

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/20/187/2014

Dated: 22/11/2019

Between

S. Ganesan, S/o. R. Subbaiah,
Aged about 45 years, Occ: Driver (OG),
NFC, ECIL, Hyderabad,
R/o. D-7/16, D.A.E. Colony,
ECIL Post, Hyderabad.



... Applicant

AND

1. Union of India rep. by its
Chairman,
Atomic Energy Commission and
Secretary,
Dept. of Atomic Energy,
Anushakti Bhavan,
CSM Marg, Mumbai.
2. Union of India rep. by its
Additional Secretary,
Dept. of Atomic Energy,
Anushakti Bhavan,
CSM Marg, Mumbai.
3. The Chief Executive,
Dept. of Atomic Energy,
Nuclear Fuel Complex,
ECIL Post, Hyderabad.
4. The Deputy Chief Executive (Admn.),
NFC, ECIL Post,
Hyderabad.
5. The Project Director,
ZIRCONIUM Complex (A Unit of NFC),
Pazhayakayal, Tuticorin District,
Tamilnadu.

... Respondents

Counsel for the Applicant : Mr. J. Sudheer
Counsel for the Respondents : Mr. V. Vinod Kumar,
Sr.CGSC

CORAM :

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman

Hon'ble Mrs. Naini Jayaseelan, Admn. Member



ORAL ORDER

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

The applicant is working as Driver in the Nuclear Fuel Complex.

It is stated that he approached this Tribunal earlier, seeking the relief of transfer to an establishment in Tamil Nadu, in view of the fact that his wife is employed there. It is stated that though the O.A. was allowed, the direction therein was not complied.

2. The applicant was issued a charge memo dated 25.06.2011, alleging that he refused to discharge the duty assigned to him on 20.04.2011. The applicant submitted an explanation, denying the allegation. Not satisfied with that, the Disciplinary Authority appointed an Inquiry Officer. Through his report dated 06.09.2013, the Inquiry Officer held the charge as proved. A copy of the report was made available to the applicant, and after taking the explanation submitted by the applicant into account, the Disciplinary Authority, passed an order dated 04.11.2013, imposing the penalty of reduction of pay by one increment from Rs.8460/- to Rs.8150/- in the concerned pay band, for a

period of two years with cumulative effect and directing that he will not earn increments of pay during the period of reduction and on expiry, it will have the effect of postponing the future increments of pay. The appeal preferred by the applicant was rejected through order dated 24.12.2013. Hence, this O.A.



3. The applicant submits that the very allegation made against him in the charge memo is not true, and that the penalty imposed is disproportionate to the charge.

4. The respondents filed a detailed counter affidavit. It is stated that the applicant is in the habit of being indisciplined and on the earlier occasion also he was warned. It is stated that the inquiry was conducted strictly in accordance with the rules and punishment was imposed, duly taking into account the relevant aspects.

5. Heard Ms. Hemlata Nageshwar Pitlewar representing Sri J. Sudheer, learned counsel for the applicant and Sri V. Vinod Kumar, learned Senior Standing Counsel appearing for the respondents.

6. The charge framed against the applicant in the charge memo reads as under:

Shri S. Ganesan, while functioning as Driver (OG), Transport Section of NFC had refused the duty assigned to him on 20.04.2011 by the concerned transport Supervisor.

By his aforesaid act, Shri Ganesan has behaved in a manner unbecoming of a Government servant in contravention of Rule 3(1)(iii) & GID No.23(1) (Acts &

Omissions) under Rule 3-C of CCS (Conduct) Rules, 1964.



7. The applicant denied the charge and a departmental inquiry was conducted. Oral and documentary evidence was recorded and ultimately the charge was held proved. The punishment, as mentioned above namely, reduction of pay by one increment for a period of two years with cumulative effect, was imposed.

8. Though it is urged that the inquiry was not conducted in accordance with law, we are not impressed by that. One aspect, which however needs attention, is that in the entire proceedings the respondents were mostly influenced by the alleged earlier misconduct of the applicant. A perusal of the report of the Inquiry Officer or for that matter, the order of punishment discloses that the past conduct was treated as an aggravating factor. Once the charge is proved, the aggravating or extenuating factors become relevant, in the context of choosing the penalty. However, such factors cannot be taken into account for recording a finding on the charge itself.

10. The allegation against the applicant is that he refused to discharge the duty, on one day. Howsoever indisciplined the applicant may have been on that day, the ultimate misconduct was only of not discharging the duties for one day. That cannot result in imposition of minor penalty. Throughout the proceedings, the various acts and omissions on the part of the applicant were taken into account. In case the applicant was guilty of any other misconduct, that ought to have figured in the charge memo.

Having framed the charge of refusal to discharge duty only on one day, the authorities cannot expand the scope of the proceedings. We are of the view that ends of justice would meet, if the penalty is restricted to the one of reduction of pay scale by one increment for a period of one year without cumulative effect.



11. The O.A. is partly allowed to the extent indicated above. The pay of the applicant shall be decided in view of the order in this O.A., within four weeks from today and he shall be paid 50% of the arrears. There shall be no order as to costs.

(NAINI JAYASEELAN)
MEMBER (ADMN.)

(JUSTICE L. NARASIMHA REDDY)
CHAIRMAN

pv