

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. No.1000 OF 1997

BETWEEN

Dated, the 10th December, '98

K. RAMANATHAM

... Applicant

A N D

Union of India represented by :

1. Post Master General, Hyderabad,
Postal Region, Hyderabad.
2. Director of Postal Services,
Office of Post Master General,
Hyderabad Region, Hyderabad.
3. Sri T. Pattabhi Rama Rao,
Superintendent RMS Hyderabad Sorting,
Hyderabad and Inquiry Officer.

... Respondents

COUNSELS :

For the Applicant : Mr. KSR Anjaneyulu

For the Respondents : Mr. V. Vinod Kumar

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THE HON'BLE MR. R. RANGARAJAN, MEMBER (ADMINISTRATION)

THE HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDICIAL)

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O R D E R

(PER : HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL)

1. Heard Mr. KSR Anjaneyulu, Learned Counsel for the applicant and Mr. V. Vinod Kumar, Learned Standing Counsel for the respondents.

2. This is an application under Section 19 of the Central Administrative Tribunals Act, 1985.

3. The application was filed on 4.8.1997.

4. The facts of the case are as under :

(a) The applicant was initially appointed as Sorting Assistant in the year 1966. He was regularly appointed as Inspector in the year 1980. From the year 1981 to 25.6.85 the applicant worked as Inspector (Uniforms) in the Postal Stores Department, Hyderabad.

While the applicant was working as Inspector (Uniforms) in the Postal Stores Department, it is alleged that he either misused or failed to account the uniform materials, such as cloths, Sarees, Garments, Foot chappals, umbrellas Water-proof Coats, Blue Dusters, Pugrees and Blouse pieces, and thereby caused pecuniary loss to the Department to the extent of lakhs of rupees.

(b) The applicant was placed under suspension contemplating disciplinary proceedings against him.

(c) The Director of Postal Services, AP, Northern Region, Hyderabad-5 issued a charge memo vide his memo No.RDH/ST/20-5/2/86 dt. 7.2.86 against the applicant. The copy of the charge memo is at Annexure-I, Page 24 of the O.A.

(d) Since there was no progress in the disciplinary proceedings, the applicant approached this Tribunal in O.A. No.244/93. On 11.6.95, this Tribunal disposed of the O.A. with the following directions:

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"The inquiry with reference to charge memo dated 26.2.1986 has to be disposed of expeditiously and preferably by 31.10.1995. The question as to whether the disciplinary authority can proceed with the inquiry with reference to charge memo dated 26.7.85 as far as the applicant is concerned is left open for consideration as and when it arises after the disposal of the criminal case against Sri KV Ramana and others referred to. It is needless to say that the turn of the applicant had already come for consideration for promotion. His case might have ^{been} already considered by following the sealed cover procedure and if it is not so done, the same said procedure has to be

5. The applicant submits that even after the specific ^{/followed} directions of this Tribunal in the said O.A. the disciplinary proceedings were not finalised and there was no sitting at all from 14.6.95 to 22.2.96 for a period of almost 8 months including the outer limit prescribed by this Tribunal; that the disciplinary proceedings vide charge memo dt. 7.2.86 has even now not concluded in accordance with the direction by this Tribunal in O.A. 244/93. He submits that therefore, the charge memo is liable to be quashed.

6. The applicant submits that one K. Rameswar Rao was appointed as the Inquiry Officer. The inquiry was fixed on 4.3.96. On that day 2 witnesses were examined and thereafter there was no further progress in the inquiry.

7. In the meanwhile, one Sri T. Pattabi Rama Rao was appointed as the Inquiry Officer in place of K. Rameswar Rao. The said Inquiry Officer did not conduct any sitting. It is stated that the Inquiry Officer was changed due to administrative reasons, and one B. Krishnam Murthy was appointed.

8. Sri B. Krishna Murthy also did not conduct any inquiry.

9. Against Sri T. Pattabhi Rama Rao, Superintendent, RMS, Hyderabad, Sorting Division was appointed as the Inquiry Officer.

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He fixed the hearing on 25.4.97. The applicant submitted a representation dt. 22.4.97 praying for time explaining certain official/personal difficulties and also the inconvenience that was experienced by his Defence Assistant. The Inquiry Officer, ^frevused the request of the applicant for time. On 25.4.97 the applicant appeared before the Inquiry Officer. It is stated that then an altercation took place between the applicant and the Inquiry Officer and that therefore, the applicant had an apprehension in his mind that he may not get fair justice at the hands of Sr T. Pattabhi Rama Rao.

10. On 22.4.97 the applicant submitted a representation alleging the biased attitude of the Inquiry Officer.

11. The Director of Postal Services, Office of the Post Master General, Hyderabad Region (Respondent No.3) vide his Memo No.ST/20-5/2/86 dt. 9.5.97 disposed of the representation rejecting his request to change the Inquiry Officer.

12. Against the order passed by the Director of Postal Services on 9.5.97, the applicant submitted a representation dt. 14.5.97 to the Director of Postal Services, who in turn rejected his prayer.

13. The applicant has narrated certain circumstances under which he apprehended that Sri T. Pattabhi Rama Rao is biased against him and that he may not get fair justice at his hands.

14. As the Inquiry was not completed within the period stipulated by this Tribunal in O.A.244/93 he submits that charge sheet is liable to quashed.

15. The applicant also challenges the action of the respondents on his representation dt. 22.4.97 requesting for change of the Inquiry Officer.

16. Hence, he has filed this O.A. to call for records relating to the matter of inquiry proceedings and to quash the charge memo dt. 7.12.86 as the same has not been concluded within the mandatory period of 31.10.95 prescribed in O.A.244/93

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decided on 14.6.95 and also to set aside the orders contained in the Director of Postal Services Memo dt. 9.5.97 and the orders of the Post Master General, Hyderabad Region, Hyderabad vide Memo. dt. 28.7.97 rejecting his bias petition and allowing Sri T. Pattabhi Rama Rao to function as the Inquiry Officer and to set aside the ex parte proceedings conducted by the Inquiry Officer from 97.97 to 25.7.97 and to give him promotion from the date his junior was promoted with all consequential benefits such as seniority, arrears of pay, etc.

17. The respondents have filed the counter submitting that an interim order was passed in O.A.244/93. They have not stated any justifiable reasons for not concluding the charge memo or the steps taken by them from 14.6.95 i.e. the date of dismissal of the O.A. 244/94 to 31.10.95 (the time limit stipulated in the O.A. 244/93). They submit that the Inquiry Officer was changed due to administrative reasons and that they could not complete the disciplinary proceedings within the time stipulated (31.10.95) due to non-cooperative attitude of the applicant. Thus they submit that the O. A. is liable to be dismissed.

18. The Learned Counsel for the applicant disputed the contentions of the respondents stating that they are prejudicial against the applicant and are harassing the applicant.

19. Admittedly, this Tribunal had given specific directions to the respondents to conclude the charge memo before 31.10.95. The O.A. was disposed of on 14.6.95.

20. If really the respondents were not in a position to adhere to the time limit prescribed by this Tribunal in O.A. 244/93 they could have filed an application for extension of time.

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explaining the circumstances which were beyond their control or explaining how the applicant stalled the conclusion of the proceedings. Even otherwise, if they could not conclude the disciplinary proceedings within the stipulated time due to non-cooperative attitude of the applicant, they should have also brought to the notice of this Tribunal and prayed for extension of time. If really the contentions of the respondents were genuine and that they could not complete the inquiry within the stipulated time i.e. 31.10.95 solely on account of non-cooperative attitude of the applicant, this Tribunal would not have refused to extend the time limit. As already observed there is nothing in the counter to explain the steps taken by the respondents to adhere to the time limit prescribed by the Tribunal. Nothing would have been possible for the respondents except to produce the inquiry records to convince the Bench as to how they were determined to conclude the disciplinary proceedings within the time limit prescribed by the Tribunal and that how the applicant had obstructed or exhibited non-chalant attitude towards their sincere attempts.

21. The applicant has specifically stated that the respondents did not take any steps after the dismissal of the said O.A.244/93 i.e. from 14.6.95 to 31.10.95. He has attempted to narrate the circumstances under which Mr. K. Rameswara Rao Mr. T. Pattabhi Rama Rao and Mr. B. Krishna Murthy were appointed as the Inquiry Officers and that these appointments were made in the year 19⁹6.

22. The respondents were clearly aware of the time stipulated in the O.A.244/³95. The respondents have not filed any application praying for extension of time explaining the circumstances under which they could not complete the inquiry either for the administrative reasons or on account of noncooperative attitude of the applicant before 31.10.95. It is too late

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in the day for the respondents now to contend that they could not complete the inquiry within the stipulated date. We are not persuaded to accept the contentions of the respondents and the same are not at all convincing.

23. The Learned Counsel for the applicant relied upon the decision of the Calcutta Bench of this Tribunal in the case of Panchu Gopal Banerjee Vs. Union of India and Ors reported in (1992) 20 ATC 595 reproduced herein below :

"17. He has drawn our attention to para 15 of the reply of the respondents in which they have admitted that the High Court did pass an order regarding completion of the departmental enquiry by 31.5.1979. They have further stated that as the applicant did not co-operate for the early disposal of the departmental enquiry, the same could not be concluded by 31.5.1979 and the application for the interim order was heard again on 6.6.1979 and the interim order was extended for a period of six weeks. However, the enquiry could not still be completed due to the non-cooperation of the applicant and the High Court extended the interim order for a further period of two months from 27.7.1979 for completion of the enquiry. Mr. Soumen Ghose has argued that thus the final picture that emerges from the admission of the respondents is that the High Court had allowed extension of time for completion of the departmental enquiry upto 27.9.1979 and that since the enquiry could not be completed by that date, it has to be quashed.

26. After a careful consideration of the materials on record and the submissions of the two counsel, we are inclined to allow this application. In view of the clear and unambiguous order of the Calcutta High Court directing the respondents to complete the departmental enquiry against the applicant and convey the result thereof by 27.9.1979 and the failure of the respondents to carry out this order, we are of the view that the enquiry could not be continued thereafter and became invalid. Though the learned counsel for the respondents submitted during the hearing that the enquiry could not be completed within the stipulated date due to the non-cooperation of the applicant, he could not produce any document in support of this contention, nor could he explain as to why the High Court was not approached for further extension of time for the completion of the enquiry in view of the alleged non-cooperation of the applicant. Besides, even if the applicant did non-co-operate as alleged, the respondents could have completed the enquiry ex parte, after observing the necessary formalities, within the stipulated period. However, this step was not taken either. Thus, the enquiry came to an end after the expiry of the stipulated date i.e. 27.9.1979 and has to be abandoned thereafter."

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In the case, the Calcutta Bench of this Tribunal directed the respondents to conclude the matter as far as possible within 2 months. The respondents did not conclude the proceedings. In fact, the respondents had preferred SLP before the Hon'ble Supreme Court. There was no stay in the SLP. Even during the pendency of the SLP, the Hon'ble Supreme Court had granted time to conclude the disciplinary proceedings. In the meanwhile, the applicant retired from service. Taking all these factors into consideration the Hon'ble Supreme Court observed as follows :

"In view of the fact that mandatory direction of the Tribunal that disciplinary proceedings which were then pending, should be completed within 6 months and more than 3 years and one month has passed by now and the proceedings have not been completed, we quash the proceedings. An employee, after retirement cannot be harassed by continuing the disciplinary action of this nature...."

24. The Learned Counsel for the applicant also relied upon the decision of the Lucknow Bench of this Tribunal in the case of Dr. M.A. Matin Vs. Council of Scientific & Industrial Research & Others reported in SLJ Vol.3 of 1995 Page 191.

25. This clearly goes to show that the direction by this Tribunal in O.A.244/95 was mandatory in its nature.

26. The applicant also relied upon the decision of the Allahabad Bench of this Tribunal in the case of Kailash Chandra Beherwal Vs. Union of India & Ors (reported in 1997(1) ATJ page 517 in O.A.278/91). In that case a specific time limit was prescribed by the Tribunal to conclude the disciplinary proceedings. The respondent authorities with a zeal to adhere to the time limit concluded the disciplinary proceedings ex parte. The Tribunal did not appreciate the procedure adopted by the respondent authorities in concluding the proceedings ex parte.

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In para 14 their Lordships have observed as under :

"14.The direction which was given by the Tribunal to complete the proceedings within the specified period was to protect the interest of the applicant. It was passed with a view to ensuring that the applicant is not subject to prolonged agony of disciplinary proceeding. This does not, however, mean that the enquiry must be proceeded ex-parte against the applicant in case he was not able to appear on particular date fixed for hearing for a valid reason merely to complete the enquiry within the time schedule given by the Tribunal. A direction given to protect the interest of the applicant cannot be used against him in the grab of complying with the direction of the Tribunal's order. We have, therefore, not hesitation in holding that the ex-parte proceeding held on 11.1.1989 is wholly unjustified and illegal".

27. After analysing the facts and from the principles deduced from the cases cited above, it is clear that the respondent authorities have failed to conclude the disciplinary proceedings before 31.10.95.

28. They have not explained any convincing reasons in not doing so. They have not placed any justifiable material on record to show that the inordinate delay was attributable only to the applicant. Hence, we have no other alternative and constrained to quash the proceedings relating to the charge memo dt. 7.02.86.

29. On perusal of the article of charges of misconduct it revealed that there is pecuniary loss caused to the Postal Stores department. The loss is not a meagre sum. We are constrained to take this extreme step of quashing the charge memo dt. 7.2.86 as the same is more than 12 years old and the respondents exhibited utter callousness to the directions given in the O.A.244/93.

30. Normally and legally, the department is expected to ascertain the reasons for such huge loss, to fix the liability on the official responsible for the same and must take preventive



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and deterrent steps to avoid recurrence of such huge losses in future.

31. The Court or the Tribunal cannot tie the hands of the respondent authorities and allow the real culprit to go scot free.

32. The applicant is presently aged about 50 years and has got another 10 years of service. Hence, we feel it proper to reserve liberty to the respondent authorities to proceed against the applicant de novo if they are so advised. In case they take a decision to proceed against the applicant de novo then we are hereby make it doubly clear that they should conclude the disciplinary proceedings within a period of one year from the date of issue of a fresh charge Memo.

33. We have taken the above decision for the reason that the charge memo was issued in February, 1986 and 12 years have elapsed and no appreciable progress has been made in the inquiry. These are the factors which compelled us to reserve liberty to the respondents to decide as to whether issuance of fresh charge memo is necessary or not.

34. It is stated that many of the juniors to the applicant have been promoted to the next higher grade.

35. The respondent authorities may consider his case for promotion notwithstanding the fact of their taking a decision to proceed against the applicant de novo for the alleged misconduct. We are compelled to observe as above, for, the charge sheet dt. 7.6.86² has been hanging over his head for over 12 years. His case may be considered for promotion at par with his juniors and if, in case, the applicant is found guilty in the proposed disciplinary proceedings, the respondents may think of imposing the punishment on the

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applicant in the higher grade.


36. Hence we issue the following directions :

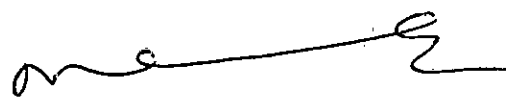
(a) The proceedings commencing^{ed} on the charge memo^{memo} and the charge^{ge} dt. 7.12.86 are hereby quashed.

(b) The respondent authorities shall take a decision within 2 months from the date of receipt of a copy of this order to proceed against the applicant afresh or not.

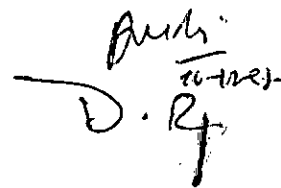
(c) The case of the applicant be considered for promotion in case, his juniors are promoted to next higher grade, as per rules, as indicated^{in para 35,} above.

37. With the above directions the O.A. is disposed of leaving the parties to bear their own costs.


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


(R. RANGARAJAN)
MEMBER (A)

Dated, the 10th December, '98.


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Copy to:-

1. The Post Master General, Hyderabad Postal Region, Hyderabad.
2. The Director of Postal Services, O/o The Post Master General, Hyderabad Region, Hyderabad.
3. One copy to Mr. K.S.R. Anjaneyulu, Advocate, CAT., Hyd.
4. One copy to Mr. V. Vinod Kumar, Addl. CGSC., CAT., Hyd.
5. One copy to HBSJP M(J), CAT., Hyd.
6. One copy to D.R.(A), CAT., Hyd.
7. One duplicate copy.

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18/12/98
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: 10/12/98

ORDER/JUDGMENT

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

in

OA.No. 1000/98

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
भेवप / DESPATCH

16 DEC 1998

हैदराबाद बेंच
HYDERABAD BENCH