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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

HYDERABAD

OA.No.312 OF 1997.

DATE OF ORDER: 20.4.97

BETWEEN:

R.B.Singh(died as per LR).

1. Smt.Umadevi.Applicant

a n d

1. The Commanding Officer &
The Disciplinary Authority,
Station Workshop, EME,
Secunderabad.(AP).

2. Major General, EME,
The Appellate Authority,
C/o M.G.EME,Headquarters,
Southern Command, Pune(MAH).

.....Respondents

COUNSEL FOR THE APPLICANT :: Mr.K.M.Saxena

COUNSEL FOR THE RESPONDENTS:: Mr.B.Narasimha Sharma

CORAM:

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

A N D

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

: O R D E R :

(PER HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (J))

Heard Mr.K.M.Saxena, learned Counsel for the
Applicant and Mr.M.C.Jacob for Mr.B.Narasimha Sharma,
learned Standing Counsel for the Respondents.



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2. This is an application under section.19 of the Administrative Tribunals Act. The application was filed on 31-12-1996.

3. The applicant was initially appointed as Civilian Telecom Mechanic(T.no.325) with effect from 9-7-1965 under the office of the Respondent No.1.

4. A cafeteria was attached to the office of the Respondent no.1. It was being managed by the staff on 'no loss no profit basis'. However, it had incurred losses. During the year 1993, the applicant was incharge of the management of the cafeteria.

5. On 6-11-1993, there was Civilian Sammelan. Certain civilian workmen protested the decision of the Officer Commanding Colonel to transfer the proceeds of the cafeteria to the unit regimental fund meant for army personnel instead/transferring the proceeds to the Civilian Welfare Fund. In this connection the applicant participated in demonstrations on behalf of the Civilian Workmen. The applicant appears to have used some abuse and foul language against his superiors in a fit of intoxication. 6-11-1993 was a Saturday. He reported for duty on 8-11-1993.

6. In connection with the incident that occurred on 6-11-1993, the respondent no.1 issued a major penalty charge memo by his Proceedings No.21203/RBS/,

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dated:23-11-1993. The misconduct alleged against the applicant reads as follows:-

"(a) Exhibited conduct unbecoming of Govt.servant i.e., consumed liquor in the place of work during working hours and shouted in abusive and vulgar language against the Organisation and its staff.

In that he, on 06 Nov.93 while functioning as Telecom Mechanic and incharge Telecom Stores Section of Station Workshop EME, Secunderabad during the period, while on duty, at about 1300 hours, consumed Whisky in Telecom Stores Section in such a quantity so as to intoxicate him. He, thereafter, shouted in abusive and vulgar language against the organisation and its staff.

That Shri RBSingh by his above act exhibited conduct unbecoming of a Govt servant, thus violating Rule 3 of Central Civil Services(Conduct) Rules,1964.

(b) Exhibited conduct unbecoming of a Govt servant i.e., used abusive and vulgar language against the Military Hospital staff.

In that he on 06 Nov 93 while functioning as Telecom Mechanic in Station Workshop EME, Secunderabad while at Military Hospital, Secunderabad where he was taken for medical treatment, at about 1400 hours used abusive and vulgar language against the Military Hospital staff with intent to intimidate, provoke the breach of peace and cause annoyance to the public/staff of Military Hospital, Secunderabad.

Thus Shri RBSingh, by his above acts exhibited conduct unbecoming of a Govt.servant, thus violating Rule 3 of CCS(Conduct)Rules,1964."



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7. The applicant denied the charges through his reply dated:6-12-1993. A detailed enquiry was conducted into the charges. The applicant participated in the enquiry proceedings. A copy of the report of the Enquiry Officer is at Annexure.A-21, pages.46 to 56 to the DA). The Enquiry Officer recorded the findings as under:-

"Ticket No.325 Shri RB Singh, Civilian Telecom Mechanic of Station Workshop EME, Secunderabad has by drinking Alcohol, in his office, during working hours, while on duty, which he has himself admitted in front of the Court, and by his subsequent use of unparliamentary, vulgar language against the organisation and its personnel, corroborated by the witnesses, committed an act of gross misconduct nor befitting the disciplined atmosphere of any organisation.

2. Shri RB Singh used abusive and vulgar language even in the Military Hospital (MI Room) thereby committing another act of gross misconduct and publically blemishing the good reputation of the unit.

3. Strict disciplinary action is recommended against Shri RB Singh for his gross misconduct which is detrimental to the discipline and reputation of the organisation."

8. A copy of the report of the Enquiry Officer was furnished to the applicant. The applicant submitted ^{against} his representation/the findings of the Enquiry Officer



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through his letter dated:1-2-1994. Further he admitted the guilt and prayed for excuse for all what he did. Hence, Respondent No.1 by his Proceedings dated:10-2-1994, imposed the penalty on the applicant which reads as follows:-

"Now, therefore, I, the undersigned, in the capacity of Disciplinary Authority, keeping in view all the facts of the case and gravity of the offence committed by the delinquent official, Shri R.B.Singh, have come to the final conclusion that T/No.325 Civilian Telecom Mechanic Shri R.B.Singh is GUILTY of the charges levelled against him. I do not find any merit in the points brought out by him through his representations dated:06 Dec, 93, to Jan 94, 14 Jan 94 and 01 Feb 94. I consider that a suitable punishment would meet the ends of justice. In exercise of the powers conferred on me under rule 14 of the Central Civil Service (Classification, Control & Appeal) Rules,1965, I confirm the proposed penalty of "COMPULSORY RETIREMENT" to be imposed upon T/No.325 Civilian Telecom Mechanic Shri R.B Singh.

This will take effect from 11 February, 1994."

A copy of the Order of the Respondent No.1 is at Annexure.2.

9. The applicant submitted an appeal dated:-Nil- to the Major General, the Respondent no.2. The Respondent no.2 by his Proceedings dated:12-5-1994, confirmed the punishment and rejected the appeal. The Order of the Appellate Authority is at Annexure.24, pages.89 to 92.



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10. The applicant in connection with the imposition of penalty of compulsory retirement by Respondent No.1 and its confirmation by Respondent no.2, the Appellate Authority, has raised an industrial dispute before the Assistant Labour Commissioner-CI, Hyderabad. The minutes of the Conciliation Proceedings before the Assistant Labour /Commissioner-CI, Hyderabad is at Page.94 of the OA.

11. The applicant has filed this OA for the following reliefs:-

- (a) That the disciplinary action was purely on personal prejudice, bias, malice and vendetta of higher-ups;
- (b) He was denied the basic principle of Natural Justice;
- (c) On 8-11-1993, he was not given any communication informing the grounds on which the Board of Officer took stock of the Telecom Stores. The stock taking was not done in accordance with the rules;
- (d) The respondents failed to supply a copy of the letter obtained by the Disciplinary Authority through Subedar(RT) M.P.Chaurasia;
- (e) The enquiry was held in isolation of the rules and principles of natural justice;
- (f) The appointment of Major Raja Puri as Inquiry Officer was improper as he had a tiff with the applicant earlier on 6-11-1993 and the appointment of Sri Hukum-



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Singh as Presenting Officer was also improper as he was involved in planting and seizure drama; and

(g) The Disciplinary Authority, Respondent no.1, made incorrect statement in the impugned Order dated: 10-2-1994, and the charges levelled against him were vague, impertinent and not covered under Rule.3 of the CCS(CCA) Rules,1965.

12. The respondents have filed their reply contending that the enquiry was conducted in accordance with the rules and adhering to the Principles of Natural Justice, that there was no 'witch-hunting and sorcery' as alleged by the applicant, that the applicant had no unblemish service, infact he was issued with warning letters dated: 16-9-1982, 28-4-1987 and 29-9-1987, for *willful* absence from the place of duty. Certain averments made in the OA are all pigment of imagination of the applicant and they are not borne out by the records. The averment of the applicant that he was in a state of Hyper-tension on 6-11-1993 and was treated by his Doctor is also *False*. They submit that on that date, the applicant was fully intoxicated under toxication. The applicant levelled abusive and foul language against his superior Officer. The decision to handover the civilian cafeteria to Contractor was a unilateral decision by the Officer. The Chairman of the Works Committee and in the Sammelan, more than 75% of the employees raised their hands supporting the decision of the Colonel.

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Works Committee and in the Commanding Officer's Committee and in the employees raised their hands supporting the decision of the Colonel

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The Worker's representatives confirmed and advised the Chairman to handover the cafeteria to an outsider on an agreement basis which was implemented later. In accordance with the agreement, the Contractor deposited an earnest money of Rs.10,000-00 in September, 1992, which gave the Civilian Welfare Fund to earn interest thereon. When the Civilian Contractor was found satisfactory, the agreement was renewed from 1-9-1993 for a period of three years. As per the agreement in addition to the earnest money, the Contractor undertook to give an additional sum of Rs.500/- per month which was to be credited into the Civilian Welfare Fund. Hence, the averments made by the applicant in this connection is absolutely incorrect. The applicant was incharge of the cafeteria when it was closed. Hence, the applicant took the transfer of the Canteen as a personal issue for him than a common cause for the civilian workers. The question of selling the furniture of the cafeteria to the Contractor did not arise because most of the furniture belonged to the MES wing of the Army and the Unit had no authority to sell the furniture. The representatives of the workers suggested not to sell the same because there may be a breach of contract at any time and appliances could be need in such an eventuality. The rent for the building and the electricity charges were being paid by the contractor to the MES Branch of the Army. That the said sum represented public fund and it could be credited to the Civilian Welfare Fund. However, the contractor was

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paying a royalty of Rs.500/- per month, which was being credited to the Civilian Welfare Fund. The accounts of the cafeteria is being regularly audited. Hence, the decision to transfer the cafeteria to an outside contractor was most advantageous to the Unit as well as to the civilian workers. The enquiry and the disciplinary proceedings were ordered by Colonel S.K.Chopra, who had known personally against the applicant. The applicant has not been able to give any reason as to why the Disciplinary Authority would have developed a bias attitude towards him. On 18-3-'93, the applicant clearly agreed and admitted that he had consumed liquor and he never stated to have been suffering from hyper-tension on the day of the incident i.e., 6-11-1993. The applicant continued to shout and use abusive language not only in the Unit but in the Hospital also. That the fact that the applicant had retained the key with him has no relevance to the case. During the course of the enquiry the applicant did not refuse that the liquor seized from his custody was not belonging to him. The complete statement has been signed by him and the same was not taken under duress. The present statement made by the applicant has been made with an intention to give a totally different colour to the incident and to mislead this Tribunal. The allegation that his letter of apology was dictated by Subedar M.P.Chaurasia is far from truth. A person who claims to/ ^{be} a father figure of the employees and whose services were utilised by them to solve their



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personal problems cannot be misled by a religious teacher to make a confessional statement. The facts narrated in the confessional statement could not have been dictated by the religious teacher and has to be his own statement. The applicant was given sufficient opportunity to defend himself. Every documents in connection with the enquiry were supplied to him giving a copy of his own confessional statement was not at all found obligatory as he was fully aware of what was written in his confessional statement and the averments made by him against M.P. Chaurasia is not correct.

13. At the time of the enquiry, the Unit was holding only three Officers on its strength. Besides the Disciplinary Authority another has been detailed as the Enquiry Officer and the third Officer presented the case. The applicant during the course of the enquiry never demanded for a change of either Enquiry Officer or the Presenting Officer. He never complained against any of these Officers. The Enquiry Officer had given adequate opportunity to defend his case and to cross examination the witnesses examined on behalf of the Disciplinary Authority. The contention that the punishment was unwarranted, unreasonable and uncalled for is not at all based on facts, because the said decision was duly accepted and agreed by the Appellate Authority whose office is situated at Pune as far away

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place and he had no occasion to have seen the face of the applicant. The Appellate Authority had no personal interest in the matter. The enquiry was conducted fairly and truthfully and this was the reason the applicant did not raise any objection or complaint during the enquiry. It is only after the imposition of the penalty, he started misleading certain facts to suit his convenience. The Commanding Officer took a lenient view and gave him a warning letter. During the preliminary enquiry Sri K.M.Rao confirmed the statement given by him. The Appellate Authority applied its mind to the facts and the circumstances of the case and gave a proper decision. It is not compulsory for the Commanding Officer to inform the applicant that a Board of Officers is detailed to carry out checking. On some occasions, surprise checks are also permissible. The Board, in the presence of the applicant seized the liquor bottles from his custody. The applicant's confessional statement was not obtained by mis-representation. There was no violation of the Principles of Natural Justice. The letter of confession was given by the applicant voluntarily and not extracted from him.

14. They further submit that the applicant has filed a dispute before the Labour Commissioner (Case.No.8/10/95-E2), and the Labour Court (Case.No.CMP.No.30/1995), and the decision of the Labour Court is awaited. The Enquiry Officer and the Presenting Officer were only two Army Officers available otherthan the Disciplinary



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Authority in the Unit. The applicant had not objected to for the appointment of the Presenting Officer and the Enquiry Officer. The applicant after imposition of the punishment of compulsory retirement, claimed his retiral benefits viz., Leave Encashment for the unutilised leave stood to his credit and accordingly the applicant obtained a sum of Rs.6,264/- being the leave encashment salary for a period of 47 days. Hence, there is no question of setting aside the penalty order of compulsory retirement on the applicant. They submit that the applicant has not taken his pension, gratuity, computation, G.P.Fund accumulation, CGEES etc.,. If the applicant is in need of financial benefits, he may submit the retirement papers so that those benefits could be settled.

15. Thus they submit that there are no grounds to interfere with the impugned orders.

16. During the pendency of this OA, the applicant died. His wife made an application, vide MA.No.535 of 1997, to come on record as the legal representative. By Order dated:24-7-1997, the wife of the applicant was permitted to come on record as the legal representative of the applicant.

17. On 5-4-1999 when this OA came up for hearing, the learned Counsel for the Respondents submitted

that the pension of the deceased employee from the date of imposition of penalty of compulsory retirement till his death is under process and the same would be paid to his legal representative shortly.

18. The only point for our consideration is whether the imposition of the penalty of compulsory retirement on the applicant is justified or not.

19. The charges of misconduct has been extracted above. The applicant states that in a state of hyper-tension he had shouted something which he could not remember. However, the respondents disputed the said fact and submit that the applicant was fully under intoxication. In a state of intoxication the applicant used abusive and foul language against the Superiors. The entire incident was with reference to the transfer of management of the cafeteria to a contractor. It is stated that at the relevant time when the cafeteria was closed, the applicant was incharge of the management. Since the decision of the Colonel to transfer the cafeteria to an outsider was not relented by the applicamt, the applicant took the issue as a personal to him. The respondents further submit that in the Civilian Sammellan which held on 6-11-1993, more than 75% of the civilian workers supported the decision to transfer the cafeteria to a contractor, that the said transfer

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benefited the civilian workers in the subsequent renewal contract volunteered to contribute a sum of Rs.500/- per month which would be deposited to the civilian welfare fund.

20. The applicant had submitted a letter of apology. It is stated that the said letter was given by the applicant purely on his own volition, but the applicant submits that it was taken from him by Subedar M.P.Chaurasia. The respondents dispute the said fact. During the preliminary enquiry, the applicant admitted to have used abusive and foul language against his Superior Officials. The Disciplinary Authority taken into consideration the letter of admission. The main grievance of the applicant is that he was not provided with a copy of the admission. The respondents state that when he himself gave a letter of admission, there was no reason for him to furnish a copy of the same, infact it was available with the Enquiry Officer and that the applicant should have perused the same. So non-furnishing of the copy of the letter of admission given by him in our opinion does not violate the Principles of Natural Justice.

21. For the first time in the OA, the applicant raises some prejudices against the Enquiry Officer and the Presenting Officer. The applicant has not explained on what circumstances the Enquiry Officer had a tiff with him earlier on 6-10-1993. As already stated the respondents submit that there were three

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Officers in the Unit except the Disciplinary Authority and no other person was available for appointing him either as Enquiry Officer or as Presenting Officer. Since the applicant had not protested at the initial stage itself about the bias or anything against the Presenting Officer or against the Enquiry Officer, we feel that the applicant is not permitted to raise the same for the first time in the OA.

22. It is an admitted fact that the applicant has raised an industrial dispute before the Industrial Court and the same is pending adjudication. It is at that stage the applicant had received a sum of Rs.6,264/- being the leave encashment salary for 47 days. Thus in a way he accepted the imposition of penalty by accepting part of the retiral benefits. The applicant had failed to submit the necessary papers for the respondent-authorities to prepare and calculate his pension and other benefits. However, the respondents submit that they have taken necessary steps to pay the pensionary benefits to the applicant from the date of imposition of penalty i.e., 10-2-1994 till the death of the applicant.

23. As regards the quantum of punishment, we feel that this Tribunal has no power to interfers with the same. In the case of UPSRTC & OTHERS Vs A.K.PARUL (reported in 1999(1) SCALE Page.138), the Hon'ble



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Supreme Court has held that it is within the discretion and Judgment of the Disciplinary Authority to impose proper punishment. In that view of the matter, we cannot interfere with the punishment. Having regard to the gravity of charges, we feel that the respondents have taken a proper decision.

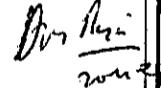
24. In that view of the matter, we find no merits in the DA and the DA is liable to be dismissed.

25. Accordingly the DA is dismissed leaving the parties to bear their own costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDW) 29


(R.RANGARAJAN)
MEMBER (ADMIN)

DATED: this the 20 day of April, 1999


D.R. Raji
20/4/99

DSN

1ST AND 2ND COURT

COPY TO:-

1. HONJ
2. HHRP M(A)
3. HSSP M(J)
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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

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

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

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

THE HON'BLE MR. B. S. JAI PARAMESWAR :
MEMBER (J)

DATED: 20/4/99

ORDER / JUDGEMENT

MA. / R.A. / C.P. NO.

IN

C.A. No. 312/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED.

C.P. CLOSED.

R.A. CLOSED.

DISPOSED OF WITH

DISMISSED.

DISMISSED AS WITHDRAWN.

ORDERED/REJECTED.

NO ORDER AS TO COSTS.

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