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CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH:
AT HYDERABAD.

O.A.No.519 of 1995.

DATE OF ORDER :- 30TH DECEMBER,1997.

BETWEEN :

M. ALLABAOKSH ... APPLICANT

AND

1. The Chief Post Master General,
A.P. Circle, Hyderabad.
2. The Director of Postal Services
O/o Postmaster General,
A.P. Southern Region, Kurnool.
3. The Superintendent of Post Offices,
Hindupur Division, Hindupur. ... RESPONDENTS

Counsel for the Applicant : Mr.K.S.R. Anjaneyulu
Mr.D.Subramanyam

Counsel for the Respondents : Mr N.R.Devaraj,SrCGSC

Coram :

Honourable Mr. R. Rangarajan, Member (Administrative)

Honourable Mr. B.S.Jai Parameshwar, Member(Judicial)

ORAL ORDER.

(Per Hon.Mr.B.S.Jai Parameshwar,Member(Judicial)).

1. Heard Mr. D. Subramanyam, the learned counsel for the applicant and Mr. N.R.Devaraj, the learned Standing Counsel for the respondents.
2. The applicant while working as LSG Postal Assistant in Hindupur Postal Division was promoted to LSG under TBOP with effect from 1.5.1993 as per the orders of the Superintendent of Post Offices, Hindupur dated 23.7.1993(Annexure-III). Earlier the applicant was placed under suspension from 9.4.1984 to 22.11.1985 on the ground of pendency of disciplinary proceedings and also a criminal case. It is stated that the applicant was acquitted in the criminal case and the matter was

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proceeded departmentally. In the disciplinary proceedings, the disciplinary authority ⁱⁿ for the first instance inflicted the punishment of reduction in the same scale of pay by 13 stages from Rs.1330/- to Rs. 975/- for a period of 10 years with effect from 30.4.1988. It was stated that the applicant would earn increments of pay during the period of reduction and that on expiry of the period, the reduction will not have the effect of postponing the applicant's future increments of pay and the period of suspension from 9.4.1984 to 22.11.1985 would be treated as suspension only.

3. Against the aforesaid punishment, the applicant submitted an appeal to the Director of Postal Services, Kurnool. The appellate authority modified the order of reduction of pay of the applicant by three stages from Rs.1390 to Rs.1300/- for a period of 5 years with effect from 30.4.1988 and it was further directed that the applicant would earn increments of pay during the period of reduction and on expiry of the period, the reduction would not have the effect of postponing his future increments of the pay. It may be stated here that the appellate authority had not given any orders ~~how~~ to treat the suspension period. It is stated that on the ^{basis of the} internal check report, the disciplinary authority re-examined the matter and by his order dated 1.6.1993 treated the said period of suspension as on duty on compassionate grounds.

4. The same disciplinary authority, subsequently, issued the show cause notice dated 18.7.1994 (Annexure-VI, at page 18 of the O.A.) to the applicant to treat the period of suspension as suspension since the major penalty was inflicted ~~to~~ ^{on} him. The applicant has submitted his explanation to the show cause notice on 8.8.1994.

5. The learned conseil for the applicant submits that the abovementioned show cause notice was issued in pursuance of the orders issued by the Director General and hence the Disciplinary authority had to implement the orders of the Director General to the detriment of the applicant. The disciplinary authority by his proceeding dated 31.8.1994 treated the period of suspension from 9.4.1984 to 22.11.1985 as suspension.

6. The applicant has filed this O.A. praying to call for the records relating to the impugned order dated 31.8.1994 (Annexure-I) and also the letter dated 28.12.1994 (Annexure-II) and to declare them as illegal and to direct the respondents to pay the applicant his salary on the basis of the Audit Inspection Report (Annexure-IV) and not to recover any amount as excess payment.

7. It is seen from the proceedings that the appellate authority has not passed any orders in regard to the treatment of the period of suspension from 9.4.1984 to 22.11.1985 and has passed orders reducing the punishment. When he was asked to convey his decision, he has remitted the matter back to the disciplinary authority for re-examining the issue. When the disciplinary authority had already passed orders in regard to the treatment of period of suspension, it was not for the appellate authority to ask for the disciplinary authority to re-examine the issue. He could have himself examined the matter and passed the appropriate orders. If he had any doubt in the matter, he could have asked for the details from the disciplinary authority as required by him. But the appellate authority has not taken that course of action.

8. When the disciplinary authority has passed some orders with regard to the treatment of suspension period on the basis of the audit objection, that was questioned by the Director General. In view of that a show cause

notice was issued and on the basis of the reply given by the applicant, the impugned order of treatment of suspension period was issued by the disciplinary authority.

9. In this case, the appellate authority somehow was kept outside the grip of the proceedings in passing the orders in regard to the treatment of the suspension period. We feel that the appellate authority has to be brought into the picture and he should have given proper orders in regard to the treatment of the suspension period when the applicant has preferred the appeal against the punishment imposed on him by the disciplinary authority. As he has not done that so far, we feel that it is a fit case to be remitted back to the appellate authority to consider and decide this issue without being influenced by any happenings that had taken place in this case.

10. The learned counsel for the applicant submits that the Director General had asked the disciplinary authority to reconsider the period of suspension and that influenced the authority next working under him. If it is remitted back to the appellate authority, he will have no other alternative except to confirm the order or pass the orders on the basis of the instructions given by the Director General.

11. We have considered this submission minutely. Consideration of disciplinary proceedings is a quasi-judicial one. We do ~~not~~ consider it necessary ~~at all~~ that the appellate authority should act independently without being influenced by any of the happenings in this case. In spite of that, we have stated that the appellate authority should consider the issue without being influenced by the orders issued by various authorities.

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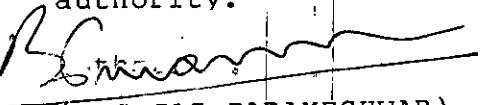
We think that itself will give necessary guarantee to the applicant that his case will be considered fairly without being influneced by any of the authorities. The submission of the learned counsel for the applicant, in our opinion, cannot be extended to that height to state that everybody ^{would} be influenced by his superiors. Hence this submission of the learned counsel for the applicant cannot be accepted in toto.

12. The learned counsel for the applicant brought to our notice the decision of the Hon'ble Supreme Court in the case of Anirudha Sinhji Karansinhji Jadeja v. State of Gujarat, reported in AIR 1995 SC 2390. ^(Para 14) This decision, in our opinion, is not relevant to the present case, because we remit back the matter to the appellate authority for deciding the issue regarding treatment of the suspension period, since he has not passed any order on that issue which is a failure on the part of the appellate authority.

It is stated that recovery has already been done. If recovery has already been done, then the applicant should be paid the amount if due to him on the basis of the decision of the appellate authority.

13. In the result, the O.A. is disposed of with the following directions :-

- (a) The impugned orders dated 31.8.1994 (Annexure-I) and 28.12.1994 (Annexure-II) are hereby set aside.
- (b) The matter is remitted back to the appellate authority for consideration and taking a decision in regard to the treatment of suspension period, in accordance with law.
- (c) The applicant be paid back the amount if due to him on the basis of the decision of the appellate authority.


 B.S.JAI PARAMESHWAR
 MEMBER(JUDICIAL)

DJ/


 R. RANGARAJAN
 MEMBER(ADMINISTRATIVE)

Dated the 30th December, 1997.

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Copy to:

1. The Chief Postmaster General, A.P.Circle, Hyderabad.
2. The Director of Postal Services, O/O Postmaster General, A.P.Southern Region, Kurnool.
3. The Superintendent of Post Offices, Hindupur Division, Hindupur.
4. One copy to Mr.K.S.R.Anjaneyulu, Advocate, CAT, Hyderabad.
5. One copy to Mr.N.R.Devraj, Sr.CGSC, CAT, Hyderabad.
6. One copy to HBSJP, M, (J),CAT, Hyderabad.
7. One duplicate copy.
8. One copy to D.R(A).

YLKR

31/12/98

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

THE HON'BLE MR. B. S. JAI PARAMESHWAR :
M(J)

DATED: 30/12/97

ORDER/JUDGMENT

M.A./R.A/C.A.NO.

in

C.A.NO. 519/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED X REJECTED

NO ORDER AS TO COSTS.

II COURT

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