

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

OA.No.996/97

Date of Order : 28/4/99

BETWEEN:

I.V.Siva Ramakrishna Sarma ... Applicant

AND

1. The Controller & Auditor General, of India, 10, Bahadur Shah Jafar Marg, New Delhi - 110 002.
2. The Dy. Controller & Auditor General of India, Bahadur Shah Jaffer Marg, New Delhi.
3. The Principal Director of Commercial Audit and Ex-Officio Member, Audit Board, Adhoc Appellate Authority, AG's Office Complex, Saifabad, Hyderabad - 4.
4. The Director, Adhoc Disciplinary Authority, O/o Principal Director of Commercial Audit and Ex-Officio Audit Board, Saifabad, Hyderabad - 4.
5. The Accountant General (A&E), Andhra Pradesh, Hyderabad - 463. ... Respondents

Counsel for the Applicant : Mr.V.Venkateshwar Rao, Advocate

Counsel for the Respondents: Mr.G.Parameshwar Rao, SC for IA&AB

CORAM:

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

THE HON'BLE MR.B.S.JAI PARAMESHWAR RAO : MEMBER (JUDL.)

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O R D E R

(per Hon'ble Mr.B.S.Jai Parameshwar, M(J))

Heard Mr.V.Venkateshwar Rao learned counsel for the applicant and Mrs.Shakti for Mr.G.Parameshwar Rao, learned standing counsel for Respondents.

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2. This is an application under Section 19 of the Administrative Tribunals Act and the Application was filed on 31-7-97.

3. During the year 1978-79 the applicant was working as Sr.Accountant in the office of the Respondent No.5. At that time he was the joint Secretary to the Civil Accounts & Audit Association, Hyderabad. Between Oct.1978 and March,1979 the association had held strike, demonstration, gherao and relay hunger strike etc. to press demands of the members of the Association.

4. The Association by its notice dt.27.11.78 had informed the Respondent authorities that the association had decided to launch a relay hunger strike from 27.11.1978 to 2.12.1978. The applicant had participated in the relay hunger strike on 30.11.78.

5. In this connection criminal prosecution as well as disciplinary proceedings were initiated against the executive members of the Association.

6. The Applicant was placed under suspension by an order dt.20.3.1979. The applicant challenged the said order of suspension in WP.No.2233180 (WP.MP.No.3240180) before Hon'ble High Court of A.P. By virtue of the orders of the Hon'ble High Court of A.P. the applicant was reinstated to service w.e.f. 21.5.80 and the period of suspension was treated as on duty vide letter dt.9.9.96 Annexure V to the reply statement.

7. The applicant was served with two charge memos bearing No.MAB/JO/C/14/14-4/79-80/22, dt.18.10.79 and No.MAB/JO/C/14/14-3/79-96/304, dt.22.9.1979.

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8. The Applicant and others challenged the charge memos before Hon'ble High Court of A.P. in WP.No.985/1982 on the plea that they were not governed by the CCS(CCA) Rules,1965. The Hon'ble High Court by its judgment dt. 10.8.92 accepted the contentions of the petitioners and held that the CCS(CCA) Rules 1965 are not applicable to the employees of IA&A Department. The Respondents challenged the decision of the Hon'ble High Court of A.P. before the Apex Court in the Civil Appeal. The Hon'ble Supreme Court by its interim order had stayed the operation of the judgment of the Hon'ble High Court of AP. By an interim order dt.26.10.90 the Hon'ble Supreme Court directed the respondent authorities to proceed with the disciplinary proceedings and further directed the same should not be concluded till the disposal of the Civil Appeal.

9. In the charge memo dated 22.9.1979, the misconduct alleged against the applicant reads as follows:-

"Article-I : That the said Sri I.V.S.R.K.Sarma while functioning as Group'D' official in the office of the Accountant General-II, Andhra Pradesh, Hyderabad, during the period 30.11.1978 to 17.03.1979 absented himself from duty unauthorisedly during the prescribed working hours of the office on various dates as detailed in the statement of imputation (Annexure-II). By the above act the said Sri I.V.S.R.K.Sarma,Group'D' exhibited lack of devotion to duty and thereby violated Rule 3(i)(ii) of CCS (Conduct) Rules, 1964.

Article-II: That during the aforesaid period and while functioning in the aforesaid office, the said Sri I.V.S.R.K.Sarma,Group'D' official participated in a 'Relay hunger strike' on 30.11.1978 in connection with service matters. By the above act, Sri Sarma, Group'D' official violated Rule 7(ii) and 3(i)(iii) of the CCS (conduct) Rules, 1964."

Or

10. Since the disciplinary authority of the applicant happened to be the complainant before the local police and was cited as a prosecution witness in C.C.188/1979 an adhoc disciplinary authority was constituted. The respondent No.4 is the adhoc disciplinary authority.

11. The applicant participated in the disciplinary proceedings in the first charge sheet dt.18.10.1979. The applicant was exonerated.

12. However in the charge sheet dt.22.9.79 the participation of the applicant in the relay hunger strike was fully established and the inquiry officer recorded his findings as follows:-

"Article-I : Not proved because the prosecution has not been able to prove that Shri I.V.S.R.K.Sarma participated in the demonstrations beyond 1.15 p.m.

Article-II : Proved that Sri I.V.S.R.K.Sarma did participate in the relay hunger strike on 30.11.1978."

A copy of the report of the Inquiry Officer dated 13.2.91 is at page 16 to 28 of the OA.

13. A copy of the report of the Inquiry Officer was furnished to the applicant, through letter dt.11.3.1996. The applicant submitted his representations against the findings of the Inquiry Officer on 20.3.1996.

14. The disciplinary authority by its proceedings No.MAB/JD/C/14/14-3/79-96 dated April,1998 imposed the penalty on the applicant which reads as under :-

" Accordingly, the undersigned, under the powers vested in him under the provisions of Rule 12 of CCS (CCA) Rules read with Rule 11 ibid and under the powers vested in him as per the Presidential Order No.C-14019/2/79-E.G.I. (Govt.of India,

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Ministry of Finance, Dept.of Expenditure) dated 2-6-1979, hereby imposes the penalty withholding the three increments due to Sri I.V.S.R.K.Sarma, Sr.Accountant for a period of one year each without cumulative effect."

15. The applicant submitted an appeal dt.26.4.96 against the penalty order issued by R-4, He also submitted an additional appeal dt.17.6.96. The appeal dt.26.4.96 and 17.6.96 are at pages 44 - 47 (Annexure A-VI) to the OA.

16. The Respondents No.3 after considering the appeals by his proceedings No.MAB/JD/C-14/14-3/96-97 (Vol.II)/351, dt.25.2.97 reduced the penalty imposed by Respondent No.4. The imposition of penalty by R-3 reduced reads as under:

"Under the provisions of Rule 24 of the Central Civil Services (CCA) Rules and also under the powers derived by the undersigned from the Presidential order No.C-14019/2/79-DG I (Govt.of India, Ministry of Finance, Dept.of Expenditure) dated 2-6-1979, the undersigned hereby reduced the penalty of withholding of three increments due to Sri I.V.S.R.K.Sarma, Accountant, for one year each without cumulative effect imposed by the Adhoc Disciplinary Authority to the penalty of withholding of one increment for one year without cumulative effect."

17. The order of the Respondent No.3 is at Annexure A-VII, page 46 - 51 to OA.

18. The Applicant has filed this OA for the following reliefs:-

"to call for the records pertaining to the Order No.MAB/JD/C.14/14-3/76-96/304 dated 15-04-1996 issued by the Respondent No.4 and order dated 25-02-1997 of the Respondent No.3 as communicated by vide Lr.No. MAB/JD/6-14/14-3/96-97/Vol.II/351 dated 25-2-1997, by the 3rd Respondent and quash the same declaring it as illegal, arbitrary, malafide, discriminatory and violative of Articles 14 & 16 of the Constitution of India by holding that the applicant is entitled

for all consequential benefits such as arrears of pay and allowances, grant of increments."

19. The applicant has challenged the impugned orders on the following grounds :-

- (a) they are illegal, malafide and arbitrary
- (b) the charge memo was concluded by Respondent No.4. The regular disciplinary authority of the applicant was not cited as a witness to the charge memo. Hence there was no justification for appointing an adhoc disciplinary authority in this case.
- (c) There was no strike at all nor was there any retardation of work on 30.11.78 in the office of the Respondent No.5.
- (d) the applicant had submitted a leave application prior to his participating in the relay hunger strike on 30.11.78. The said leave was sanctioned to him and the same was not cancelled till 30.12.91.
- (e) the applicant observed fast on 30.11.78 from 9.00 AM to 5.00 PM (8 Hours)
- (f) treating the person on strike when he was on leave is malafide. As per the report of the welfare officer 5 officials were in relay hunger strike but the applicant was singled out for punishment. This is unjustified.
- (g) In view of the note below Rule 7 of the CCS (Conduct) rules, rule 7 was not attracted to the case of the applicant.
- (h) though he worked as Sr.Accountant from 1996 he was reverted to lower post without any notice.
- (i) to constitute an act of an individual as strike it is required that a group of persons should act in combination. The respondent authorities failed to take note of this aspect. This is malafide and vindictiveness.
- (j) the chief executive and other executive members of the association were allowed to go scot free

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without any punishment. It is stated that the chief executive retired from service without any kind of punishment. In para IX at page 7 the applicant has detailed executive members of the association who were allowed to go with lesser punishment or without punishment.

- (k) no evidence was led in the inquiry to establish the charge. The applicant categorically denied the charge but however stated that he had participated in relay hunger strike from 9.00 am to 5.00 pm on 30.11.78 that on that day he was sanctioned leave, that too outside the office premises, that his participation had caused any retardation or cessation of work and the observations of the Inquiry Officer, in this behalf is malafide.
- (l) Inquiry was held utter violation of the principles of natural justice; and
- (m) the order of the Respondent No.3 is illegal. It has not taken into account the various grounds made by him in appeal and in the additional appeal

20. The Respondents have filed a reply narrating the circumstances under which the applicant as a Joint Secretary of Civil Accounts and Audit Association participated in certain demonstrations as a result of which Criminal prosecutions and disciplinary proceedings were initiated, that the disciplinary proceedings were delayed due to interim order, that during the inquiry all possible opportunities were given to the applicant, that in one of the inquiry i.e. on the basis of the charge memo dt. 18.10.79 the applicant was exonerated, that however, in the charge memo dt. 22.9.79, since the applicant himself had admitted to have participated in the relay hunger strike between 9.00 am to 5.00 pm on 30.11.1978 and also the Welfare Officer had reported about applicant's participation in the relay hunger strike, the Inquiry Officer submitted the report and a copy of the same furnished to

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the applicant and to that the applicant submitted his representation against the findings of the Inquiry Officer by his representation dt.20.3.96; that the disciplinary authority had considered the report of the Inquiry Officer, findings recorded by him, and the representation of the applicant and the inquiry records and formed an opinion that the misconduct alleged against the applicant was substantiated on all probabilities; that on account of admission by the applicant, that the appellate authority has taken a lenient view in the matter by reducing the punishment and hence OA is liable to be dismissed.

21. The facts, grounds raised, and reliefs claimed in this OA are almost identical and similar to the facts grounds and reliefs claimed in OA.219/97. The applicant has mainly canvassed that his participation in the relay hunger strike on 30.11.1978 had not affected routine functioning <sup>in</sup> the office, that he had participated in the hunger strike outside the office premises and that the respondent authorities failed to apply their mind, before passing the impugned orders.

22. The applicant has relied on the decisions of the Hon'ble Supreme Court in the case of Kameshwar Prasad Vs State of Bihar reported in AIR 1962 SC 1166 and the decision of the Hon'ble High Court of Allahabad in the case of Suraj Prasad Vs. Northern Railway reported in AIR 1967All 457.

23. As already observed the Appellate Authority has reduced the punishment <sup>ed by</sup> imposing <sub>the</sub> Adhoc Disciplinary Authority. Setting aside the order of the Appellate Authority may put the applicant in a disadvantageous position.



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24. Hence we feel it proper to direct the Appellate Authority to reconsider the appeal dt.26.4.96 and 17.6.96 duly taking note of the observations of the Hon'ble Supreme Court and the Hon'ble High Court of Allahabad, and also considering the grounds raised in this OA. The directions given by us in OA.219/97 are equally hold good in this application. Hence the following direction are given :-

- (a) The Appellate Authority shall reconsider the Appeal dt.16.4.96 and 17.6.96 duly taking note of the observations of the Hon'ble Supreme Court and the Hon'ble High Court of Allahabad.
- (b) The Appellate Authority, shall give an opportunity of personal hearing to the applicant if he so desires.
- (c) The Appellate authority shall take proper decision on such reconsideration of the appeal expeditiously.

25. Thus the OA is disposed of. No costs.

  
 (B.S. JAI PARAMESHWAR)  
 MEMBER (JUDL.)  
 2874/117

  
 (R. RANGARAJAN)  
 MEMBER (ADMN.)

Dated: 28<sup>th</sup> April, 1999

SA

  
 Justice  
 Justice

COPY TO:-

1. HON. J.
2. H.R.P. M(A)
3. H.B.S.J.P. M(B)
4. B.R. (A)
5. SPARE

1ST AND 2ND COURT

TYPED BY  
COMPARED BY

CHECKED BY  
APPROVED BY

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 (B)

DATED: 28.4.99

ORDER / JUDGEMENT

MS / R.A. / C.P. No.

IN

O.A. No. 996/97

ADMITTED AND INTERIM DIRECTIONS  
ISSUED.

ALLOWED.

C.P. CLOSED.

R.A. CLOSED.

DISPOSED OF WITH DIRECTIONS.

DISMISSED.

DISMISSED AS प्रेक्षण / DESPATCH

ORDERED/REJECTED

NO ORDER AS TO COSTS

HYDERABAD BENCH

SRR

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