

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

O.A.No.230/99

Date of Order:18.2.2000

BETWEEN :

K.Papaiah ..Applicant.

AND

1. The Air Marshal,  
AOC-in-Chief,  
Headquarters Training Command,  
Indian Air Force,  
Bangalore.
2. The Commanding Officer,  
Air Force Station,  
Begumpet, Hyderabad. ..Respondents.

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Counsel for the Applicant ..Mr.V.Venkateswara Rao

Counsel for the Respondents ..Mr.V.Rajeswara Rao

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CORAM :

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

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

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O R D E R

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

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Mr.V.Venkateswara Rao, learned counsel for the applicant and Mr.V.Rajeswara Ra, learned standing counsel for the respondents.

Mr.R.K.Dubey, Flight Lt. was present.

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2. The applicant herein was appointed as a Driver in Air Force Station w.e.f. 14.4.82. He remained absent from 22.5.96 onwards. A charge memo bearing No.BEG/2755/36118/PC, dated 9.11.96 (A-1) was issued to him.

3. It is stated that the said misconduct was enquired into exparte and the respondents submit that it was necessitated as the applicant refused to receive the notices sent by the Inquiry Officer.

4. The disciplinary authority by his proceedings No.BEG/2755/31499/PC, dated 13.5.97 imposed the punishment of dismissal from service on the applicant.

4(a) We feel it proper to reproduce the entire order passed by the disciplinary authority.

"Where Shri K.Papaiah, MTD-II PA No.31499 of Air Force Station Begumpet, was chargesheeted by the undersigned vide memorandum No.BEG/2755/32499/PC dated 21.4.97.

And whereas the articles of charge No.I, II, IV and V have been proved against the said Shri K.Papaiah as a result of the enquiry held into the charge and the undersigned has found the said Shri K.Papaiah has not sent any representation in reply to the "SHOW CAUSE" notice issued to him vide memorandum No.BEG/2755/31499/PC dated 24.4.97.

Now, therefore, in exercise of the powers conferred by Rule 15(4) of the Central Civil Services (Classification, Control and Appeal) Rules 1965, the undersigned hereby imposes the following penalty on the said Shri K.Papaiah, MTD-II, P.A.No.31499 :-

"Dismissal from service"

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5. The applicant submits that the said punishment order was served on him on ~~13.5.97~~ <sup>17.9.98</sup>. The applicant submitted an appeal to the appellate authority. The appellate authority by his proceedings No.TA/10046/3/96/PC, dated 31.12.98 (A-8) confirmed the punishment and rejected the appeal.

6. The applicant has filed this OA challenging the order dated 13.5.97 passed by the disciplinary authority and the order dated 31.12.98 passed by the appellate authority, praying to set aside the same and for reinstatement into service with all consequential benefits.

7. On going through the proceedings we feel that the punishment imposed by the disciplinary authority on the charge memo is totally different from the memorandum of charges served on the applicant. The charge memo dated 9.11.96 is quite different from the charge memo mentioned by the disciplinary authority in para-1 of the order. Further the charge memo dated 9.11.96 indicates 3 articles of misconduct. Whereas the disciplinary authority in para-2 of his order indicates 5 (Articles I to V) items of misconduct and has not stated as to what was <sup>the</sup> finding of the enquiry officer with respect to article No.III misconduct.

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8. When the proceedings mentioned by the disciplinary authority is quite distinct and different from the charge memo dated 9.11.96 it cannot be said that the disciplinary authority has applied his mind to the proceedings before passing the punishment order. This aspect has not been noticed by the appellate authority.

9. It may be possible that the applicant could have enclosed the <sup>charge</sup> memo No.BEG/2755/36118/PC, dated 9.11.96 (A-1) incorrectly instead of enclosing the memorandum of charges mentioned in the punishment order dated 13.5.97 i.e. the memo No.BEG/2755/31499/PC, dated 21.4.97 (A-2). If so in the reply the respondents can have clearly stated that the applicant has enclosed a wrong memorandum of charges dated 9.11.96 which is erroneous and the correct charge sheet as mentioned in the order dated 13.5.97 might have been enclosed to the reply. But the respondents did not state any thing in regard to the discrepancies.

10. Further, in the enquiry report memo dated 21.4.97 (A-2) it is mentioned that article of charges No.I, II, and IV are proved, whereas in the impugned order dated 13.5.97 the charge Nos. I, II, IV and V have been proved. It is not understood how that order was issued contrary to the memo dated 21.4.97 wherein

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there is no mention about charge No.V.

11. The applicant submits that the enquiry report was signed by 2 officers as can be seen from the annexure at page-15 to the OA. There can be 2 enquiry officers and hence the enquiry report is <sup>WR</sup> ~~unapprovable~~ followed submits the learned counsel for the applicant. We do not wish to go deep into this submission at this stage in view of the order that is going to be passed in this OA.

12. Hence the impugned orders dated 13.5.97 and 31.7.98 are <sup>liable to be</sup> ~~hereby~~ set aside. The applicant shall be reinstated into service. The respondents are at liberty to conduct fresh enquiry from the stage of securing his explanation to the charge memo dated 9.11.96. The applicant shall submit his explanation to the charge memo dated 9.11.96 and shall fully cooperate with the department to conclude the enquiry expeditiously.

13. If any lapses are pointout by the respondents in that connection, then the applicant cannot demand a <sup>or further</sup> ~~fresh~~ enquiry into the charges.

14. There is an apprehension on the part of the respondents that the correct address of the applicant may not <sup>be</sup> available to them. Hence the applicant under his signature shall submit the correct address to which the notices and proceedings of the inquiry have to be issued/served on him. Besides, in his

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explanation to the charge memo dated 9.11.96 the applicant shall furnish the correct address to which further proceedings have to be addressed. // Hence the following directions are issued :-

(a) The impugned order dated 13.5.97 and dated 31.12.98 are hereby set aside.

(b) The respondents shall conduct fresh enquiry into the charge memo dated 9.11.96 from the stage of receiving an explanation thereto from the applicant.

(c) The applicant shall furnish his correct address to the respondents and shall co-operate with the inquiry officer.

(d) The respondents shall conclude the inquiry into the charge memo dated 9.11.96 expeditiously.

(e) No order as to costs.

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

  
(R. RANGARAJAN)  
Member (Admn.)

Dated : 18th February, 2000

(Dictated in Open Court)

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