

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

HYDERABAD

O.A.No.956 of 1997.

DATE OF DECISION:14-2-2000.

Between:

M.A.Rasheed (Died asper LR).

Farhatunnissa Begum.

....Applicant

a n d

1. The Director General,  
Indian Council for Agricultural  
Research, Krishi Bhavan, New Delhi.
2. The Director, Central Research Institute,  
for Dry land Agriculture, Santoshnagar,  
Saidabad P.O., Hyderabad-59.
3. Sri V.M.Mayande, Scientist and  
Inquiry Officer, Central Research  
Institute for Dry land Agriculture,  
Hyderabad.

.....Respondents

COUNSEL FOR THE APPLICANT :: Mr.Krishna Devan

COUNSEL FOR THE RESPONDENTS :: Mr.N.R.Devaraj

CORAM:

THE HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN

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

: O R D E R :

(PER HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN)

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1. The original applicant M.A.Rasheed filed the present OA for the following reliefs:-

"Therefore in the interest of justice, it is prayed that this Hon'ble Tribunal may be pleased to call for the records pertaining to the Order No.INQ/2/94, dated 19-2-1996 and No.3(13)/96-Vig(D), dated 10-4-1997 issued by the 2nd respondent inflicting the punishment of compulsory retirement on the applicant with effect from 19-2-1996 and quash the same declaring it as illegal, arbitrary and unconstitutional by holding that the applicant herein is entitled for reinstatement into service with all consequential benefits such as arrears of pay and allowances, seniority etc., and to pass such other order or orders as is deemed fit, proper, necessary and expedient in the circumstances of the case."

2. He (M.A.Rasheed) died during the pendency of this OA and his legal representatives were brought on record in his place. <sup>ⓧ</sup> *No amendment however was sought to be made in the pleadings or in the relief clause consequent upon the death of the applicant. ⓧ*
3. The facts of this case briefly are as follows:-

This incumbent was compulsorily retired from service of the Central Research Institute for Dry Land Agriculture, on account of major penalty imposed on him based on the enquiry held against him under CCS(CCA) Rules, vide Order No.INQ/2/94, dated 19-2-1996. The said order was issued by the Director,CRIDA, Hyderabad, as the Disciplinary Authority. **The charged official preferred** /an appeal dated 22-3-1996 against the above order for consideration of the Appellate Authority. After

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considering the said appeal, the Appellate Authority came to a conclusion that reasonable opportunity had not been given to the charged official for cross examination of the departmental witnesses before imposing the penalty. The Appellate Authority while setting aside the Order dated 19-2-1996, remitted the case back to the Disciplinary Authority with a direction to provide an opportunity to the applicant to cross examine the departmental witnesses. However, the Disciplinary Authority brought <sup>certain</sup> ~~true~~ facts of the case to the notice of the Appellate Authority with a request to re-examine the case, in view of the fact that sufficient opportunity had already been provided to the applicant for cross examining the departmental witnesses, <sup>but</sup> ~~But~~ the charged official himself did not avail of the same. Thereupon the Director General, Indian Council for Agricultural Research, being the revising authority, considered the facts explained by the Disciplinary Authority <sup>as</sup> ~~under the circumstances of the enquiry~~ and decided, vide his order dated 10-4-1997, that there was no need for giving further opportunity for cross examination, and the penalty of compulsory retirement imposed by the Disciplinary Authority was justified. Accordingly, the revising authority set aside the order dated 6-1-1997 of the Appellate Authority and confirmed the penalty imposed by the Disciplinary Authority.

4. When the case came up for hearing on 9-11-1999, the Bench desired to obtain a clarification from the Department

of Personnel & Training, whether the Disciplinary Authority could make a representation to the Appellate Authority to re-consider his order or whether he could make a review petition to the Revising Authority against the decision made by the Appellate Authority, and secondly whether the Appellate Authority can place <sup>the</sup> ~~a~~ proceeding before the revising authority.

5. In terms of Rule 28 of CCS(CCA) Rules, 1965, the Authority which passed the order appealed against ~~has~~ to give effect to the orders passed by the Appellate Authority. The rules are silent whether the Disciplinary Authority could ask for re-consideration of the order passed by the Appellate Authority. Even if he makes a request for the same, it would not be legal and proper for the Appellate Authority to review his own order since no such power is vested in him under the rules. However, power of revision lies with the Revisional Authority as mentioned in Rule 28, who may revise any order passed under the CCS(CCA) Rules at any time either on ~~or~~ its own motion or otherwise.

6. It is evident from the above that the Appellate Authority if requested to re-consider his decision, he ~~may have~~ <sup>could</sup> either ~~to~~ <sup>to</sup> reject it or place the matter before the Revising Authority, who possesses the power of sou-moto revision of orders passed by the Subordinate Authority.

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7. It is evident from all that is stated above that the whole proceeding at the stage immediately after the Disciplinary Authority imposing the penalty of compulsory retirement stood vitiated on account of unlawful assumption of powers by the Disciplinary Authority and the Authority above him and therefore the entire proceeding from that stage onwards deserves to be declared as null and void.

8. The question, <sup>to</sup> however, still survive as to why the penalty imposed by the Disciplinary Authority cannot be upheld. Even if the penalty is allowed to be enforced, it would be an exercise in futility in view of the fact that the charged official has died during the pendency of this OA. It is quite possible that the charged official would not have refrained from challenging the legality of the penalty before the competent authorities, it would therefore not be in order to uphold even the order of the Disciplinary Authority imposing penalty.

9. Moreover, the right of the charged official to challenge the legality of the penalty is a personal right. It need hardly be stated that the person's <sup>right</sup> right of action dies with the death of the person. Since the person concerned has died during the pendency of this proceeding, the legal representatives of the deceased, who have come on the record of the case, have no right to challenge the legality of the penalty imposed by the Disciplinary Authority against the deceased charged official nor can the penalty be allowed to be enforced

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in favour of the department and against the deceased charged official.

10. In the above view of the matter, therefore, the OA becomes infructuous and it is hereby disposed of as having become infructuous. No costs.

11. *not with standing anything noted above the LRs who have come on record shall be at liberty to make a fresh representation if they so desire. The respondents shall consider the same sympathetically keeping in mind the observation.*

( R. RANGARAJAN )

MEMBER (ADMN.)

( D.H. NASIR )

VICE CHAIRMAN

DATED: this the 14th day of February, 2000

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DSN

*made in this judgment. The representation should be disposed of within 2 months from the date of receipt of the same.*

*[Signature]*

*[Signature]*

*[Signature]*  
14.2.00

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

1ST AND 2ND COURT

COPY TO:

1. HDHND
2. HRRN M (ADMN.)
3. HBSJP M (JUDL.)
4. D.R. A (ADMN.)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY  
COMPILED BY

CHECKED BY  
APPROVED BY

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

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

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

\* \* \*

DATE OF ORDER: 14/2/2000

MA/PA/CP.NO.

IN

DA. NO. 956/97

ADMITTED AND INTERIM DIRECTIONS  
ISSUED

ALLOWED

CP CLOSED

PA. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

*Instructions*

*Scanned*

