

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.381/96

DATE OF ORDER : 27-07-1999.

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Between :-

Ch.Shivalingam

... Applicant

And

1. The Director,
SVP National Police Academy,
Govt. of India, Ministry of Home Affairs
Hyderabad-500 252.
2. The Dy.Director (Admn.),
SVP National Police Academy,
Govt. of India, Ministry of Home Affairs,
Hyderabad - 500 252.
3. The Asst.Director (Admn),
SVP National Police Academy,
Govt. of India, Ministry of Home Affairs,
Hyderabad - 500 252.

... Respondents

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Counsel for the Applicant : Shri P.Naveen Rao

Counsel for the Respondents : Shri V.Rajeshwar Rao, CGSC

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CORAM:

THE HON'BLE SHRI H.RAJENDRA PRASAD : MEMBER (A)

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (J)

(Order per Hon'ble Shri H.Rajendra Prasad, Member (A)) *✓* *✓*

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... 2.

: O R D E R :

(PER HON'BLE SHRI H.RAJENDRA PRASAD, MEMBER(A))

Heard Mr.P.Naveen Rao and Mr.Phani Raj for the applicant and Mr.V.Rajeshwar Rao, Respondents.

2. A Memorandum of Charges was issued to the Applicant under Rule-14 of CCS(CCA) Rules,1965, on allegations of disobedience, refusal to perform the work assigned to him, quarelsomeness besides using vulgar expressions against his superior. He was simultaneously placed under suspension on 5-3-1994. The order of suspension was, however, revoked on 28-4-1994 and an Enquiry Officer was appointed on the same date. The officer ~~so appointed to conduct the~~ ^{became} enquiry later, in normal course, ~~the~~ the applicant's Disciplinary Authority and proceeded to carry on the enquiry in the twin-capacities of Enquiry Officer and Disciplinary Authority, and imposed on the Applicant the punishment of Reduction to a lower stage in the scale of pay for a period of one year with a proviso that he would earn his due increments during the period of such Reduction and the punishment would not have the effect of postponing the future increments. It was also ordered that the period of suspension between 5-3-1994 to 28-4-1994 was to be treated as leave without pay.

3. The Applicant filed an appeal to Respondent No.2 on 22-5-1995. The Appellate Authority upheld the punishment whereupon a Review Petition was filed by the aggrieved employee before Respondent No.1. It is stated that the review petition has not been disposed of yet.

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4. The grievance of the applicant is based on the following :-

- i) No Enquiry Report was served on the applicant or had even been drawn up.
- ii) The Enquiry Officer assumed the role of Disciplinary Authority and proceeded with the enquiry;
- iii) No clear findings were recorded on the basis of the evidence tendered during the enquiry, nor apparently was the evidence evaluated;
- iv) Whereas 3 witnesses were cited in the memorandum of charges, the enquiry officer-cum-disciplinary authority proceeded to examine and record the statements of many more witnesses;
- v) The documents cited in the memorandum of charges were not supplied to him;
- vi) The Appellate Authority passed the orders in a mechanical way without dealing with any of the contentions raised by him, viz., the applicant, in his appeal;
- vii) No witnesses had testified to the alleged use of intemperate or unparliamentary language by him, viz., the Applicant.

5. The respondents in their counter-affidavit state that: the OA is premature in as much as the Review Petition has not yet been disposed of; the order issued by Respondent No.3 imposing the impugned punishment is valid in as much as the rules permit the appointing authority to function as Disciplinary Authority; further the Disciplinary Authority can himself conduct enquiry under the rules. It is added that the Disciplinary Authority in his discretion may allow production of evidence not included in the memorandum of charges and that such discretion was used by the Disciplinary Authority in this case. The appeal submitted by the Applicant was found to have no substance in it and was therefore rejected. The evaluation of evidence on record was based on the averments of witnesses, and the applicant was also given ample opportunity to present his case. And finally, the

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principles of natural justice were in no way violated in this instance.

6. The contention of the Respondents that there is no bar for the disciplinary authority to conduct an enquiry himself against an official in respect of whom he is the Appointing Authority is indeed correct. In the instant case, however, the Enquiry Officer, having been appointed before he became the Disciplinary Authority, it was expected that a proper notice should have been served on the charged official to the effect that the Disciplinary Authority himself intended to conduct the Enquiry. No such notice was given leading to a situation wherein the same authority assumed the dual role at a later stage of the proceedings without adequate notice or warning to the official in this regard. There is no reply to the contention of the Applicant that the sole document relied upon by the Disciplinary Authority was not supplied to him. The Respondents state that the Disciplinary/Enquiry Authority at his discretion to allowed some extra evidence and witnesses which were considered relevant to the proceedings. It is a clear possibility that the charged official viz., Applicant, was not given a notice in this regard as well. If such an intention was not made clear to the Applicant, then the pressing of additional evidence which was beyond the range and scope of the original charges would not be correct or permissible. The Applicant had raised various contentions in the appeal submitted by him to Respondent-2. In this case it is noticed that the orders passed by both the Disciplinary as well as the Appellate Authority were cryptic and almost non-speaking. There is no hint of any evaluation of the evidence tendered during the enquiry, nor any discussion or findings. The R bland statement in para-8 of the counter-affidavit—that the evaluation of the evidence was based on the submissions
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of the witnesses, is not borne out from the orders of the Disciplinary Authority. Similarly, it is far from clear whether an opportunity was given, or not given, to the charged official, viz., Applicant, to present his case during the enquiry. We have nothing, except a bald assertion, in this regard to lead us to any definite conclusion. If such an opportunity was not in fact given, the proceedings would be flawed on this score as well.

7. The above deficiencies are serious enough to warrant interference with the impugned orders passed by the Disciplinary as well as Appellate Authorities. Since, however, a Revision Petition is stated to be pending consideration and disposal, these are merely pointed out with the expectation that the Review/Revisional Authority shall duly take cognisance the shortcomings pointed out herein and take a suitable decision keeping in view the observations recorded above. Incidentally, the Review Petition which was submitted by the applicant in May, 1995, was reported to be lying undisposed till the time of the filing of this O.A. on 14-3-1996. We therefore direct that the petition submitted by the Applicant be disposed of by the concerned authority within (30) days from the date of receipt of a copy of this order bearing in mind the observations made above.

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1st AND 2nd COURT.

COPY TO:-

1. HDHND

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

2. HHRP M(A)

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH, HYDERABAD.

3. HESOP M(J)

4. D.R. (A)

5. SPARE

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE - CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD
MEMBER (ADMN)

THE HON'BLE MR. R. RANGARAJAN :
MEMBER (ADMN)

THE HON'BLE MR. B.S. JAP PARAMESHWAR :
MEMBER (JUDL)

ORDER: Date. 27/7/99

ORDER / JUDGMENT

MA./RA./CP.NO

IN

DA. NO.

381/96

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED.

C.P. CLOSED

R.A. CLOSED

D.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS.

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