

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.470 of 1995

DATE OF ORDER: 5th August, 2003

BETWEEN:

V.B.Madan Mohan Rao

.. Applicant

AND

1. The Deputy Commissioner of Income Tax,
Range I, Ayakar Bhawan,
Hyderabad,

2. The Commissioner of Income Tax,
Andhra Pradesh-I,
(Chairman, I.T.Departmental Canteen),
Ayakar Bhawan,
Hyderabad.

.. Respondents

COUNSEL FOR THE APPLICANT: Mr.S.Ramakrishna Rao,

COUNSEL FOR THE RESPONDENTS: Mr.K.Bhaskar Rao, Addl.CGSC

CORAM:


HON'BLE SRI JUSTICE K.R.PRASADA RAO, VICE CHAIRMAN

HON'BLE SRI S.K.AGRAWAL, MEMBER (ADMN.)

JUDGEMENT


ORDER (PER HON'BLE SRI JUSTICE K.R.PRASADA RAO,
VICE CHAIRMAN)

The applicant filed the present OA seeking for setting aside the impugned order dated 27.1.1995 of the 1st respondent declaring it as arbitrary, without jurisdiction, unwarranted, ultravires to the Constitution of India offending Articles 14 and 16 of the Constitution of India, and to direct the respondents to reinstate him with all consequential benefits.




2. The facts which are not in dispute are briefly as follows:-

The applicant was initially appointed as Accountant-cum-Kitchen Clerk with effect from 7.10.1965 with Andhra Pradesh Incometax Department Employees Multipurpose Cooperative Society Limited, Hyderabad by its Vice-President to work in the Departmental Canteen managed by the Society. The said society was registered under the provisions of the Andhra Pradesh Cooperative Societies Act, 1964. The Society is managed by the Managing Committee Members duly elected by the members of General Body of the Society. During the year 1974 the applicant was promoted as Manager in the Canteen of the Society. The applicant became Central Government employee from 1.10.1991 in furtherance of the directions issued by the Hon'ble Supreme Court in W.P.(Civil) Nos.6189-7044 and 8246-55 of 1983 directing the respondents therein to extend the benefit of Central Government employees to the employees of Non-statutory Departmental Co-operative Canteens/Tiffin Room etc. In accordance with the above directions, the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) have issued O.M. dated 29.1.1992 in which it is intimated that it was decided to treat the employees of Non-statutory Departmental/Cooperative canteens/Tiffin Room located in Central Government offices as Government servants with effect from 1.10.1991. Accordingly the applicant acquired the status of Central Government employee from 1.10.1991 and he was




brought under the scale of pay of Rs.1200-30-1440-EB-30-1800. An Office Order has been issued in this regard by the 1st respondent and it had been implemented only with effect from 1.1.1994. The applicant continued to work in the Society Canteen which was managed by the managing committee of the Society.

3. It is ^{be} further the case of the applicant that the 1st respondent as a disciplinary authority issued the applicant a charge memo dated 27.1.1995 imputing certain allegations alleging charges pertaining to the period from 1.7.1985 to 30.10.1993 during which period the applicant worked in the A.P.Income Tax Department Employees Co-operative Society, under the jurisdiction of the Management of the Society. The 1st respondent had further appointed an Inquiry Officer and a Presenting Officer vide his orders dated 2.3.1995. The applicant challenged the impugned charge memo issued to him by the 1st respondent in the present OA contending that the 1st respondent has no jurisdiction to act as a disciplinary authority in respect of the charges pertaining to the period from 1.7.1985 to 30.10.1993 when the applicant was working in A.P.Income Tax Department Employees Cooperative Society under the jurisdiction of the management of the Society during the said period. He further contended that there is separate forum to look into the irregularities committed by the Management of the Society and its officers/paid servants as per the




Andhra Pradesh Coopertive Societies Act, 1964. Therefore the 1st respondent has wrongly assumed the role of disciplinary authority contrary to the provisions contained in the said Act.

4. The respondents filed reply statement contending that the applicant is a Government servant with effect from 1.10.1991 and as such he is governed by the same set of rules as applicable to the other Government servants and action could be taken against him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. They further contended that various disciplinary rules do not provide for any time limit for initiation of proceedings or issuing of charge sheet proceedings and it can be initiated against an employee while he is in employment irrespective of time of happening of the incident. The facts of this case clearly show that there has been no such delay considering the period to which the charge relates (from period prior to 1991 to October 1993), the time taken for issue of memo to the applicant, considering the explanation offered by the applicant thereto and finalising the charge memo. They also contended that as per Govt. of India instruction (2) below Rule 3 of CCS (CCA) Rules, time at which an act was committed or the capacity in which it was committed is not material for deciding whether or not the CCS (CCA) Rules, 1965 are applicable to an employee. It would therefore be quite in order to initiate disciplinary proceedings against the applicant for the misconduct




which is alleged to have been committed at the time when he is not a Government servant. It is therefore contended by the respondents that the departmental action is permissible against the applicant in respect of the misconduct committed in the earlier employment.

5. This OA came to be disposed of earlier by the another Division Bench of this Tribunal by order dated 27.10.1997 directing the respondents to issue a separate charge sheet to the applicant for the period prior to 1.10.1991 and only charges relating to the periods subsequent to 1.10.1991 should be enquired into in accordance with the law. This Tribunal further directed that bifurcation of charge sheet should be done within a period of 21 days from the date of receipt of a copy of the order and disciplinary proceedings should be completed within 4 months from the date of issue of the bifurcated charge sheet. The said order has been challenged by the respondents in W.P.No.231/98 before the High Court of Andhra Pradesh. The said W.P. was allowed by the order dated 21.1.03 and the order passed by this Tribunal dated 27.10.1997 has been set aside and the matter is remanded to this Tribunal to dispose of the same in accordance with law after giving opportunity of being heard to all the concerned, preferably within a period of 4 months from the date of receipt of a copy of the order.



6. We have heard the arguments advanced by the learned counsel appearing on both sides. The learned counsel for the applicant Shri S.Ramakrishna Rao vehemently contended that the 1st respondent has no jurisdiction to act as a disciplinary authority and to conduct inquiry in respect of the charges relating to the period prior to 1.10.1991 when the applicant was an employee with the Andhra Pradesh Income Tax Department Employees Multipurpose Cooperative Society Limited, Hyderabad which was under the management of the Managing Committee. He further submitted that as per the Bye-laws of the Society, the Managing Committee of the society has to manage the affairs of the Society including the canteen managed by the Society. It is also pointed out by him that there are clear provisions in the A.P.Cooperative Societies Act, 1964 with respect to the management of the society as well as the supervision over the staff. Section 55-A(2) stipulates that in case if such accounts and books are not maintained, the Registrar of Co-operative Societies, may direct the person who is responsible to bring the accounts and books upto date to make them upto date and he shall be bound to comply with such direction within the period specified thereon. Sub-clause (3) of Section 55-A further clarifies that if the person fails to comply with the direction under sub-section (2) the Registrar may suspend such person for such period as he may consider necessary and authorise any person to take action for bringing such account and books upto date. It is further provided under Sub-clause (1) of Section 59 of the said Act that where in the



course of an audit under section 50 ^{or} of an inquiry under Section 51 ^{or} of an inspection under Section 52 or Section 53, it is brought to the notice of the Registrar that paid officer or servnat of a Society has committed or has been otherwise responsible for misappropriation, breach of trust or other offence, in relation to the society, the Registrar may, if in his opinion there is prima facie evidence against such paid officer or servant and the suspension of such paid officer or servant is necessary in the interest of the society, direct the committee pending the investigation and disposal of the matter, to place or cause to be placed such paid officer or servnat under suspension from such date and for such period as may be specified by him, but not retrospectively. Sub-clause (2) of the said section further states that t on receipt of such direction, the committee shall, notwithstanding any provision to the contrary in the bye-laws, place or cause to be placed the paid officer or servnat under suspension forthwith. He therefore contended that in the light of the above provisions contained in A.P.Cooperative Societies Act, 1964 only the Managing Committee is empowered to take any action in respect of the Society employees subject to such direction from the Registrar of Cooperative Societies which may be given from time to time. According to him when there is a separte forum to look into the irregularities committed by the paid servants of the Society as per the provisions of Andhra Pradesh Cooperltive Societies Act, 1964, R-1 has no jurisdiction to assume the role of disciplinary authority and to

conduct the inquiry in respect of the charges framed against the applicant for the period prior to 1.10.1991. In reply to the above submissions, the learned standing counsel for the respondents Shri B.N.Sarma has submitted that as per the Govt. of India instructions, it would be quite in order to initiate disciplinary proceedings against a government servant for some misconduct which is alleged to have been committed at a time when he was not a Government servant. It is further clarified by the said Govt. of India instructions 2 below rule 3 of CCS (CCA) Rles that the time at which act was committed and capacity ⁱⁿ ~~to~~ which it was committed is not material for deciding whether or not the Central Civil Services (Classification, Control and Appeal) Rules, 1965 are applicable to an employee. It is further pointed out by him that as per the Govt. of India instructions below rule 11 of CCS (CCA) Rules, it is clarified that the provisions of rule 11 of CCS (CCA) Rules, 1965 which envisages imposition of penalties on Govt. servants for good and sufficient reasons is adequate authority for taking action against a Govt. servant in respect of misconduct committed before his employment if the misconduct committed before his employment was of such nature as has rational connection with his present employment and renders him unfit and unsuitable for continuing in service. When such action is taken, the charge should specifically state that the misconduct alleged is such that it renders him unfit and unsuitable for continuance in service (G.I.M.H.A.,


O.M.No.39/1/67/Ests.(A) dated 21.2.1967). He also relied upon a decision of the Supreme Court reported in AIR 1967 SC 1274 in the case of "S.Govinda Menon Vs. Union of India" wherein it was held that,

"In our opinion, it is not necessary that a member of the service should have committed the alleged act or omission in the course of discharge of his duties as a servant of the Government in order that it may form the subject of disciplinary proceedings. In other words, if the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that activity in regard to which there is no actual master and servant relationship. To put it differently, the test is not whether the act or omission was committed by the appellant in the course of the discharge of his duties as servant of the Government. The test is whether the act or omission has some reasonable connection with the nature and condition of his service or whether the act or omission has cast ^{any} reflection upon the reputation of the member of the service for integrity or devotion to duty as a

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public servant. We are of the opinion that even if the appellant was not subject to the administrative control of the Government when he was functioning as Commissioner under the act and was not the servant of the Government, subject to its orders at the relevant time, his act or omission as Commissioner could form the subject matter of the disciplinary proceedings provided the act or omission would reflect upon his reputation for integrity or devotion to duty as a member of the service."

7. Placing reliance on the above decision, he contended that the CCS (CCA) Rules are adequate authority for proceedings against the applicant even for the period prior to 1.10.1991 when the applicant was functioning in the same canteen under the management of the Society. Having regard to the above position of law and the Govt. of India instructions issued under the relevant CCS (CCA) Rules, it must be seen whether there are specific allegations in the charge framed that the misconduct alleged in the charge prior to 1.10.91 is such that it renders the applicant unfit and unsuitable for continuance in service and whether the acts or omissions attributed are such as to reflect ^{an} reputation of the applicant for his integrity or good ^afaith or devotion to duty and whether the acts or omissions alleged have some reasonable connection with the nature and condition of



his service and whether it casts any reflection or reputation of the applicant for integrity and devotion to duty as a public servant. It is seen from the articles of charge, framed against the applicant that the charge relates to the period prior to 1.10.91^{all} for misappropriation of the canteen funds, failure to maintain absolute integrity, non-maintenance of required books and accounts and other registers etc. According to the allegations in the Article-II of the charge, the ~~omission~~, misappropriation pertains to the period from 10.8.88 to 31.10.93. The article-XII of the charge pertains to the year 1986 relating to the purchase of refrigerator of 165 litres and debiting ^{for} Rs.8025/- showing purchase of refrigerator of 300 litres capacity. Thus it is found that the transaction pertaining to the period prior to 1.10.91 alleged in the charge, have relevance and connection with his present employment and if the said charges are proved, rendering the applicant ^{unfit} as unfit and unsuitable for continuing in the service. The said ~~action~~ and omissions alleged in the charge, if ~~is~~ proved, reflect on the reputation of the applicant for his integrity or good faith or devotion to duty. We are therefore satisfied that it is permissible for the 1st respondent to hold inquiry in respect of ^{all} the articles of charge framed. Further it is found that the applicant is functioning in the same canteen prior to and after 1.10.1991 and the capacity in which he was discharging duty is unchanged i.e., as a Manager being overall incharge of running the canteen and also incharge of maintaining records and registers, connected files,

general supervision and looking after the day-to-day maintenance. Further it is pointed out by the learned standing counsel for the respondents that the salaries^c of the employees of the canteen even earlier to 1.10.91 were being released by the Government of India to the extent of 70% and in terms of the orders of the Hon'ble Supreme Court and the decision of the court dated 16.11.1992 these employees were eligible for Pension/CPF benefits with effect from 26.9.83. As such the misconduct alleged earlier to 1.10.91 is, in our view, relevant and cannot be ignored. We therefore find no grounds to quash any of the articles of charges^c framed against the applicant or to order for deletion of the charges pertaining to the ^{period} charge prior to 1.10.91 or for restraining the 1st respondent ^{from} conducting inquiry in respect of the said charges.

8. For the above reasons, we find that this OA is devoid of merits. The OA is accordingly dismissed. In the circumstances, we direct the parties to bear their respective costs.

(S.K.AGRAWAL)
Member (A)

(K.R.PRASADA RAO)
Vice Chairman

Dated: this the ^{5th} day of ^{August} ~~July~~ 2003

vsn

06/8/03

CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH : HYDERABAD

COPY TO :

1. VICE CHAIRMAN
2. HMVN : MEMBER (ADMN.)
3. HSKA : MEMBER (ADMN.)
4. HBR : MEMBER (JUDL.)
5. DEPUTY REGISTRAR (ADMN.)
6. SPARE
7. ADVOCATE
8. STANDING COUNSEL

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE K.R. PRASADA RAO
VICE - CHAIRMAN

THE HON'BLE MR. M.V. NATARAJAN :
MEMBER (ADMN.)

THE HON'BLE MR. S.K. AGRAWAL
MEMBER (ADMN.)

THE HON'BLE MR. S.K. AGRAWAL
MEMBER (JUDL.)

DATE OF ORDER: 5/8/03

MA/CP/RA.NO.

IN
O.A. NO.

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED.

C.P. CLOSED

DISPOSED OF

DISPOSED OF WITH DIRECTIONS

DISPOSED OF AS WITHDRAWN

DISMISSED

ORDERED ACCORDINGLY

REJECTED

DISMISSED AS INFUCTIOUS

DISMISSED FOR DEFAULT

NO ORDER AS TO COSTS

WITH COSTS.

Records/Posting/Notice/Scrutiny

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपीठ, Hyderabad Bench

21 Feb 2003

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