pleas in this OA that had already been raised by him in OA 171/89 with regard to the legality of the Disciplinary proceedings and the competence of the third respondent to impose the punishment of dismissal of the applicant.

20. It is contended on behalf of the respondents that this OA is not at all maintainable, in view of the judgement in OA 303/90. OA 303/90 was filed by the applicant for the following reliefs:

- (i) To quash the impugned order No.CE/9103/7 dated 21.3.90 under Article 311 of the Constitution based on the charge memo No.CE/9103/7 dated 9.10.86.
- (ii) To declare that Article 311, 309 and CCS(CCA) Rules, 65 are not applicable to Defence Civilians based on the law declared by the Supreme Court vide their decision reported in AIR 1989 SC 662.
- (iii) To order the respondents to restore the CCS(CCA) Rules 1952 particularly to defence civilians until new rules if any framed at a later date under Article 310 of the Constitution instead of allowing the respondents to follow the procedure under CCS(CCA) rules, 1965 which is declared as illegal by the Supreme Court.
- (iv) To quash the delegation of powers presently held vide order No. CP(L)/4035 dated 4.8.79 under Rule 9(1) of the CCS(CCA) Rules 1965 in respect of Appointing Authorities and Ministry of Defence order No. 5(18)/79(DLab) dated 13.9.79 issued under Rule 12(2)(2)(a) of CCS(CCA) Rules 1965 in respect of Disciplinary authorities in view of the law declared by the Supreme Court in a case reported in AIR 1989 S C 662 Supra regarding the non-applicability

of Article 311, 309 and CCS(CCA) Rules, 1965 framed under Article 309 of the Constitution and also on the ground that these rules were framed after 8 years of the appointment of the applicant.

- (v) To declare that the suspension order No.CE/9103/7 dated 10.7.85 chargememo No.CE/9103/7 dt.9.10.85 appointment of the Enquiry Officer vide order No.CE/9103/7 dt.30.11.85, and the appointment of the PO vide order No.CE/9103/7 dt. 30.11.85 as illegal since the above orders were passed by the 5th respondent (in OA 303/90) who maintains no locus standi in case of the applicant as the applicant was working under a Captain of Command Supply Office and that the Captain also maintains competency of a Disciplinary Authority to impose minor penalty on the staff working under the 5th respondent (in OA 303/90).
- (vi) To declare the action of the Respondents 3 and 4 as violative of Article 141 of the Constitution of India since the impugned order was issued contrary to the law declared by the Supreme Court in the case reported in AIR 1989 SC662;
- (vii) to award suitable costs.

11. It is also the contention of the applicant in this OA that he is not governed by the CCS(CCA) Rules which plea he had raised in OA 303/90 also. Dealing with the applicability of CCS(CCA) Rules, the Bench had held as follows at page 11 of the judgement in OA 303/90.

"In this application, the main contention of the applicant is that he is not governed by Article 309 and 311(2) of the Constitution and that the CCS(CCA) Rules, 1965 are not applicable to Defence Civilians. While advancing the arguments in the earlier petition, he had only urged that the documents were not supplied to him before the punishment order was given. In the earlier OA 171/89 he had not raised this legal issue of the applicability or otherwise of the CCS (CCA) Rules, 1965. We find from the Judgement dated 29.11.89 in OA 171/89 that the learned counsel for the respondents therein had raised this issue and argued that even if there infirmities in the conduct of the enquiry against the applicant, they did not matter since CCS(CCA) rules, 1965 were not applicable to him. The respondents therein relied on the ground that the rules framed under Articles 309 and 311(2) of the Constitution were not applicable to the applicant. After dealing with this aspect in considerable detail, this Tribunal held:-

"Civilians in defence services can claim the right to a reasonable opportunity whenever the provisions of Article 310 have not been invoked by application of the CCS(CCA) Rules. The rules framed and extended to such employees would be valid rules and are deemed to have been framed to subserve to the principle of 'audi alteram partem' and the equality clauses framed in the Constitution."

Summarising the whole issue vide para 11, this Tribunal had observed in OA 471/89,

"From the various cases cited as discussed in the preceding paras, the following legal propositions would emerge in regard to the rights of civilian employees in the defence services:

- (i) Those employees are not entitled to the benefits of Article 311 of the Constitution of India when their services are sought to be terminated under Art.310 of the Constitution. They cannot also claim rights similar analogous to the rights conferred under Art.311 even by virtue of the service rules since the service rules must conform to the provisions of the Constitution. Any rule which eradicates or limits the powers of the President/Governor under Article 310 would be ultra vires.
- (ii) The power under Article 310 can be exercised by any minister or officer under the rules of business framed either under the Article 77(3) or under Article 116(3) or in exercise of powers vested in them by rules framed in this behalf, that is, the pleasure of the President or the Governor can be exercised by a Minister/Officer on whom the President or the Governor confers or delegates the power.
- (iii) The right to opportunity by reason of applicability of the principles of natural justice is expressly excluded to defence employees and civilian employees in the defence services when their services are terminated exercising the 'pleasure doctrine' by virtue of Article 310 read with Article 311 of the Constitution of India.
- (iv) Where the power under Article 310 of the Constitution has not been delegated by the President and the appointing authority/disciplinary authority seeks to remove such an employee, without affording him a reasonable opportunity, the exercise of such a power would be contrary to the rule "audi alteram partem"/principles

of natural justice and would be arbitrary and violative of article 14 of the Constitution. The procedures prescribed by the Govt. in such cases viz., applying the CCS(CCA) Rules is a valid procedure and subserves or satisfies the test of audi alteram partem. Consequently, non-compliance of the rules in such case would be illegal and ultra vires of Article 14."

12. So, in view of the findings of this Tribunal in OA 171/89 and OA 303/90, the plea of the applicant that he is not governed by Article 309 and 311(2) of the Constitution and that the CCS(CCA) Rules are not applicable to the applicant, falls to the ground, as the said findings had become final. So, none of the legal contentions raised on behalf of the applicant can be accepted in view of the earlier judgements passed in OA 171/89 and OA 303/90. As already pointed out, while narrating the facts giving rise to this OA (OA 326/91), the applicant herein by Judgement dated 8.3.91 passed in OA 303/90 was permitted to prefer an appeal to the competent authority as against the dismissal order dated 21.3.90 passed against the applicant. The applicant had not chosen to approach the competent authority as permitted by this Bench within 45 days from the date of receipt of the order passed in OA 303/90. As already pointed out, the applicant preferred a Special Leave Petition in the Hon'ble Supreme Court of India against the judgement dated 8.3.91 passed in OA 303/90. The SLP was dismissed by the Hon'ble Supreme Court as per its order dated 25.9.92. So, the Bench judgement passed in OA 303/90 had become final. It is only after the dismissal of the SLP on 25.9.92 that the applicant had preferred an appeal to the competent authority. We are informed that the said appeal had been rejected as time barred. As the applicant did not prefer an appeal to the competent authority against the order dated 21.3.90 as per the directions of this Tribunal, the liberty given to the applicant also automatically ceases, as he had chosen to appeal to the Supreme Court, as against the orders dated 8-3-91 passed in OA 303/90 and as the Supreme Court had not given any time to the applicant to prefer an appeal to the competent authority as against the dismissal order dated 21.3.90, certainly the appeal preferred by

the applicant before the appellate authority on 12.10.92 had become time barred. So, as the appeal preferred by the applicant before the appellate authority, after dismissal of his SLP by the Supreme Court had become time barred, the dismissal order passed by the third respondents dated 21.3.90 had become final. So, in view of the facts and circumstances herein, to go into the merits of this case will be futile exercise and so, we are not inclined to go into the merits of this case.

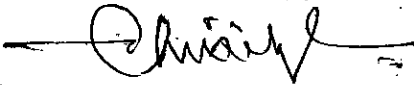
13. It is vehemently contended by the applicant that the earlier OA 171/89 had been filed as against the dismissal order dated 27.2.89, whereas the present OA ~~326/90~~ 326/91 is filed as against the dismissal order dated 21.3.90 and as the present OA is filed on separate cause of action that this OA is maintainable. The fact that the applicant had also filed OA 303/90 for the very same relief he has asked for in this OA (326/91) cannot be forgotten. As a matter of fact, the present (OA 326/91) OA 303/90 and OA 171/89 are based on the same subject matter and the issues involved are also the same. Even accepting the contentions of the applicant that the dates of dismissal order in OA 171/89 and in this OA are different, the judgement in the prior action, namely in OA 171/89, operates as estoppel with regard to the matters in issue and points controverted upon the determination of which the finding of verdict was rendered. So, that being the position, it is not open for the applicant, to contend that the present OA is filed on a separate cause of action other than in OA 171/89 and, that, he has got a right to advance all the pleas raised in OA 171/89. As already pointed out, findings in OA 171/89 operate as a bar to the present OA 326/91. It is not open for the applicant to raise the very same issues herein which were negatived by this Tribunal in OA 171/89. In the result, we see no merits in this OA and hence, this OA is liable to be dismissed and is accordingly dismissed leaving the parties to bear their own costs.

CERTIFIED TO BE TRUE COPY
 SD/ x x x x x x x x x x
 Court Officer
 Central Administrative Tribunal
 Hyderabad Bench
 Hyderabad.

Copy to:-

1. The Secretary, Ministry of Defence, DHQ PO, New Delhi-11.
2. The Chief of the Naval Staff, Naval Headquarters, DHQ PO New Delhi-11.
3. The Flag Officer Commanding-in-Chief, Eastern Naval Command, Visakhapatnam-14
4. The Chief Staff Officer (P&A), Eastern Naval Command, Naval Base, Visakhapatnam-14
5. One copy to: Sri Ch. Narayanacharyulu (Party-in-person), E/1 Pallava Park, Kanchi-arapalem, P.O., Visakhapatnam
6. One copy to Sri N.R. Devraj, Sr. CGSC, CAT, Hyd.
7. One spare copy
8. One copy to library.

//TRUE COPY//


(CH. NARAYANACHARYULU)
Party-in-person.

Suspend the operation
Dr. 23.1.90.
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

M.A.No. /96

in

O.A. No.1541/95

Between:-

CH. NARAYANACHARYULU
Door No. 57-8-106/2
Gowrinagar,
Kancharapalem P.O.
Visakhapatnam-53 0008

Applicant

And

- 1) Secretary M of D,
DHQ PO, New Delhi-110011
- 2) ~~Director~~ Chief of Naval
Staff, HQ DHQ PO,
New Delhi-110011
- 3) Director of Civ. Personnel
NHQ DHQ PO, New Delhi-11
- 4) Flag Officer Commanding-in-
Chief, ENC, Visakhapatnam-14
- 5) Chief Staff Officer(P&A)
ENC, Visakhapatnam-53 0014.

Respondent

APPLICATION FILED UNDER SEC.8(3)
CAT (RPO) RULES 1987



Recd
19.11.96
L. N. R. Denny

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Filed
19.11.96