

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/21/670/2013

Dated: 11/11/2019

&

MA/21/295/2017

Between

T. Rajender Kumar,
S/o. T. Bhoomaiah,
Aged about 52 years,
Occ: Grade-I (under suspension),
India Government Mint,
Cherlapally, Hyderabad.

... Applicant

AND

1. Union of India rep. by its
Secretary,
Ministry of Finance,
Dept. of Economic Affairs,
(Coin and Currency Division),
North Block, New Delhi.
2. The General Manager,
India Government Mint,
Security Printing and Minting Corporation Ltd.,
Cherlapally, Hyderabad.

... Respondents

Counsel for the Applicant : Mr. J. Sudheer

Counsel for the Respondents : Mrs. K. Rajitha, Sr. CGSC
Mrs. Tara Sharma (for R-2)

CORAM :

***Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

ORAL ORDER

(Per Hon'ble Mr. Justice L. Narasimha Reddy, Chairman)

The applicant was working as Turner Gr.I in the Security Press at Hyderabad in the year 2011. The Security Press was corporatized in the year 2008 and it was brought under the purview of the Security Printing and Mint Corporation of India Limited, the 2nd respondent herein. The applicant was placed under suspension on 23.6.2011 on the ground that he misbehaved with the security staff of the Unit. This was followed by issuance of charge memo dated 28.6.2011. The applicant filed W.P. No.27416/2011, feeling aggrieved by the order of suspension as well as charge memo. No interim orders were passed as regards the suspension order. He submitted his explanation to the charge memo and not satisfied with that, the Disciplinary Authority (DA) appointed an Inquiry Officer. The Inquiry Officer submitted his report holding the charges against the applicant as proved and the same was furnished to the applicant on 28.03.2012. On consideration of the report of the Inquiry Officer and the comments offered by the applicant, the DA passed an order dated 29.8.2012, imposing the punishment of compulsory retirement. That was communicated to the applicant through a covering letter dated 01.02.2013.

3. This O.A. was initially filed, challenging the communication dated 01.02.2013 as well as the charge memo dated 28.6.2011 and the report of the Inquiry Officer.

4. The applicant pleaded that the 2nd respondent has no jurisdiction to initiate the disciplinary proceedings, much less to pass the order of punishment. It was also stated that the inquiry was held in a perfunctory manner and though no evidence was adduced, the charge was held proved, the order of punishment was passed. Various other grounds were also urged.

5. The respondents filed a counter affidavit, opposing the contentions made in the O.A. It is stated that with the corporatization of the Mint, the applicant became the employee of the Corporation and he cannot raise the objection as to jurisdiction. It is also stated that the complaint of the Security Wing, which constituted the basis for initiation of disciplinary proceedings was made part of record and the Executive of the Security Agency was examined as a witness. It is stated that the applicant did not choose to cross-examine any witness or to adduce any evidence and left with no alternative, the Inquiry Officer held the charges against the applicant as proved. It is stated that the punishment imposed is commensurate with the charges, held proved.

6. The O.A. was allowed through an order dated 18.9.2013 on the ground of jurisdiction as well as on merits. The respondents filed Writ Petition No.34560/2013, challenging the order passed by this Tribunal in this

O.A. The Writ Petition was allowed on 09.04.2014. It was observed that the applicant did not challenge the order of punishment as such and mere challenge to the covering letter does not serve the purpose. The matter was accordingly remanded to the Tribunal for fresh hearing. The OA is argued at length today.

7. It needs to be noted that by virtue of the interim order passed on 11.6.2013, the applicant is continuing in service, despite the order of suspension. The same arrangement was directed to be continued by the Hon'ble High Court, while allowing the Writ Petition No.34560/2013. Even as of now, the applicant is continuing in service.

8. We heard Sri J. Sudheer, learned counsel for the applicant and Mrs. Tara Sharma, learned counsel for the 2nd respondent.

9. The applicant was issued a charge memo dated 28.6.2011 with reference to an incident, which took place on 22.6.2011. The articles of charge framed against the applicant read as under:

óArticle No.1 That the said Sri T. Rajender Kumar, while functioning as Grade-I (Turner) of GWS Section of this Mint is charged with the gross misconduct:

óOn 22.6.2011, Sri T. Rajender Kumar, T.No.201 had indulged in riotous, disorderly and unruly behaviour prejudicial to peace, harmony and discipline of the organization.ó

That the said act on the part of the said Sri T. Rajender Kumar, T.no.201 is a gross misconduct in terms of S.O.No.23(ii)(g) of India Government Mint, Hyderabad.

Article No.2: That the aforesaid Sri T. Rajender Kumar, T.No.201 had indulged in activities of indiscipline by using noisy/ altercation/ abusive language and thereby he disturbed peace and industrial harmony. Thus he deliberately acted in a manner subversive of discipline on the Mint premises

amounting to misconduct in terms of S.O.No.23(ii) (v) of India Government Mint, Hyderabad.

Article No.3: That the said Sri T. Rajnder Kumar, T.No.201 on 22.6.2011 had threatened, abused, physically assaulted / manhandled a worker engaged by the House Keeping contractor in the factory premises right in front of the office of the Deputy Commanded, CISF, I.G Mint Unit, Hyderabad. Thereby Sri T. Rajnder Kumar, T.No.201 had committed a gross misconduct in terms of S.O.No.23(ii)(q) of India Government Mint, Hyderabad.

Article No.4: That the aforesaid Sri T. Rajender Kumar, T.No.201 on 22.6.2011 had indulged into wilful insubordination or disobedience/ nuisance/ physical assault/ manhandling of worker on duty and incited others. This act on the part of Sri T. Rajender Kumar, T.No.201 amounts to misconduct in terms of S.O.No.23(ii) (a) of India Government Mint, Hyderabad.

Article No.5: That the said Sri T. Rajnder Kumar, T.No.201 left his legitimate shop-floor work spot during the day hours on 22.6.2011 unauthorizedly. The said act on the part of Sri T. Rajender Kumar, T. No.201 is a gross misconduct in terms of S.O.No.23 (i)(e) & (f) of India Government Mint, Hyderabad.

Article No.6: That the aforesaid Sri T. Rajender Kumar, T.No.201 by leaving his legitimate shop-floor work spot unauthorizedly during the duty hours on 22.6.2011 has not only neglected his official works but also exhibited his clear negligence in performing his official duties. The said act on the part of Sri T. Rajender Kumar, T.No.201 is a gross misconduct in terms of S.O.No.23(i)(b) & (c) and S.O. No.23 (ii)(h) of India Government Mint, Hyderabad Standing Orders.ö

10. The applicant denied the allegations, by submitting a reply. Not satisfied with that, the DA appointed an Inquiry Officer and in his report, the Inquiry Officer held the charges as proved. Taking the Inquiry Officer's report as well as the representation made by the applicant, the DA, imposed the punishment of compulsory retirement through order dated 29.08.2012. This in turn was communicated to the applicant through order dated 01.02.2013. The subsequent events have been narrated in the previous paragraphs.

11. Two aspects become relevant in this case. The first is that whether the applicant is under the purview of the 2nd respondent . The second is as to

whether the disciplinary proceedings are vitiated in any manner. Depending on the answer to these issues, the Tribunal has to decide the nature of relief that can be granted in the O.A.

12. It has already been mentioned that the activities of the Mint, which was part of the Ministry of Finance, were corporatized in the year 2008, with the incorporation of the 2nd respondent herein. The applicant was initially appointed in the Mint. Thereafter he became the employee of the 2nd respondent. Along with the applicant, several other employees filed W.P. No.23740/2008 before the erstwhile High Court of Andhra Pradesh, feeling aggrieved by their being brought under the purview of 2nd respondent. That Writ Petition is said to be still pending. In that view of the matter, we do not propose to discuss the matter at length. Any adjudication which we undertake in this O.A., needs to be on the premise that the applicant is very much amenable to the jurisdiction of the 2nd respondent, but the same shall be subject to the outcome of Writ Petition No.23740/2008.

13. Coming to the second issue, the articles of the charge memorandum have been extracted. He is said to have manhandled an employee of the Security Wing and abused him in a filthy language. The applicant, no doubt, denied the charges, by filing a reply. In the departmental inquiry, the applicant has virtually challenged the very authority of the Inquiry Officer, at every stage. His plea was that the Inquiry Officer has no jurisdiction since he was not appointed by an appropriate authority. As discussed earlier, once the

issue pertaining to that very aspect is pending before the High Court, it was not open to the applicant to keep on raising those issues.

14. It needs to be mentioned here that the applicant challenged the charge memo as well as the order of suspension before the Hon'ble High Court in W.P. No.27416/2011. The said Writ Petition was entertained obviously because the issue pertaining to the corporatisation of the Mint was already pending in W.P. No.23740/2008. Ultimately, the Writ Petition No.27416/2011 was disposed of on 23.4.2013, leaving it open to the applicant to file O.A. Accordingly, the present O.A. was filed. Having approached the Hon'ble High Court by raising certain issues pertaining to jurisdiction, it was not open to the applicant to keep on raising that issue before the Inquiry Officer, once the Writ Petition was disposed of, particularly when no interim orders were passed by the High Court in that Writ Petition.

15. On their part, the department has produced the relevant records, which included the complaint submitted against the applicant. The complaint reads as under:

“We beg to submit to your kind honour Sir that on 22.6.2011 at about 11.15 a.m., Sri T. Rajender Kumar, T.No.201 telephoned to our M.D. Sri Subrahmanyam and called us to the office to discuss about the two contractor labours. Though we expressed our inability to go over there due to heavy work on account of the meeting of SPMCIL on 23.6.2011, however, they pressed us to go over to factory. Despite busy work, myself and my M.D., came to factory and were waiting at the middle gate. Then they called us inside the factory right in front of the Deputy Commandant's Office where Sri T. Rajender Kumar, T.No.201, Sri Gyaneshwar, Sri Sadanand and Sri Ravi were waiting. In the pretext of discussions, without listening to us and without giving any chance to speak to them, they started using filthy and unparliamentary language against me and my

M.D. We never heard such type of talk and such language is unheard of, unexpected of from the employees of institutions like yours Sir. While abusing me and my boss, Sri T. Rajender Kumar, T. No.201 held my neck and pressed with pressure, Sri Gyaneshwar and Sri Sadanand folded my hands from backside so that I do not breathe. All these show that they wanted us to threaten us by manhandling and abusing us like this. They in fact attempted to murder and they were orally reiterated also. On behalf of our institution, we request you to kindly take appropriate action against the above officials as they have abused using filthy language and manhandled with an intention to kill me right in front of my boss. I also recorded some of the voice regarding the above incident. Please listen to this Sir.

Kindly do justice to us and protect our lives from this unruly officials.

Witness to this incident were two CISF officials, Sri Basha and Middle Gate CISF Guard.ö

16. The complainant Sri A. Anand appears to have left the service of Bison Security & House Keeping Services, by the time the inquiry was being held. The Managing Director of the Agency, by name Subrahmanyam deposed as a witness. After he was examined to a certain extent, the Inquiry Officer asked the department as to whether they would be in a position to examine Mr. Anand. Time was granted for that purpose and ultimately when Anand could not be examined, PW-1 Subrahmanyam was recalled. It was elicited from him that he stands by the contents of the complaint submitted by Anand. Thereby, the complaint dated 23.6.2011 not only became part of record but also the contents were spoken to.

17. It was open to the applicant to cross-examine PW-1. However, he has not chosen to do that, in spite of the opportunity being given to him. He has flatly refused to cross-examine the witnesses. Even if the applicant was of the view that the evidence of PW-1 was not of much relevance, at least he

could have deposed as a witness, opposing the contents of the complaint and other documents. He has not chosen to do so. The Inquiry Officer, left with no alternative except to take the contents of the complaint as proved, held the articles of charge as proved.

18. It is true that if the findings are recorded on the basis of no evidence, the Tribunal or Court can certainly interfere with the report of the Inquiry Officer. If the oral and documentary evidence adduced by the department is not contradicted in any manner such as by cross examining the witnesses or by adducing evidence in defence, it becomes difficult to apply that principle.

19. The plea of the learned counsel for the applicant is that the burden was upon the respondents to prove the charge and in the instant case, such burden cannot be said to have been discharged. Reason is that the question of burden would arise if only the evidence was shown to be not sufficient or it was contradicted in any manner, whatever. The disciplinary proceedings cannot be equated to a criminal trial. Once the employee chooses not to cross examine the witnesses examined by of the department, he has to face the consequences that ensue out of it. We, therefore, do not find any basis to interfere with the order of punishment and dismiss the O.A.

20. There are certain peculiar features in the present case. Though the order of punishment was passed on 29.08.2012 , it was not served upon the applicant for a period of six months. It became operative only on 01.02.2013. Though he was out of service from 01.02.2013 onwards, an interim order was passed in his favour on 11.6.2013 in the O.A. and he was reinstated into

service on 30.12.2013. The O.A. was allowed. This arrangement was continued by the Hon'ble High Court while allowing the Writ Petition. The applicant was out of service from 01.02.2013 to 11.06.2013, but he is continuing in service, by virtue of orders of the Hon'ble High Court. Since we are dismissing the O.A., we make it clear that the order of compulsory retirement shall be treated as having coming into force from today onwards. The service rendered by him after reinstatement shall be counted for the purpose of calculating the pension. He shall not be entitled to get any arrears for the period during which he is out of service; but that period shall be counted for the purpose of fixation of pension.

21. The O.A. is accordingly dismissed with the above observations. MA/21/295/2017 shall stand closed. There shall be no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE L. NARASIMHA REDDY)
CHAIRMAN

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