

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 895/96

Date of Order : 25.11.98

BETWEEN :

P.Mohana Rao

.. Applicant.

AND

1. The Union of India,
rep. by its Secretary to Govt.,
Ministry of Finance,
Dept. of Economic Affairs,
North Block, New Delhi.

2. National Savings Commissioner,
Government of India,
12, Seminary Hills,
Nagpur.

3. Regional Director,
Government of India,
National Savings,
'C' Block, 2nd Floor,
Kendriya Sadan, Saltan Bazar,
Hyderabad.

.. Respondents.

Counsel for the Applicant

.. Mr.N.Ramamohana Rao

Counsel for the Respondents

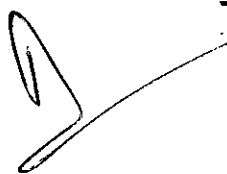
... Mr.K.Ramulu

CORAM :

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

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

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X As per Hon'ble Shri R.Rangarajan, Member (Admn.) X

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Mr.Shiva for Mr.N.Rama Mohana Rao, learned counsel for the applicant and Ms.Shama for Mr.K.Ramulu, learned standing counsel for the respondents.

2. The applicant in this OA was charge sheeted by memo No.7-8/Admn.(PMR)DCO/A7, dated 12.12.86 for unauthorised absence. The article of charge reads as below:

"That the said Shri P.Mohana Rao, while functioning as Driver-cum-Operator in the office of the Asst. Regional Director, National Savings, (now DRD) Vijayawada has been continuously absent from duty with effect from 28.11.84 to this day i.e. 12.12.86 without any intimation/leave application and has deserted his post, thereby Shri P.Mohana Rao Driver-cum-Operator utterly failed to maintain devotion to duty and acted in a manner unbecoming of a Government servant in violation of the provisions of the Rule 3(1)(ii) and Rule 3(1)(iii) of CCS Conduct Rules, 1964 respectively".

3. An enquiry was conducted by the Deputy Regional Director National Savings Commission and he has completed the enquiry and came to the conclusion that the charge is proved.

4. The applicant was issued with a punishment order by the National Savings Commissioner removing him from service by order No.33082/Vig/2(8)86, dated 5.12.88 (A-32). The applicant filed an appeal which was also disposed of. The appellate order was passed on 15.5.90 by the Finance

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Secretary confirming the order of the disciplinary authority. The order of the appellate authority is very cryptic and it only states that the delinquent employee has not brought out any new point which requires consideration and hence his appeal was rejected. Thereafter the applicant filed a revision petition. The applicant by his letter dated Nil (A-43) addressed to R-2 asked for the enquiry report. The learned counsel for the respondents submits that it is not received. It is also seen that by the order No.2/9/89-NS.I, dated 23.4.93 (A-44) the applicant was informed that his petitions dated 1.7.92 and 9.7.92 addressed to Finance Minister and Minister of State for Finance respectively on the subject of his penalty of removal from service was considered and rejected.

5. This OA is filed for setting aside the disciplinary order of removal dated 5.12.88 and also the proceedings dated 23.4.93 issued by the revision authority by holding them as arbitrary, illegal and contrary to CCS (CCA) Rules and for a consequential direction that the applicant is reinstated to duty as driver-cum-operator with all consequential benefits.

6. The learned counsel for the applicant vigorously argued that the enquiry report was not given to him before the order was passed by the disciplinary authority. Passing

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an order by the disciplinary authority without supplying him enquiry report is arbitrary and illegal and hence on that score itself the punishment orders have to be set aside.

7. The above contention was considered carefully. The applicant was issued with the punishment order of removal on 5.12.88 after the constitutional amendment by which the ~~submission of~~ the enquiry report was not to be given before passing the disciplinary order. Hence if the disciplinary order has been passed without supplying the enquiry report during the pendency of that period the order passed by disciplinary authority without supplying him the Enquiry report cannot be said to be irregular. However, the passing of the disciplinary order without supplying the enquiry report was challenged in Mohd. Ramjankhan's case reported in AIR 1991 SC 471. Further in the reported case AIR 1994 SC 1074 (Managing Director, ECIL v. B. Karunakar) a Constitution bench of the Apex Court had directed that the enquiry report should be supplied to the delinquent employee in these cases which are pending on the date of issue of judgement in Mohd. Ramjankhan's case i.e. 20.11.90. The cases decided after the amendment to the disciplinary rules till 20.11.90 need not be reopened if the enquiry report was not given to the delinquent employee before passing of the order by the disciplinary authority. However on and from 20.11.90 the cases can be decided and order of penalty can be issued only after supplying of the enquiry report. As the present case

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was decided before 20.11.90 i.e. the disciplinary order was dated 5.12.88 now supply of enquiry report to the applicant cannot be termed as illegal or irregular. The learned counsel for the applicant submits that a reading of the Supreme Court judgement reported in AIR 1994 SC 1074 indicates that even in those cases decided earlier to 20.11.90 punishment should have awarded only after supplying the enquiry report. We do not subscribe to the above view. The cut off date was given by the Supreme Court in the case of ECIL to avoid unsettling of the settled position. Hence the submission made by the applicant's counsel cannot be upheld. The passing of the disciplinary order in the present case was on 5.12.88 and hence cannot be challenged on the ground that it was passed without supplying him the enquiry report.

8. The applicant further submits that even when he filed his revision petition the enquiry report was not made available to him even though rule exists that the enquiry report has to be supplied to him atleast along with the disciplinary order. The learned counsel for the respondents submits that it was sent to him but ^{the applicant} ~~he~~ had returned back those documents without accepting the same. If that is so, the extant rules should have been followed before implementing the concerned order of the disciplinary authority. ~~A required~~ ^{had} proof should have been kept to the effect that the applicant ^{had} refused to take the documents. But we are not able to come to a decisive

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conclusion that such an action was taken by the respondents. Though it may be possible that the enquiry proceedings was sent to the applicant, there is a doubt whether he received the same or not. Giving the benefit of doubt to the applicant we are of the opinion that reconsideration of the case may be essential.

9. The applicant if he has not received the enquiry report should have informed the appellate authority that he cannot submit an appeal unless the enquiry report is supplied to him. But we do not find any such correspondence in this connection. Though we questioned the learned counsel for the applicant to show any such correspondence he is unable to show the same. Hence it has to be presumed that the applicant failed to bring out this fact to the notice of the appellate authority.

10. The applicant in his letter dated Nil (A-43) had addressed a letter to R-2 stating that the enquiry report was not supplied to him. Though the learned counsel for the respondents submits that such a letter was not received by them, in view of the foregoing analysis we feel that the issue needs reconsideration by giving him a copy of the enquiry report, if it is not already given to him, at least now, and the order already passed by the reviewing authority is to be reconsidered.



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11. The learned counsel for the applicant submits that even the disciplinary order has to be set aside and the case has to be decided after giving the enquiry report. We do not accept such submission as the disciplinary order ^{was} ~~has~~ passed in accordance with the rules then in force. The learned counsel for the applicant further submits that atleast ~~the~~ appellate authority can reconsider the case once again in view of the order passed by him. We do not see much substance in this submission. When higher authority, namely, revisional authority had passed the order already we do not think that the appellate authority may act independently as it is likely that his views had ^{already} ~~ahead~~ been biased by the orders of the reviewing authority dated 23.4.93.

12. Rule 20 of the CCS (CCA) Rules provides for revision in disciplinary cases. The appellate order was passed by the Finance Secretary and hence the appropriate competent authority may reconsider his review petition, if submitted, on the basis of the enquiry report to be supplied to him.

13. In the result, the following direction is given :-

The order dated 23.4.93 (A-44) is set aside. The respondents are directed to supply the applicant a copy of the enquiry report, if it is not already supplied. As there is a ~~doubt~~ in regard to the supply of the enquiry report ~~if~~ is preferable for the respondents organisation to supply a

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fresh enquiry report to him to the correct address and take acknowledgement from him for having accepted the enquiry report. The applicant should submit his revision petition within a period of 30 days from the date of receipt of the enquiry report, if he desires so. The reviewing authority should dispose of that representation within 2 months from the date of receipt of his review petition. In case the applicant fails to submit a review petition within the stipulated time as above then the order dated 23.4.93 which is set aside is to be revived and brought on record and enforced by informing the applicant.

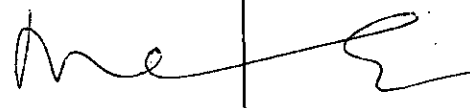
14. The applicant submits that the removal from service is severe considering the gravity of the charges. He was not able to attend the office due to his ill health condition which caused ^{the} absence. Hence the order of removal needs review. The applicant may include this submission in his review petition. If such a request is made the reviewing authority will consider that also in addition to other contentions in that review petition.

15. With the above directions the OA is disposed of.

No costs.


(B.S. JAI PARAMESHWAR)
Member (Judl.)

25.11.98


(R. RANGARAJAN)
Member (Admn.)

Dated : 25th November, 1998

(Dictated in Open Court)

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OA. No. 895/96:copy to :-

- 1) GOI, Secretary to Govt., Min. of Finance, Dept. of Economic Affairs, North Block, New Delhi.
- 2) ~~Adl~~ National Savings Commissioner, GOI, 12, Seminary Hills, Nagpur.
- 3) Regional Director, GOI, National Savings, 'C' Block, 2nd Floor, Kendriya Sadan, Saltan Bazar, Hyd.
- 4) one copy to M. N. Rama Mohan Rao, Advocate, CAT, Hyd.
- 5) one copy to M. K. Ramulu, Addl. CGISE, CAT, Hyd.
- 6) one copy to D.R(A), CAT, Hyd.
- 7) one duplicate copy.

II COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B. S. JAI PARAMESWAR :
M(J)

DATED: 25/11/98

ORDER/JUDGMENT

M.A./R.A./C.P.No.

in
DA. NO. 895/96

~~ADMITTED AND INTERIM DIRECTIONS ISSUED~~
ALLOWED

~~DISPOSED OF WITH DIRECTIONS~~

~~DISMISSED~~

~~DISMISSED AS WITHDRAWN~~

~~ORDERED/REJECTED~~

~~NO ORDER AS NO COSTS~~

Despatch

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