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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.1108/99

DATE OF ORDER : 17th July, 2000.

Between :-

A.Saraswati

...Applicant

And

1. The Union of India,
rep. bythe Chief Administrative Officer,
Office of the Director General,
National Sample Survey,
Department of Statistics,
Government of India, C-Block,
3rd Floor, Pushpa Bhavan,
Madangir Road, New Delhi-110 062.

2. The Dy.Director,
National Sample Survey Organisation
(FOD), AP North, 8th Floor,
Gaganvihar, M.J.Road,
Hyderabad-500 001.

...Respondents

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Counsel for the Applicant : Shri J.V.Laxman Rao

Counsel for the Respondents : Shri V.Vinod Kumar, Addl.CGSC

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CORAM:

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

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

(Order per Hon'ble Justice Shri D.H.Nasir, Vice-Chairman).

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...2.

(Order per Hon'ble Justice Shri D.H.Nasir, Vice-Chairman).

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Heard Sri J.V.Laxman Rao, learned counsel for the applicant and Sri V.Vinod Kumar, learned Standing Counsel for the Respondents.

2. The grievance expressed by the applicant in this O.A. is against the award of punishment of reduction of pay by two increments for a period of 2 years for the mis-conduct alleged in the second charge sheet dt.23.2.1998. The applicant is challenging the legality of the order of punishment on three counts. Firstly that the opportunity of hearing was not afforded to her and no regular enquiry was conducted inspite of a demand made by the applicant in that regard. It is further contended by the applicant that the punishment awarded is highly disproportionate ~~as compared~~ to the misconduct alleged against her.

3. On perusal of the case papers it appears that the Disciplinary Authority imposed a punishment reducing the applicant's pay by six stages from Rs.5,750/- to Rs.5,000/- for a period of 2 years with effect from 18.3.1998 with a stipulation that the applicant would not earn any increment of pay during the period of reduction and on expiry of that period it will not have the effect of postponing her future increments of pay. This order was modified by the appellate authority by withholding two increments without cumulative effect for five years.

4. In para-2 of the impugned order it is mentioned that according to CCS(CCA)Rules, 1965, the Appellate Authority is required to consider (i)whether the proceedure laid down in the rules has been complied with and if not whether such compliance resulted in violation of any provisions of the Constitution xxxx xxxxx xxxx

of India or in the failure of justice(ii)whether the findings of the Disciplinary authority are ~~warranted~~ substantiated by the evidence on record and (iii)whether the penalty is adquate, inadequate or severe. In para-3 of the said order it is stated that the case file of the applicant revealed that the appellant was charge sheeted under Rule-16 of the CCS(CCA) Rules, 1965 by the Assistant Director, Hyderabad by memo dt.23.2.1998 for the following charges :-

> (i) Keeping the office records after 10.12.1997 though the work was over on that date but not handing over the schedules to concerned Asst.Superintendent/Superintendent under proper receipt thereby attracting provision of Rule 3(1)(iii) of CCS(Conduct)Rules.
>
> (ii)Insulting the Superintendent/Asst.Director by putting unsubstantiated allegation like taking vindictive attitute against her, and calling explanation from her in order to escape from responsibility, thereby attracting provision of Rule 3(1)(iii) of CCS(Conduct)Rules.
>
> (iii)Misleading the office by telling that she has submitted schedules to Shri B.Narasaiah, Superintendent on 24.12.1997. Against the same schedules was submitted to Asst.Superintendent/Superintendent of Charge VI on 2.1.1998, thereby contradicting her own statement and thereby attracting provision of Rule 3(1)(iii) of CCS(Conduct) Rules.

5. After taking into consideration the points made out in the appeal preferred by the applicant, the appellate authority made the following order :-

> (i)In the circumstances of the case, the inquiry under Rule 16 1(A) was not necessary and as such the decision of the disciplinary authority was perfectly in order. I fully agree with the findings of the disciplinary authority and reject the contention made by the appellant.
>
> (ii)Since the appellant could not furnish proof in token of having submitted the schedule by her on 24.12.1997 to Shri B.Narasiah, Superintendent, her statement is not worthy for consideration and therefore outrightly rejected.

As regards the quantum of punishment, the appellete authority in the impugned order states that he found that the same has been imposed by the Disciplinary Authority as 'major one' i.e. penalty No.(v) as specified in Rule 11 of CCS(CCA) Rules, 1965 and not penalty No.(iii)(a) i.e. 'minor one' as has been determined by the disciplinary authority and mentioned in the order. In fact, according to the Appellete Authority no major penalty ~~can~~ could be imposed on any official until and unless theofficial is charge sheeted under Rule 14 and inquiry is conducted under the provisions of Rule 14 of CCS(CCA) Rules. The Appellate Authority therefore recorded his 'feeling' that the ends of justice would be adequately met if the penalty was modified to that of minor one and that too commensurate with the gravity of the charges. Accordingly the Appellate Authority decided to modify the penalty and the penalty was modified as stated in para-3 above.

6. From these short facts it strikingly appears that the appellate authority has ~~indulged into~~ resorted to modifying the order so as to suit the requirement of law without making any effort to find out whether the merits or demerits of the case warranted the modification so made. It is like putting the cart before the horse. If the misconduct was not found to be of a serious order, the appellate authority would have been justified in reviewing the punishment. Instead the appellate authority went ahead and relaxed the punishment so as to ensure that it 'fits' into the realm of "minor penalties" and also to ensure that regular inquiry into the case was avoided.

7. The appellate authority has also observed in para-4 of the Appellate order as under :-

4. In her appeal, the appellant has stated that (i) her request for conducting the inquiry under Rule 16(1)(b) of the CCS(CCA) Rules was not considered and as such she was not afforded reasonable opportunity to defend herself and (ii) she had submitted the schedule on 24.12.1997 in the same manner as other Investigators were doing.

8. There can therefore be no doubt about the fact that it is incumbent on the department to conduct a full fledged enquiry even in minor penalty case if a demand in that regard is made by the applicant. There is no secret about the fact that the applicant had already made a demand as permissible under the rules. Inspite of the same, the respondents have not seen their way to hold a full fledged enquiry. Not conducting a full fledged enquiry can only be sustained if a satisfaction is rendered to the Tribunal that the demand had not been raised by the applicant for conducting a full fledged enquiry and in that view of the matter even if it is conceded that it was a minor penalty case the respondents cannot purge themselves of the allegation that the opportunity of hearing was not afforded to the applicant and that the applicant was condemned unheard. In para-8 of the counter affidavit filed by the respondents, it is stated that after considering the appeal made by the applicant against the penalty order dt.18.3.1998 and taking into consideration the evidence and other material available on record of the Appellate Authority, i.e. the Chief Administrative Officer passed orders vide memo dt.4.8.1998. It is further stated in para-8 itself that the Appellate Authority opined that Disciplinary Authority imposed major penalty in a charge sheet which was issued under minor penalty rules and felt that the ends of justice would be adequately met if the penalty is modified to that of minor one

commensurate with the gravity of the charges levelled against the applicant.

9. However, it is not in order for the respondents to raise a contention that no violation of the DisciplinaryRules had taken place merely on the ground that the major penalty was reduced to minor penalty.

10. This question in fact is required to be kept in view right from the inception of the Disciplinary Action so that at the threshhold of the enquiry itself it could be decided whether a full fledged enquiry is required to be conducted in a given case. It is not credit worthy on the part of the Department to change or alter the punishment with a view to escaping from the rigours of affording adequate opportunity of hearing to the incumbent so that he may have sufficient opportunity to equip himself for defending his case.

11. As far as appreciation of evidence is concerned, it is well settled that the Tribunal should not interfere with the findings of the Inquiry Officer followed by the Disciplinary Authority on factual aspects of the case and to re-appreciate the oral evidence if any tendered by the Department. If it is so done, it would mean that the Tribunal is acting as the appellate authority instead of confining its scrutiny to judical review. The Tribunal can certainly look into the question of quantum of punishment or severity of punishment for determining whether it is commensurate with the gravity of the charge alleged and proved against the applicant. This question however does not call for any adjudication as we believe that the impugned orders deserve to be quashed

for the reasons as stated above and a regular inquiry is required to be held so as to meet the ends of justice.

12. This O.A. is therefore allowed. The punishment order of the Disciplinary Authority memo No.C 140 13/2/AS/AD/Hyd/97-98/ 1883 dated 18.3.1998 and the modified order of punishment No.C-160 13/5/98-Vig dated 4-8-1998 are hereby quashed and set aside.

13. The respondents shall be at liberty to initiate a fresh enquiry on the same charges and to carry the same to its logical conclusion in accordance with law.

14. Original Application allowed accordingly. No order as to costs.

(R.RANGARAJAN)
Member (A)

(D.H.NASIR)
Vice-Chairman

Dated: 17th July, 2000.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

COPY TO
1. HDHNJ
2. HRRN (ADMN.) MEMBER
3. HBSJP (JUDL.) MEMBER
4. D.R. (ADMN.)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

IST AND IIND COURT

TYPED BY CHECKED BY
COMPARED 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 PARAMESHWAR
MEMBER (JUDL.)

DATE OF ORDER 17/7/2000

MA/RA/CP.NO. —
IN
O.A.NO. 1108/99

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

C.P.CLOSED

R.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED.

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

(6+1=7 Copies)

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH
24 JUL 2000
हैदराबाद न्यायपीठ
HYDERABAD BENCH