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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. NO.1316 OF 1996

Dated, the 8th September, 1998.

BETWEEN :

A. Venkat Reddy Applicant

A N D

1. Union of India,
Rep. by Director General of Post Offices,
Sanchay Bhawan, New Delhi.
2. The Chief Post Master General,
A.P. Circle, Hyderabad-1.
3. The Director of Postal Services(HCR)
O/o, The Chief Post Master General,
Dak Sadan, Hyderabad.
4. The Senior Superintendent of Post Offices,
Secunderabad ~~Division~~,
Hyderabad.16.
5. M. Jaya Kumar, Senior Post Master,
Secunderabad H.O., Presently working as
Senior Superintendent of Post Offices,
Bhimanipatnam, W.G. Dist..

... Respondents.

COUNSELS:

For the Applicant : Mr. K.K. Chakravarthy

For the Respondents : Mr. K. Ramulu

CORAM :

HON'BLE MR. R. RANGARAJAN, MEMBER (ADMN)

HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JDL)

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O R D E R

(PER : HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL)

1. Heard Mr. K.K. Chakravarthy, Learned Counsel for the applicant and Miss Shyama for Mr. K. Ramulu, Learned Standing Counsel for the respondents. Notice served on R-5 but called absent.
2. This is an application under Section 19 of the Central Administrative Tribunals Act, 1985. The application was filed on 16.10.96.
3. The facts giving raise to this O.A. may, in brief be, stated thus :
 - a) While the applicant was working as Postal Assistant in H.O. Secunderabad, was placed under suspension.
 - b) The respondent No.5, /then working as the Senior Post Master ~~as~~ ^{was} ~~Head~~ of the said Post Office. He served a major penalty charge memo vide ~~proceedings~~ No.B1/PF/AVR dt. 20.7.92. The charge levelled against the applicant reads as follows :

"ARTICLE - I

That the said Sri A. Venkatreddy, while working as PA Secunderabad HO misbehaved with the Senior Post Master, Secunderabad HO on 22.5.92, abused using filthy language and threatened to break hands and legs and murder if extension of his leave was not sanctioned and thus behaved in a manner, which is unbecoming of a Govt. servant violating the provisions of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

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ARTICLE-II

That the said Sri A. Venkatreddy, while working as PA Secunderabad HO has unauthorisedly absented from duty from 22.5.92 A/N and resumed duty on 25.5.92 F/N and failed to maintain devotion to duty as required of rule 3 (1)(ii) of CCS (Conduct) Rules, 1964.

ARTICLE-III

That the said Sr A. Venkatreddy, while working as PA, Secunderabad HO has failed to account for RL No.01559 dt. 19.5.92 of Secunderabad HO entrusted to him by the HRC Secunderabad HO on 20.5.92 and thus failed to maintain absolute integrity as required by rule 3(1)(i) of CCS(Conduct) Rules, 1964."

The Article of charges were signed by R-5. It may be noted that R-5 was cited as a witness in Annexure-IV to the charge memo.

4. The applicant has submitted his explanation dt. 10.8.92. A copy of the explanation is at Annexure-II (page 20).

5. The inquiry was conducted into the charges and the applicant participated in the inquiry. The applicant submitted his defence brief. A copy of the same is at pages 48 to 61 of the O.A. The Assistant Superintendent of Post Offices (Establishment), O/o of the Chief Post Master General, Hyderabad, was the Inquiry Officer. He submitted his report on 15.4.95. A copy of the report of the Inquiry Officer is at pages 63 to 77 of the O.A. The Inquiry Officer has recorded his findings as under :

"FINDINGS AND DECISIONS AGAINST EACH CHARGE

Article-I

Under the influence of the evidence adduced during

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the course of the enquiry and also according to the findings and decisions arrived while analysing the evidence, I feel that some thing transpired between the Government Servant and the Senior Postmaster. Though the witness in this charge did not attend and burden of proof lies with the prosecution, I held the charge as proved beyond reasonable doubt.

Article-II

It is a fact that the Government servant availed leave without prior permission, resulting in unauthorised absence. I hold the charge as proved beyond reasonable doubt, in view of the evidence adduced on the analysis and assessment of evidence discussed above.

Article-III

Even though there is no proof in token of having entrusted particular R.L. to the Government servant duly supported by the acquittance from the Government servant, as is evident from the depositions of the witnesses during the course of inquiry, I hold the charge that the said Sr A. Venkatreddy, failed to account for RL No.C1559 dt. 19.5.92 of Secunderabad entrusted to him by HRC, Secunderabad HO on 20.5.92, as proved beyond reasonable doubt."

6. The applicant submitted his explanation dt. 20.4.95 against the findings recorded by the Inquiry Officer. A copy of his explanation is at page 72 to 82 of the O.A.
7. It appears that during the pendency of the inquiry, the applicant was transferred out of the H.O. Secunderabad. Hence, the R-4 acquired jurisdiction over the applicant.
8. The Senior Superintendent of Post Offices, Secunderabad Division, Hyderabad i.e. R-4 after considering the report of the Inquiry Officer, explanation of the applicant and the inquiry records accepted the findings of the inquiry officer on Article II and III of charge memo and imposed penalty of reduction of pay of the applicant by 5 stages



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from 1300/- to Rs.1150/- in the time scale of pay of Rs.975-1660/- for a period of 5 years w.e.f. 1.6.95. He further held that the applicant shall not earn increments of pay during the period of reduction and that on the expiry of that period, the reduction would not have the effect of postponing his future increments of pay.

4. Against the penalty order, the applicant submitted a memorandum of appeal to the Director of Postal Services, City Region, Hyderabad i.e. R-3. A copy of the memorandum of Appeal is at pages 89 to 96 of the OA.

5. The R-3 by his proceedings No. ST/6-HD/20095 dt. 22.8.96 considered the appeal and confirmed the order of the disciplinary authority and hence he dismissed the appeal.

6. The applicant has filed this O.A. challenging the order of the Appellate authority as well as of the disciplinary authority as illegal, arbitrary, ^{praying} to set aside the same and consequently/direct the respondents to restore ^{of} his pay scale and to order to refund ^{the amounts to} him with all consequential benefits.

7. The principal ground contended by the applicant is that the charge sheet issued by R-5 is not valid. It is his contention that when the R-5 is cited as a witness on behalf of the disciplinary authority, it was not proper for the R-5 to issue the charge memo. As already observed, the R-5 was then working as Senior Post Master, HQ Secunderabad. At that time the applicant was working under R-5.

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8. In para 6(c) of the O.A. the applicant has narrated the circumstances under which there was a kind of misunderstanding between him and R-5. The applicant submits that was the main reason for initiating the disciplinary proceedings. He contends that the charge memo was issued with vengeance. ~~Merely because the R-5 has~~ remained absent, it may not be proper for this Tribunal to come to the conclusion that the charge memo was issued with vengeance. In fact, the irregularity committed by R-5 is that he has signed the charge memo when he happened to be the material witness ~~to~~ to substantiate the charge levelled against the applicant. We, therefore, feel, in all fairness, the R-5 should not have issued the charge memo. If he had felt the necessity to proceed against the applicant departmentally, then he should have placed the papers before the appointing authority. As Head of the Office, he had every competence to issue the charge memo to his subordinate employees. However, when he happened to be the material witness on behalf of the disciplinary authority, he should not have issued the charge memo dt. 20.7.92.

9. The Learned Counsel for the applicant in support of his contention ~~that the charge memo~~ issued by R-5 is not valid, relied upon the observations made by the Patna Bench of this Tribunal in the case of CCS Dwivedi V. Union of India reported in 1989(4) SLJ(CAT) 892(Patna). The observations made by the Patna Bench of this Tribunal are reproduced below :



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".....The memorandum of charges was issued against the applicant as a result of the check conducted by the second respondent in his capacity as the Senior Divisional Commercial Superintendent when it is stated that the alleged irregularity committed by the applicant was detected. Indeed it is openly admitted in the reply that the second respondent was the complainant. Yet the second respondent by virtue of his authority as disciplinary authority has issued the memorandum of charges fully knowing that the imputation relates to an incident which is within his personal knowledge, unearthed by him and as such, he will have to play the material role in the inquiry. Actually it did happen like that and it is seen from the report of the Inquiry Officer that the Inquiry Officer has placed considerable reliance on the witnessing of the incident by the second respondent. It is only as the nominee or as the agent of the disciplinary authority that the Inquiry Officer conducts the enquiry. The second respondent himself has passed the impugned order holding the applicant guilty and imposing the penalty on him.

It is one of the principles of natural justice that one cannot be a judge in one's own cause. It may be that it was in his capacity as the authority empowered to check that the second respondent detected the incident and made the complaint. But in such a matter when the Railway servant denies the charge he can be found guilty and a penalty imposed on him only after an inquiry is conducted in accordance with the principles of natural justice. Actually, though the second respondent was empowered to be the disciplinary authority in respect of the applicant, in a case of this nature where the inquiry would involve himself as the material witness, the second respondent should not have issued the memorandum of charges, but should have appointed a disciplinary authority for the purpose. Failure to do so has vitally affected the entire disciplinary proceedings. In view of the above the order of the disciplinary authority imposing the penalty and that of the appellate authority rejecting the appeal are all vitiated and cannot be sustained".

10. Though the R-5 was cited as a witness, he was not examined during the disciplinary proceedings. Even though he was the material witness to the incident described in

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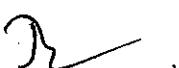
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Article-I of the charge memo. The Inquiry Officer held the said charge as proved. However, the disciplinary authority while considering the findings ~~recorded by the~~ Inquiry Officer on item No.1 of the charge memo on the basis of evidence rightly ~~did~~ agree with the findings of the Inquiry Officer on item No.1 of the charge memo and passed the order on the items No.2 and 3 of the charge memo.

11. The question is not about giving a finding on the basis of the enquiry. By the time the disciplinary authority already passed the order sufficient damage had been done in the disciplinary proceedings by issue of the charge memo by the R-5. When the R-5 was a material witness he should not have ventured to issue the charge memo. Then itself the principles of the natural justice had been violated. Any action ~~in~~ subsequent manner of disposal of the disciplinary proceedings cannot be compensated. We feel the entire proceedings are vitiated.

12. Respondents 1 to 4 attempted to justify the competency of the R-5 to issue the charge memo. As already observed, we are not saying that R-5 was not competent, but in the circumstances of the case, he should not have issued the charge memo, for, he was one of the material witnesses to substantiate the incident described in item No.1 of the charge memo.

13. In view of the above, it may not be proper to sustain the impugned orders. There is flagrant violation of the principles of natural justice in conducting the disciplinary proceedings. Therefore, we are of the opinion that the impugned orders are not sustainable. We leave it to the respondent authorities to consider and take a decision still whether it is necessary to proceed against the applicant.



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14. Hence the following directions are issued :

a) The impugned order dt. 19/21.6.95 (Annexure-XVI) passed by the disciplinary authority and the order dated 22.8.96 passed by the appellate authority are hereby set aside.

b) The respondent authorities may consider the necessity or otherwise of proceeding against the applicant for the alleged misconduct.

c) In such an event, the disciplinary proceedings shall be concluded as expeditiously as possible.

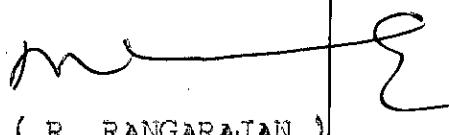
in regard to item (b) above

d) Time for compliance is 1 (one) month from the date of receipt of a copy of this order.

15. With the above directions, the O.A. is allowed leaving the parties to bear their own costs.


(B.S. JAI PARAMESHWAR)

MEMBER (J)


(R. RANGARAJAN)

MEMBER (A)

Dated, the 8th September, 1998.

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