IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.293 of 1997

DATE OF ORDER: 31st DECEMBER, 1998

BETWEEN:

M.BUCHI REDDY .. APPLICANT

AND

1. The Chairman, Ordnance Factory Board,
   Govt. of India,
   Ministry of Defence,
   10-A, Auckland Road,
   Clcutta - 700 001,

2. The General Manager,
   Ordnance Factory Project,
   Ministry of Defence,
   Govt. of India,
   Yeddumailaram,
   Medak District - 502 205. .. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.P.NAVEEN RAO

COUNSEL FOR THE RESPONDENTS: Mr.V.BHIMANNA, Addl.CGSC

CORAM:

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

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

JUDGEMENT

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

Heard Mr.P.Naveen Rao, learned counsel for the applicant and Mr.V.Bhimanna, learned standing counsel for the respondents.

2. The applicant in this OA who is Machinist working under R-3 Factory remained absent from duty form 20.4.92 to 7.7.92 (79 days). Later he submitted leave application on his joining duty on 8.7.92 (Annexure R-I to the reply). It

is stated in the leave application that he was sick and that sickness was supported by the medical certificate dated 7.7.92 which is enclosed to Annexure R-1 to the reply. It is stated in the medical certificate that the applicant was undr treatment from 20.4.92 to 7.7.92 and was fit to join duty on 8.7.92.

2. On 27.12.93 i.e, after a lapse of about one year and 6 months, it is stated that intimations were received by R-2 from the Station House Officer, P.S. Sadasivpet (Annexure R-3 to the reply) and also from the Superintendent, District Jail, Sangareddy (R-3 to the reply) stating that the applicant was involved in a criminal case in Crime No.74/92 under section 302 IPC of P.S, Sadasivpet. It was stated in the letters sent by the police and the Jail Superintendent that the applicant was arrested on 5.5.92 and remanded to judicial custody and was released on Bail on 26.6.92 as Under Trial Prisoner No.9729.

3. It is seen from the OA that one Raoof Patel of Maddikunta Village filed a complaint before the Sadasivpet Police on 19.4.92 that a lady named Malkamgari Sangamma, aged 44 years was found in a pool of blood with four knife injuries in the stomach on the corner of the residence of the applicant herein. Smt.Malkamgari Sangamma died on the way to Hospital due to stab injuries. In the first information report, there was no mention of any particular individual's involvement in the incident. However, it was understood from the statement made by Kum.Nagamma ~~submitted~~ ~~before the Additional Sessions Judge, Medak~~ who is the

grand daughter of the deceased Malkamgari Sangamma and had accompanied the deceased at the time of incident before the Addl. Sessions Court, Medak, that the actual person involved was the second son of Raoof Patel named Shahjan. However, the said Raoof Patel had deliberately omitted the name of the culprit in the FIR. Subsequently, the police conducted investigation into the case and due to wrong identity and misleading of information by the actual culprit, the applicant was taken into custody on 5.5.92 for further investigation. Though initially the applicant was shown as the lone accused in the incident, on account of further investigation into the matter on the basis of the deposition made by Kum.Nagamma before the Sessions Court, Raoof Patel and his son Shahjan were arraigned as the accused NO.2 and 3 in the Sessions Case NO.131 of 1993 on the file of the Additional Sessions Judge, Medak. The case is pending on the file of the Sessions Court.

4. The applicant submits that he was working to the satisfaction of one and all from 8.7.92 and there were no complaints against him.

5. When the matter stood thus, R-2 kept the applicant under deemed suspension under Rule 10 of the CCS (CCA) Rules, 1965 from the date of his arrest as he was detained in judicial custody for more than 48 hours. Thereafter a charge sheet under Rule 14 of the CCS (CCA) Rules, 1965 was issued vide Memorandum No.02/00056/Estt./94/02, dated 15.1.94 which is enclosed as Annexure A-1 at page 13 to the OA.

6. The article of Charge reads as below:-

"Statement of article of charge framed against Shri M.Buchi Reddy, Machinist

(s), T.No.1062-4/Tool Room. That the said Shri M.Buchi Reddy, Machinist (s), T.No.1062-4/TR while functioning as such during the period from 23.10.89 is alleged to have committed gross misconduct, viz.

1. Suppression of material information regarding arrest by police and detention in judicial custody.

2. Giving false information regarding cause of absence from duty.

3. Failure to maintain absolute integrity and

4. Conduct unbecoming of a government servant."

Thereafter, the applicant submitted his explanation to R-2 by his representation dated NIL (Annexure A-II at page 17 to the OA). In that explanation he said that the allegation that he had given false declaration regarding the cause of his absence was incorrect. The cause mentioned in his leave application is genuine as can be seen from the record. The omission and non mention of the fact in regard to his detention in judicial custody is purely accidental and hence the charges may be dropped and he may be taken back to duty. By the Memo No.02/00058/Estt./94/02, dated 31.12.94 (Annexure A-III at page 19 to the OA) the Inquiry report was sent to the applicant. Thereafter, R-2 issued the order bearing No.02/00058/Estt./94/02, dated 6.3.95 (Annexure A-IV at page 20 to the OA) under Rule 15 of CCS (CCA) Rules, imposing the penalty of dismissal from service with effect from 6.3.95 (AN). Thereafter the applicant

made an appeal dated Nil to R-1 (Annexure A-V at page 22 to the OA). The appellate authority, namely, R-1 by his order NO.10961/A/VIG, dated 15.3.96 informed him that his appeal is rejected and that was conveyed to the applicant by R-2 by letter No.02/0058/Estt/94/02, dated 17.5.96 (Annexure A-VI at Page 28 to the OA).

7. This OA is filed to set aside the order of the disciplinary authority viz, R-2 vide Order No.02/00058/Estt./94/02, dated 6.3.95 (Annexure A-IV at page 20 to the OA) and also the appellate order No.10961/A/ViG., dated 15.3.96 (Enclosure to Annexure A-VI at page 29 to the OA) of R-1 and for consequential benefits of reinstating him in service with continuity of service, pay and allowances and other service benefits.

8. The main contentions of the applicant in this OA are -

(i) That the applicant has not committed any misconduct and he had applied for leave on the ground of sickness which was granted to him way back in the year 1992. Having granted the leave, initiation of disciplinary proceedings at a very distant date and further actions thereof are estopped;

(ii) That the applicant has not committed any misconduct even assuming that he had not informed the fact of his judicial custody following Rule 10(2)(a) of CCS (CCA) Rules. Any person can be detained and taken to police custody for interrogation on the ground of suspicion. In the present case neither the FIR nor prime witness has revealed any thing about the involvement of

the applicant herein and the Police took him into custody on the ground of suspicion only. It is further stated that he was under the bonafide belief in assuming that the R-2 was aware of his arrest through the letter written by his brother-in-law on 26.6.92 and having regard to the fact that R-2 sanctioned leave and allowed him to work till January 1994. Under the above circusmstances it is not correct to proceed against him under D&A Rules.

(iii) That the aplplicant was allowed to continue in service for a long time after occurrence of the incident. Hence after a lapse of ***** long time, initiation of the disciplinary proceedings and dismissing him from service is highly arbitrary and discriminatory;

(iv) That the Inquiry Officer cannot hold any responsibility on him for not informing the respondent-authorities of his judicial custody as he had already been granted leave and hence his absence was regulated;

(v) That the order of the disciplinary authority is vague and is not a speaking one indicating reasons for imposing the penalty of dismissal from service;

(vi) That there was no wilful suppression of any facts as his sickness was proved by the medical certificate; and

(vii) That the punishment of dismissal from service is too severe and disproportionate to the delinquency of the alleged misconduct. Hence the

punishment needs review.

9. A reply has been filed in this OA. On the basis of the contentions raised in the OA, taking due note of the reply and also after hearing both sides, following is the analysis of the case:-

The applicant, no doubt, was inolved in a criminal case which is evident from the letter of the Station House Officer, P.S. Sadasivpet enclosed as Annexure R-2 to the reply and also the letter of the District Jail Superintendent, Sangareddy dated 27.12.93 (Annexure R-3 to the reply) addressed to R-2. No doubt, the applicant was reported sick from 20.4.92 earlier to the date when he was arrested and remanded to judicial custody i.e, with effect from 5.5.92 and he was in judicial custody till 26.6.92 as Under Trial Prisoner No.9729. The applicant joined duty on 8.7.92. At the time of his joining back to duty, he had submitted his leave application for the period from 20.4.92 to 7.7.92 for sanction on medical grounds enclosing the medical certificate.

10. It is essential for the applicant to inform that he was in sick during the period from 20.4.92 to 7.7.92 but during the period from 5.5.92 to 26.6.92 he was also under judicial custody in an alleged criminal case while undergoing treatment for his sickness. There was no need for the applicant to conceal his arrest and detention in judicial custody. He may have also stated that during the period he was in judicial custody i.e, 5.5.92 to 26.6.92 may be treated as sickness period and he should be granted the leave accordingly. It is not understood why the applicant failed to do so. In the Government service if a

person is arrested and detained in judicial custody, it is his responsibility to inform his employer or his immediate official superior. The very fact that he concealed the above fact of his detention in judicial custody means that he was not discharging the obligations imposed on him effectively in accordance with the rules. As such concealment of his detention in judicial custody for the period from 5.5.92 to 26.6.92 should necessarily be treated as a misconduct and the applicant cannot escape the rigours of that concealment.

11. Though the applicant submits that his brother-in-law had informed R-2 on 28.6.92 with regard to his judicial custody, the respondents submit that no such letter was received by them. As stated earlier, it is the responsibility of the applicant to inform and he cannot depend on some body else to inform the said fact to the departmental authorities. There was no difficulty for the applicant to send a letter through the Jail authorities, if he so desired.

12. Hence non information in regard to the detention in judicial custody to the departmental-authorities cannot be taken lightly. The respondent-authorities came to know of the said fact that the applicant was detained in judicial custody only through the letter of the Station House Officer, P.S. Sadasivpet through the letter dated 27.12.93 and the letter of the Superintendent, District Jail, Sangareddy, dated 27.12.93 addressed to R-2. If the said officials had not informed the respondent-authorities, the respondent-authorities would have been under bonafide

belief that the applicant was in the sick list. Unfortunately, the fact of his detention in judicial custody came to the notice of R-2 through the Police and the jail authorities.

13. The applicant thus, in our opinion, concealed the fact of detention in judicial custody and pretended as if he was in sick list during the leave period from 20.4.92 to 7.7.92 which amounted to dereliction of his duties and gross misconduct.

14. The learned counsel for the applicant relying on the judgement of the Supreme Court reported in AIR 1984 SC 1022 (Union of India v. G.M.Kokil) contends that the said misconduct has not been codified in the CCS (CCA) Rules and so long it is not codified, the same cannot be regarded as misconduct. Hence on that score itself, the punishment has to be set-aside.

15. The above reported case pertains to the workmen governed by the Industrial Disputes Act which regulates the nature and various kinds of misconduct. In that context, the Supreme Court had held that "If a misconduct is not included in the list of misconducts enumerated in the Act, then no disciplinary proceedings could be initiated". But the CCS (CCA) Rules by which the applicant is governed for imposing punishment on him under D&A Rules, no such list is available. The rules do not define the word misconduct. Under Rule 3(1) of the CCS (Conduct) Rules by which the applicant is governed, such list is not included and the authorities may consider the cases which in their opinion

amounts to misconduct and on that basis charge sheet can be issued.

16. In the reported case in AIR 1984 SC 1361 (A.L.Kalra v. The Project and Equipment Corporation of India Ltd.) it was held that "if the rules granting some benefits to the employees provide consequence of breach of conditions, it would be idle to go in search of another consequence for initiating any disciplinary action". This would mean that if there is rule governing the conduct of an employee, then quoting of that rule itself is sufficient to initiate disciplinary proceedings.

17. In the present case, the applicant should have intimated the fact of his detention in judicial custody. It is not necessary for the respondents to get such information through somebody else. When an unusual incident takes place, which may affect the service conditions, an employee is obliged to inform the appropriate authority under whom he is working in regard to such incident explaining, if he so desires, as to why that incident will have no bearing in the discharge of his duties, under the Conduct Rules. The applicant failed to comply with those regulations.

18. Hence when the respondents issued charge sheet for his failure to maintain absolute integrity and conduct unbecoming of a Government servant due to suppression of material information regarding his arrest by the police and detention in judicial custody, the same cannot be said to be an irrelevant charge. Failure on the part of the applicant to intimate his arrest and detention in judicial custody during the period from 20.4.92 to 7.7.92 to R-2 is not only a misconduct but can be treated as a deliberate and wanton concealment of the information. The applicant knows very well that in case he reveals his detention in judicial custody, he may have to face disciplinary action. In order to avoid that only, he concealed it when he submitted his leave application on 7.7.92 and reported for duty along with the medical certificate. The above conduct of the applicant cannot be condoned as a mere lapse on his part.

19. The applicant submits that he was taken back on duty on 8.7.92 and he was suspended only on 31.12.93 after a lapse of over 1½ years. Hence the issue of suspension order itself is irregular and initiation of disciplinary proceedings thereafter is also to be set-aside. If the

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applicant had informed in regard to his detention in judicial custody on the date when he joined, he would have been kept under suspension. But as stated earlier, he did not reveal the same. The respondent-authorities came to know of his judicial custody only through the Police and the Jail authorities on 27.12.93. Immediately thereafter the applicant was kept under suspension and the charge sheet was issued on 15.1.94. Hence we do not see any irregularity in issuing the charge sheet belatedly. The applicant himself is responsible for the delay in the issue of the charge sheet due to his lapse in not informing the authorities regarding his judicial custody at the time of his joining.

20. The applicant is of the opinion that the conclusions of the Inquiry Officer are based on the surmises, conjuctures and assumptions but not based on the concrete evidence. He is also of the opinion that the view of the Inquiry Officer that the applicant was required to send the intimation immediately on his arrest instead of waiting for his relief from the custody, is not borne by any statutory requirement nor contemplated in any guidelines. The above allegation against the Inquiry Officer cannot at all be taken as a legitimate allegation. It is for the applicant to discharge his obligation by informing the authorities in regard to his judicial custody. There need be no rules or guidelines in this connection. A service personnel should inform the incident which affects his career to the respondent-authorities. It is a well known law that an employee if arrested should inform the authorities concerned explaining why that

(67)

incident will not stand in the way of discharging his duties and also the need not to treat it as misconduct. The applicant having failed to do so, cannot make allegations against the Inquiry Officer that the conclusions are not based on any evidence. The evidence is strong on the face of it and it is evident from the letters of the Police as well as the Jail authorities dated 27.12.93.

21. The applicant submits that the order of the appellate authority is not a speaking one. Fist of all, we do not see any reason for issuing speaking order when the facts are clear. When the facts themselves speak, where is necessity for repeating those facts once again? Hence this allegation has to be dismissed. R-1, the appellate authority, had issued the detailed speaking order dated 15.3.96 considering his appeal. Hence we do not see any irregularity in the issue of the punishment order either by the disciplinary authority or appellate authority.

22. In the facts and circumstances of the case, we do not find any necessity to grant the prayer as prayed for by the applicant in this OA. The applicant has been correctly issued with the punishment of dismissal from service. Hence the OA is dismissed. No order as to costs.

A - 5/

7/1/99

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: 31-12-98

ORDER/JUDGMENT

~~MA/R.A./C.P.No.~~

~~in~~

OA.NO. 293/97

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

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Central Administrative Tribunal
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- 6 JAN 1999
हैदराबाद न्यायपीठ
HYDERABAD BENCH