

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 1099/97

Date of Order : 1.4.1999

BETWEEN :

P.Rajaram

.. Applicant.

AND

1. Union of India, rep. by Secretary,
Ministry of Communications,
Dept. of Posts, New Delhi.
2. Member (P) Board of Postal Services,
O/o D.G.Posts, New Delhi.
3. Director of Postal Services,
O/o Hyderabad Region,
O/o Chief Post Master General,
Dak Sadan, Hyderabad.
4. Superintendent RMS 'Z' Division,
Endowments Buildings, Tilak Road,
Hyderabad.
5. Secretary, Board of Intermediate
Education, A.P., Hyderabad.

.. Respondents.

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Counsel for the Applicant

.. Mr.B.S.A.Satya-
narayana

Counsel for the Respondents

.. Mr.B.N.Sharma
Mr. T.P.V. Mebbakar
for R.S.

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CORAM :

HON'BLE SHRI B.RANGARAJAN : MEMBER (ADMN.)

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



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O R D E R

X As per Hon'ble Shri B.S.Jai Parameshwar, Member (J) X

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Mr.B.S.A.Satyanarayana, learned counsel for the applicant and Mr.M.C.Jacob for Mr.B.N.Sharma, learned standing counsel for the respondents.

2. The applicant herein is an ex-direct recruit Sorting Assistant in ^{the} office of R-4 has, in this application filed under Section 19 of the AT Act, challenged the order dated 11.2.94 passed by R-4 imposing the penalty of dismissal from service on him, on a proved charge of misconduct, which order came to be confirmed by R-3 by his order dated 8.4.94 in appeal and by R-4 by his order dated 3.1.97 in revision.

3. The impugned orders have been passed on the basis of the charge memo issued by R-4 vide proceedings No.B/2/P.Rajaram/78 dated 18.9.80 (A-4). The misconduct levelled against the applicant reads as under :-

"That the said Sri P.Raja Ram has submitted memorandum of marks for Intermediate Examination bearing Serial No.38707 (Regd.No.32868 E) as having passed Intermediate Examination Part-I English, in December 1974 so as to get undue benefit of addition of 7 (seven) bonus marks for passing Intermediate examination even though he had not passed the said examination and thereby he committed a misconduct rendering him unfit and unsuitable for continuance in service and he acted in a manner which is unbecoming of a Government Servant, thus contravening the provisions of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964".



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4. The respondent authorities passed the impugned orders in accordance with the direction given by this Tribunal in OA.70/90 decided on 13.10.93.

5. R-4 on the basis of the report of the Enquiry Officer after concluding the enquiry into the said charge memo had by his earlier order dated 13.9.81 imposed the penalty on the applicant which reads as follows :-

"Sri P.Rajaram, Stg.Asst. in the scale of Rs.260-8-300-EB-8-340-10-360-12-420-EB-12-480 should be reduced as Mail guard in the scale of Rs.210-4-250-EB-5-270 with immediate effect for a period of two years. During the period of punishment, he should get the minimum of the scale of pay for mailguard. On restoration as T/S Stg.Asst., the period of punishment of Two years should not be counted for increment in the scale of Rs.260-8-300-EB-340-10-360-12-420-EB-12-480. On repromotion as Stg.Asst., after the period of the two years, he would regain his original seniority."

6. R-3 and R-2 having felt that the punishment imposed by the R-4 by his order dated 13.9.81 was either inadequate or not commensurate with the gravity of the misconduct attempted to exercise their power vested in them under Rule 29 of the CCS (CCA) Rules 1965.

7. The applicant at each and every stage approached either the Hon'ble High Court of A.P. or this Tribunal through the following proceedings :



(A) W.P.No. 2829/82 (T.A.No.118/87 decided on 11.8.88).

(B) O.A.687/89 decided on 15.9.89

(C) O.A.70/90 decided on 13.10.93.

(D) W.P.No. 18216/93 decided on 13.12.93.

8. We are ^{certain} that the approach of the applicant to the Hon'ble High Court of A.P. in W.P.No.18216/93 is a clear departure from the provisions of the A.T.Act 1985. Perhaps the applicant did so, only to derive an unintended advantage.

9. As already observed the applicant was a direct recruit to the post of Sorting Assistant in the scale of pay of Rs.260-480. While considering various contentions raised by the applicant in OA.70/90 this Tribunal considered the legality of the punishment imposed by the disciplinary authority - R-4 by his order dated 13.9.81. Having found such reduction of the applicant to a lower grade of Mail guard was not permissible, this Tribunal by its order dated 13.10.93 set aside the punishment imposed by the disciplinary authority and following the principle enunciated by the Hon'ble Supreme Court of India in Mohd. Ramjankhan ^{AIR 1990 SC} directed the disciplinary authority - R-4 to furnish a copy of the report of the enquiry officer to the applicant and proceed further. Infact the directions given by this Tribunal in the said OA reads as follows:-

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"In the result, we set aside the impugned order dated 13.9.1981 passed by the Disciplinary authority (4th respondent herein) reducing the applicant from the post of Sorting Assistant to Mail Guard. We also set aside the impugned showcause notice of the 2nd respondent dated 25.7.89 and reiterated by his memo dated 31.10.89 calling the applicant to submit his representation for enhancement of punishment imposed by the Disciplinary authority from reduction to lower grade to that of dismissal from service. The matter is remitted back to the Disciplinary authority (R4) for the limited purpose, to afford an opportunity to the applicant to submit his representation if any, as against the findings in the inquiry report and then to pass appropriate orders in accordance with law. The directions in this order shall be complied by the respondents within two months from the date of communication of this order. No costs".

10. It is in this background the respondent authorities passed the impugned orders.

11. The applicant has challenged the impugned orders on the following grounds.

(A) Action of the respondents in dismissing him from service is based on no evidence and is violative of principles of natural justice;

(B) the action of the respondents in imposing two punishments (punishment of reduction to a lower grade-mail guard by order dated 13.9.81 and punishment of dismissal from service by the impugned orders for one and the same offence

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is violative of Articles 20(2) of the Constitution of India; and

(C) the impugned orders are violative of the directions of this Tribunal in OA.70/90 dated 13.10.93.

11. The respondents have filed a reply narrating the circumstances right from the year 1978 when the applicant entered into service in the department till the impugned orders are passed. It is not necessary to reproduce what all the respondents have stated in their reply. Suffices it to say that they submit that the enquiry was conducted strictly in accordance with the rules adhering to the principles of natural justice that the applicant at the time of submitting his candidature for the post of Sorting Assistant had not passed Intermediate examination that the applicant had furnished a marks card of the Intermediate examination only to gain bonus marks '7' during the selection that after his appointment enquiries revealed that the applicant was infact failed in the Intermediate examination that the question whether the applicant had attended the first year B.A. class was no; relevance to the issue that the charge imputed against the applicant cast a burden on him to establish that the marks card of the Intermediate examination produced by him along with the application was a genuine one, that the applicant failed to substantiate his innocence that the applicant has

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not placed any material to show that at the time when he applied for the post he had passed the Intermediate examination and that therefore the impugned orders are perfectly ^{and} legally valid and according to law.

12. Though not specifically pleaded in the application the learned counsel for the applicant during the course of arguments vehemently contended or urged that the enquiry officer relied upon a xerox copy of the marks list that the applicant is not responsible for any correction in the marks list that in order to ascertain or verify the corrections if any, in the marks list the enquiry officer could have summoned the original marks list maintained in the office of the controller of the examinations that the enquiry officer has not chosen to secure the original marks list that the enquiry officer relied upon certain material which are not relevant and hence the enquiry is vitiated. It is also stated that the enquiry officer rejected his claim for production of certain documents. The learned counsel for the applicant further submitted that the enquiry was conducted in utter violation of the principles of natural justice. Before considering these grounds raised by the applicant which are not specifically pleaded in the OA we feel it proper to reproduce herein the observations made by this Tribunal while deciding the OA.70/90. The observations are to be found in para-13 and the same is reproduced herein

below :

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"We have gone through the entire proceedings. The applicant had a fair deal in the matter of enquiry. No principles of natural justice are violated. The applicant had reasonable opportunity to meet his defence. We do not find any irregularity in the matter of conducting the enquiry. Having regard to the facts and circumstances of the case and in view of the aforesaid discussion, the OA is disposed of as hereunder".

13. The Tribunal has recorded a categorical finding that the applicant had a fair deal in the matter of enquiry. No principles of natural justice are violated. The applicant had a reasonable opportunity to meet his defence and it could not find any irregularity in the matter of conducting the enquiry. On the face of these observations we are of the humble view that the applicant cannot be permitted to raise the contentions over and again. The said contentions are barred by the principles of constructive resjudicata.

14. If the applicant felt that those observations made by this Tribunal in OA.70/90 were contrary to the record or unwarranted then the applicant should have filed an application for review of the said order or should have challenged the observations in an appropriate judicial appellate forum. Having not done so, the observations made by this Tribunal on the said OA had become final. When it reached the finality it is not necessary for this Tribunal to over and again consider the contentions in this application.

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15. Coming to the grounds challenging the impugned orders we have to observe that the imposition of the penalty is on the basis of no evidence ~~has~~ no merits. The respondents authorities have produced the enquiry records. We have perused the enquiry records. We are not inclined to accept the contention of the applicant that it is a case of no evidence. Infact the observations made by the Tribunal in OA.70/90 clearly indicate that the enquiry officer had collected sufficient material to substantiate the charges and that he did so giving full and adequate opportunity to the applicant. Hence this contention cannot be accepted.

15. The applicant has contended that it has caused double jeopardy to him. It is his contention that he had suffered the penalty of reduction to a lower grade of Mail guard imposed by R-4 by his order dated 13.8.91. Now he is also made to suffer a severe penalty of dismissal from service by his impugned orders. Thus he ^{tries} now \angle to take shoulder under Article 20 (2) of the Constitution of India.

16. Article 20(2) of the Constitution of India incorporates prohibition against double jeopardy. The doctrine of double jeopardy incorporated in this Article is not applicable to departmental proceedings. Strictly speaking the departmental proceedings does not come under the term "prosecution". Departmental proceedings is ^{not} a prosecution within the meaning of Article 20(2) or a trial then the meaning of Section 403

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of the Code of Criminal Procedure. Thus no legal basis to bar a departmental proceeding on the same fact in which the criminal proceedings terminated in favour of the delinquent with an order of acquittal. Here in the instant case there was no prosecution against the applicant. Earlier R-4 by his order dated 13.9.81 had imposed an illegal punishment. That fact was noticed while considering the OA.70/90 and this Tribunal set aside the said punishment imposed by R-4. Further this Tribunal noticed that the R-4 had not furnished a copy of the report of the enquiry officer to the applicant before issuing the said penalty^{order} and in view of the principle laid down in the case of Mohd. Ramjan Khan directed the disciplinary authority to proceed further in accordance with the rules after furnishing a copy of the enquiry officer to the applicant. Therefore in our humble view the question of double jeopardy does not at all arise.

17. The applicant further contended that the impugned orders are violative of the directions given in OA.70/90 dated 13.10.93. We have already extracted the operative portion of the order above. When once the punishment imposed by R-4 by his order dated 13.9.81 was set aside it is left open to the authorities to pass proper punishment having regard to the gravity of the charge.



18. Coming to the question of punishment we have to say that the respondent authorities are the best judges in imposing the proper punishment. The Court or Tribunal has no power to interfere with the punishment. It is the settled position as enunciated by the Hon'ble Supreme Court. Kindly see APSRTC and others v. A.K. Parul (reported in / in various cases. / In that view of the matter we do not find any justification for interfering with the impugned orders.

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19. The learned counsel for the applicant during the course of his arguments submitted that R-4 before implementing the directions contained in OA.70/90 had not restored the position of the applicant as on 12.9.81. It is to be noted that the first punishment imposed by the disciplinary authority by its order dated 13.9.81 was set aside on the ground that the same was illegal. The disciplinary authority had reduced the applicant to the post of Mail Guard. He had suffered the punishment. When this Tribunal set aside the said punishment it was the bound^{-en} and duty of R-4 to restore the position of the applicant as ^{was} available on 12.9.81 before passing the impugned order dated 11.2.94.

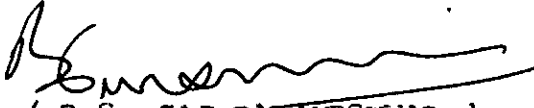
20. It is, therefore, we feel it proper to direct R-4 to check and verify the service records and office records to ascertain whether the applicant was placed in his original position as ^{was} available on 12.9.81. If so, the same should be

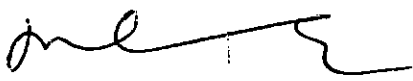


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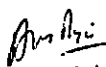
communicated to the applicant. If not, the applicant should be restored to his position of Sorting Assistant as on 12.9.91 and the punishment undergone by him should be annulled by restoring to ^{him} ~~term~~ all the monetary benefits eligible. The R-4 shall complete this exercise within a period of 2 months from the date of receipt of a copy of this order.

21. In that view of the matter we find no merits in this OA and the OA is liable to be dismissed. Accordingly the OA is dismissed. No costs.


(B.S. JAI PARAMESHWAR)
Member (Judl.)


(R. RANGARAJAN)
Member (Admn.)

Dated : ^{1st} April, 1999


12.4.99.

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COPY TO:-

1. HDHND

2. HHRP M(A)

3. HBSJP M(J)

4. D.R.(A)

5. SPARE

1ST AND IIND 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 (J)

ORDER: 1-4-99

ORDER / JUDGEMENT

MA/3A/CP No.

in

OA. No.

1099/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED.

C.P. CLOSED.

R.A. CLOSED.

O.A. CLOSED.

DISPOSED OF WITH DIRECTIONS.

DISMISSED.

DISMISSED AS WITHDRAWN.

ORDERED / REJECTED.

NO ORDER AS TO COSTS.

SRR

