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CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :
AT HYDERABAD.

O.A.NO.282 OF 1997

Date of Order:-2nd March,1998.

Between :

D. MANOHARLAL
S/o Sri Durga Prasad,Hindu,
aged about 39 years,
Occupation :M-28 Messenger,
2 Training Battalion,
1 EME Centre, Secunderabad,
Resident of Secunderabad.

.. APPLICANT

And

1. The M.G. EME,
Southern Command HQ.,
Pune.
2. The Commandant,
1 EME Centre,
Secunderabad-500 587.

.. RESPONDENTS

Counsel for the Applicant : Mr.V.Venkateswara Rao.

Counsel for the Respondents : Mr. V.Rajeswara Rao,CGSC.

CORAM :

Honourable Mr. R. Rangarajan, Member (Admn.)

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

O R D E R.

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

1. Heard Mr. V. Venkateswara Rao,the learned counsel for the applicant and Mr.V.Rajeswara Rao, the learned Standing Counsel for the respondents.

2. This is an application under Section 19 of the Administrative Tribunals Act. The application was filed on 4.3.1997.

3. While the applicant was working as Messenger(M-28) at Training Battalion, 1 EME Centre, remained unauthorisedly absent from duties from 25.7.1993 to 21.9.1993 without applying for leave

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or without disclosing his whereabouts. During this period he was involved in a criminal case in Crime No.41/93 of Bolarum Police Station and was reported to be in custody.

4. After he was released on bail, the applicant reported for duty and submitted an application dated 24.9.1993 for sanction of leave for his absence from 25.7.1993 to 21.9.1993 on domestic grounds. He did not disclose that he was involved in Crime No.41/93 when he submitted his application for sanction of leave.

5. The respondent-authorities sanctioned the leave till February,1995 and paid his emoluments amounting to Rs.41,972/-.

6. When the respondents became aware of the applicant's involvement in a criminal case, his detention in the custody and his deliberate suppression of these material facts, they served a Memorandum of Charges in No.21207/EST/M-28/CIV dated 17.4.1995.. The charges levelled against the applicant read as under :-

" " ARTICLE OF CHARGE I.

That the said No.M-28 Messenger Shri DP Manoharlal while functioning as Messenger at 2 Trg.Bn 1 EME Centre committed an act of 'Gross Misconduct' i.e. failed to inform the fact of his detention in police custody from 25 Jul 93 to 21 Sep 93 under IPC 302 and 307 for a period exceeding forty eight hours to the Official Superiors.

Shri DP Manoharlal by his above act suppressed material information and exhibited lack of maintaining absolute integrity becoming of a Government servant thereby violating Rule 3 of CCS(Conduct)Rules 1964.

In that No.M-28 Messenger Shri D.P.Manoharlal was detained in police custody from 25 Jul to 21 Sep 93 under IPC 302 & 307 and was released on bail on 22 Sep 93.

Shri DP Manoharlal by his above act of suppressing material information has exhibited lack of maintaining absolute integrity unbecoming of a Govt. servant there by violating Rule 3 of CCS(Conduct) Rules 1964.

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ARTICLE OF CHARGE II

In that No.M-28 Messenger Shri DP Manoharlal was submitted an application for grant of leave for the period from 13 Jul 93 to 23 Sep 93 on the reasons of domestic affairs, is during his detention period in police custody, by giving knowing fully false reasons for his absence, suppressing the material information regarding his detention in police custody."

7. The applicant submitted his explanation dated 1.8.1995. The explanation was not found convincing. A detailed inquiry was conducted. The applicant submitted his written brief. After conclusion of the inquiry, the Inquiry Officer submitted his report. The copy of the report of the Inquiry Officer is at page 34 of the reply of the respondents. It is stated that the respondents attempted to serve the copy of the report of the Inquiry Officer and also the show cause notice on the applicant but their efforts proved futile. The disciplinary authority by his order dated 20.8.1996 (Annexure-14 at page 46 of the O.A.) imposed the punishment of removal of the applicant from service.

8. On 7.10.1996 the applicant preferred an appeal. The copy of the Memorandum of Appeal is at Annexure-17 at pages 49 to 57 of the O.A. The respondent No.1 being the appellate authority rejected the appeal.. by his order dated 25.1.1997 by observing as under :-

" On being satisfied with the penalty imposed by the Disciplinary authority(Commandant 1 EME Centre), in exercise of powers vested vide Presidential Order No.5(6)/79/D(Lab) dated 06 Sep 79, Mg EME HQ Southern Command(Appellate authority) has rejected your appeal."

The copy of the order of the appellate authority is at Annexure-18 at page 58 of the O.A.

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9. The applicant has filed this O.A. for the following reliefs :-

To call for the records pertaining to the order No.21207/EST/M-28/CIV-I dated 20.8.1996 issued by the 2nd respondent imposing the penalty of removal from service of the applicant as confirmed by the Appellate Authority and communicated to the applicant by the 2nd respondent vide his letter No.21207/EST/M-28/CIV dated 25.1.1997 and quash the same declaring it as illegal, arbitrary, unconstitutional, violative of principles of natural justice and mala fide by holding that the applicant is entitled for reinstatement and continue in service with all consequential benefits such as arrears of pay and allowances.

10. The applicant has challenged the orders dated 20.8.1996 and 25.1.1997 passed by the respondents 2 and 1 on the following grounds :-

- (a) The charges levelled against him are false and baseless.
- (b) He has been acquitted in the Criminal case.
- (c) The inquiry proceedings were initiated only to harass him.
- (d) The inquiry proceedings were held in utter violation of the principles of natural justice.
- (e) The copy of the report of the Inquiry Officer was not furnished to him, and thereby Rule 17 of the CCS(CCA) Rules was violated.
- (f) The Inquiry Officer exceeded his limits in submitting his report. In that it is submitted that the Inquiry Officer was expected to record his findings on the charges and was not expected to recommend any kind of penalty. It is submitted that the Inquiry Officer has recommended to the disciplinary authority to impose a major penalty.

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February, 1995 were paid; that the applicant submitted a false statement; that there are no reasons to interfere with the orders impugned in the O.A.

12. The charge against the applicant is that he failed to disclose his detention in the police custody of the Bolarum Police Station and also in the judicial custody between 25.7.1993 to 21.9.1993. Further, the charge against him is that he suppressed the said fact while submitting his leave application for sanction of leave upto February, 1995. Now it is clear that the applicant was in the custody in connection with Crime No.4/91 of Bolarum Police Station registered for the offences punishable under Sections 302 and 307 of the I.P.C. The outcome of the investigation is not relevant. Hence the point that requires to be considered is, whether the applicant suppressed these facts and the respondents were completely in dark about his detention by the police authorities.

13. It appears that even during July 1993 the respondents themselves had corresponded with the police authorities which clearly gives an indication that they were fully aware of the applicant's involvement in the criminal case. When that was so, we fail to understand as to how the respondents entertained the leave application of the applicant and sanctioned the leave. It is also not made clear that the respondents were not aware of the whereabouts of the applicant for the period from 25.7.1993 to 21.9.1993. From the correspondence the respondents had with the police authorities it cannot be said that they were not aware of the applicant's involvement in the criminal case. If they had not received any definite information from the police

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- (g) The authorities were fully aware of his involvement in the criminal case as they had themselves corresponded with the police authorities and therefore, there was no point in saying that he suppressed the material facts from them. The authorities would not have sanctioned him leave for ^{his} absence if they felt that he had suppressed any material facts from them.
- (h) He submits that it is a case of no evidence and that the punishment imposed by the authorities on him is illegal.
- (i) The appellate authority has not considered his appeal in accordance with the rules. It is submitted that the appellate authority without applying his mind has mechanically passed the cryptic order.

11. The respondents have filed the counter stating that they made sincere efforts to serve the Inquiry Officer's report on the applicant; that the applicant refused the same; that thereafter those documents were sent to his residential address and also through local police authorities; that the notices were also published in the daily newspaper; that thereafter the applicant requested for supply of the copy of the report of the Inquiry Officer; that the order dated 20.8.1996 passed by the disciplinary authority is perfectly legal and valid; that the applicant was detained in the police custody with effect from 25.7.1993 to 21.9.1993 for investigation for commission of the offences punishable under Sections 302 and 307 of the I.P.C.; that he was released on bail on 22.9.1993; that the applicant did not disclose these facts when he submitted his leave application and due to which, his full pay and allowances amounting to Rs.41,972/- upto

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authorities, then they should have deferred the decision on the leave application submitted by the applicant. On the contrary, they sanctioned the leave and paid the leave salary to the applicant. The charge sheet has been issued on 17.4.1995 i.e. two months after his emoluments were paid. This is one aspect of the matter.

14. As already stated, the applicant preferred an appeal against the punishment imposed by the disciplinary authority by his order dated 20.8.1996. The respondent No.1 is the appellate authority. The respondent No.1 has disposed of the said appeal as extracted above. On cursory perusal of the order passed by the appellate authority on 25.1.1997, we are fully convinced that he has not at all applied his mind to the various grounds raised by the applicant in his Memorandum of Appeal. When we brought this defect in the order of the appellate authority to the learned counsel for the applicant and expressed our inclination to set aside the order of the appellate authority and to remand the matter to the appellate authority for fresh consideration of the appeal dated 7.10.1996 (Annexure-17) in accordance with law, the learned counsel prevailed upon us to decide the O.A. on merits holding that there was no basis for the respondent-authorities to impose the punishment. He maintained that it is a case of no evidence. We are not prepared to accept the above submission. We are also not inclined to set aside the order of the disciplinary authority. Whether the applicant suppressed the material facts or whether the respondent No.3 was not aware of the applicant's involvement in the criminal case, is a matter which is

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to be considered by the appellate authority while deciding the appeal of the applicant.

15. The appellant authority is a quasi-judicial authority. He is expected to decide the appeal in accordance with Rule 27(2) of the CCS(CCA) Rules 1965. It is not our desire that the appellate authority should pass an order like a judgment passed in a court of law. We impress upon the appellate authority to consider ^{all} the requirements in deciding the appeal. The appellate authority is under a statutory obligation to consider the following facts before deciding the appeal.

- (a) Whether the relevant rules were followed in conducting the inquiry?
- (b) Whether sufficient and adequate opportunity was given to the applicant during the inquiry?
- (c) Whether the disciplinary authority has analysed and appreciated the evidence placed on record both by the disciplinary authority and the delinquent employee in proper perspective? and
- (d) Whether the punishment imposed on the delinquent employee is sufficient or insufficient or what is the proper punishment to be imposed ?

16. In this connection, we feel it proper to reproduce herein the observations made by the Hon'ble Supreme Court of India in the case of Ram Chander vs. Union of India and others, reported in AIR 1986 SC 1173. In paras-4 and 5, the Hon'ble Supreme Court has been pleased to observe as follows :-

"4. The duty to give reasons is an incident of the judicial process. So, in R.P. Bhatt v. Union of India (C.A.No.3165/81 decided on Dec.14, 1982) : (reported in 1986 Lab IC 790) this Court, in somewhat similar circumstances, interpreting R.27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which provision is in pari materia with R.22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, observed :

"It is clear upon the terms of R.27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the rules had been complied with; and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India or in the failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) and whether the penalty imposed is adequate, inadequate or severe, and pass orders confirming, enhancing, reducing or setting aside the penalty, or remit back the case to the authority which imposed or enhanced the penalty, etc."

It was held that the word 'consider' in R.27(2) of the Rules implied 'due application of mind'. The Court emphasized that the Appellate Authority discharging quasi-judicial functions, in accordance with natural justice must give reasons for its decision. There was in that case, as here, no indication in the impugned order that the Director-General, Border Road Organisation, New Delhi was satisfied as to the aforesaid requirements. The Court observed that he had not recorded any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. In the present case, the impugned order of the Railway Board is in these terms :

"(1) In terms of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, the Railway Board have carefully considered your appeal against the orders of the General Manager, Northern Railway, New Delhi imposing on you the penalty of removal from service and have observed as under :

(a) by the evidence on record, the findings of the disciplinary authority are warranted ; and

(b) The Railway Board have thereafter rejected the appeal preferred by you."

5. To say the least, this is just a mechanical reproduction of the phraseology of R.22(2) of the Railway Servants Rules without any attempt on the part of the Railway Board either to

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marshall the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the attendant circumstances and the past records of the appellant were such that he should have been visited with the extreme penalty, of removal from service for a single lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service, may not deserve such a harsh punishment. There being non-compliance with the requirements of R.22(2) of the Railway Servants Rules, the impugned order passed by the Railway Board is liable to be set aside."

17. Considering these factors we are fully convinced that the appellate authority i.e. the respondent No.1, has not at all applied his mind while deciding the appeal dated 7.10.1996 of the applicant in accordance with the rules.

18. Hence we set aside the order dated 25.1.1997 passed by the respondent No.1 and remit the appeal back to the respondent No.1 for fresh consideration.

19. In the result, the following directions are issued :-

(a) The order of the appellate authority i.e. the respondent No.1 dated 25.1.1997, Annexure-18 at page 58 of the O.A. is hereby set aside.

(b) The Memorandum of Appeal dated 7.10.1996 of the applicant is remanded to the respondent No.1.

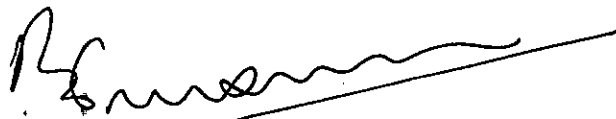
(c) The respondent No.1 is directed to consider afresh the appeal memorandum dated 7.10.1996 of the applicant in accordance with rules and dispose of the same by a speaking order.

(d) In case the applicant desires an opportunity of being heard, the same shall be given to the applicant.



(e) The appellate authority shall dispose of the appeal as expeditiously as possible.

20. With the above directions, the O.A. is disposed of. No order as to costs.



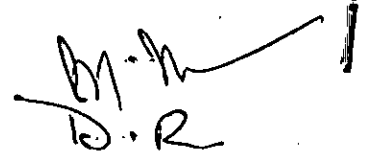
(B.S. JAI PARAMESHWAR)
MEMBER (JUDICIAL)

2/3/98



(R. RANGARAJAN)
MEMBER (ADMINISTRATIVE)

DATED THE 2nd MARCH, 1998.



D.R.

DJ/

OA.282 of 1997

copy to:-

1. The M.G. EME, Southern Command HQ., Pune.
2. The Commandant, 1 EME Centre, Secunderabad.
3. One copy to Mr. V.Venkateswara Rao, Advocate, CAT., Hyd.
4. One copy to Mr. V.Rajeswara Rao, Addl.CGSC., CAT., Hyd.
5. One copy to ESJP M(J), CAT., Hyd.
6. One copy to D.R.(A), CAT., Hyd.
7. One copy to duplicate.

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17/3/98
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: 2/3/98

ORDER/JUDGMENT

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

in

O.A.NO. 282/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

~~DISPOSED OF WITH DIRECTIONS~~

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

YLKR

