

Sri A.Balakrishna Vs. Union of India, Rep. by Chief Postmaster General, Daksadan and Others

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Court : Central Administrative Tribunal CAT Hyderabad

Decided On : Jun-16-2009

Judge : The Honourable Mrs. Bharati Ray Member (Judl.) & the Honourable Mr. Hriday Narain Member (Admn.)

Appeal No. : Original Application No.423 of 2008

Appellant : Sri A.Balakrishna

Respondent : Union of India, Rep. by Chief Postmaster General, Daksadan and Others

Advocate for Pet/Ap. : Counsel for the Applicant : Krishna Devan, Advocate.
Counsel for the Respondents : A. Radha Krishna, Addl.CGSC.

Judgement :

ORAL ORDER:

{As per Hon'ble Mrs. Bharati Ray, Member (Judl.)}

Heard Mr. Krishna Devan, learned counsel for the applicant. None appears for the respondents.

This application has been filed questioning the order No.ST-IV/SUS/Review/AB, dated 25.06.2008 passed by the second respondent under Rule 19 of CCS (CCA) Rules, 1965.

2.The applicant has sought for the following relief :

“To set aside the order No.ST-IV/SUS/Review/AB, dated 25.06.2008 passed by the 2nd respondent by declaring the same as arbitrary, illegal, without application of mind, void being excess of jurisdiction and over riding the higher authority including this Hon'ble Court, in violation of Principles of natural justice being violation of Article 14, 16 and 21 of the Constitution of India and consequently direct the respondents to act in accordance with the directions by the 1st respondent in the order dated 24.06.2008.”

3.The respondents have filed counter reply contesting the OA on 11.09.2008. No rejoinder has been filed by the applicant to the counter reply filed by the respondents. However, the applicant filed one MA No.127/2009 on 29.12.2008 seeking permission to amend the OA to take additional grounds by adding the following paragraph :

To set aside the impugned order dated 25.06.2008 which is not issued in the standard form No.16 (para 4th and 5th) which mandates to give opportunity to make a representation on the penalty proposed in para '4' of the form and the opportunity of hearing stated in the impugned order is contrary to the contents of the standard form nor interested by the applicant and consequently direct the respondents not to disturb the continuation of the applicant on duty entrusted on revocation of suspension in respect of the misconduct led to conviction.”

4.However, we find that this point can be taken by the applicant at the time of argument while hearing the case, therefore, we have taken up the MA along with OA for final hearing.

5.The undisputed facts of the case are that the applicant was convicted on criminal charge in C.C.No.436/99 by the Court of Additional Judicial Magistrate of First Class, Nellore vide judgement dated 21.05.2005. The appeal preferred by the

applicant against the judgement in C.C.436/99 was dismissed by the V Additional Sessions Judge, Nellore vide judgement dated 27.07.2007 confirming the conviction. It is, at this stage the 2nd respondent proposed to award the appropriate penalty under Rule 19 of CCS (CCA) Rules, 1965 and before coming to a decision about the quantum of penalty, he has issued the impugned order dated 25.06.2008 to give an opportunity of personal hearing to the applicant to explain the circumstances as to why penal action should not be taken against him in pursuance of the provisions of Rule 19 and accordingly vide the said order he directed the applicant to appear before the officer at 16-00 hours on 04.07.2008 in the address mentioned therein. A copy of the order is enclosed by the applicant as Annexure-1, page-11 to the OA.

6.Although, the learned counsel for the applicant argued on the point of revocation of suspension and reinstatement, but we find that so far the present OA is concerned the applicant has questioned the order of 2nd respondent (supra) and the relief claimed by the applicant is also in connection with the impugned order. Therefore, the point that arises for consideration in this application is whether the impugned order issued by the 2nd respondent is as per rule and that the authority is competent to issue such order

7.The learned counsel for the applicant has taken the point of competency of the 2nd respondent in issuing the order in sub-para (iv) of para (5)of OA, where it is stated that the impugned order passed by the 2nd respondent is in excess of jurisdiction as the Superintendent of Post Offices was the authority who has issued the order of suspension. The respondents has dealt with this objection raised by the applicant at page-22 of the reply where it has been stated that the applicant was appointed as PA in Department of Posts on 01.05.1981 and was further upgraded under first financial upgradation w.e.f. 09.05.1997 and second financial upgradation w.e.f. 01.07.2007 and as the applicant is a BCR official, the 2nd respondent is the disciplinary authority and therefore the issue of order by the 2nd respondent is fully justified. No rejoinder has been filed by the applicant refuting the contentions raised by the respondents in their counter reply. The second point taken by the learned counsel for the applicant is that the impugned order dated 25.06.2009 is not issued in the standard form No.16 which mandates to give

opportunity to give a representation on the penalty proposed in para-5 of the form and that the opportunity of hearing stated in the impugned order is contrary to the contents of the Standard Form. In this context he has drawn our attention to the last para of the Standard Form of show cause notice for imposing penalty to be issued on the Government servant on his conviction under Rule 19 of CCS (CCA) Rules, 1965 which reads as under :

“NOW, THEREFORE, Shri (here enter the name of the official) is hereby given an opportunity of making representation on the penalty proposed above. Any representation which he may wish to make against the penalty proposed will be considered by the undersigned. Such a representation, if any, should be made in writing and submitted so as to reach the undersigned not later than fifteen days from the date of receipt of this memorandum by Shri (enter the name of the Government servant).”

8.It is the contention of learned counsel for the applicant that a perusal of the last para of the said form shows that an opportunity of making representation on the penalty proposed is to be given to the convicted official, whereas in the impugned show cause notice the second respondent has directed the applicant to appear before him for personal hearing which is not contained in the standard form at all. Therefore the impugned order issued by the 2nd respondent is not in order and is liable to be set aside.

9.We have considered the submission made by the learned counsel for the applicant carefully. We have also gone through the Standard Form of show cause notice as reproduced above. It is no doubt that as per the last para of the Standard Form, if such show cause notice is issued opportunity of making representation has to be given to the convicted official on the penalty proposed. But a careful reading of para-3 of the form would show that before coming to the decision about the quantum of penalty the convicted official has to be given opportunity of personal hearing to explain the circumstances why penal action should not be taken against him in pursuance of provisions of Rule 19 of CCS (CCA) Rules 1965. In our view the last paragraph cannot be read in isolation the same has to be read along with the other paragraphs particularly para (3) which reads as under

:

“and WHEREAS before coming to a decision about the quantum of penalty Shri (here enter the name of the convicted official) was given an opportunity of personal hearing to explain the circumstances why penal action should not be taken against him in pursuance of the provisions of Rule 19 ibid.”

10.The impugned order has been issued by the 2nd respondent to the applicant giving an opportunity of personal hearing to explain the circumstances as to why penal action should not be taken against him in pursuance of the provisions of rules. Therefore the impugned order was issued in accordance with the rules. We are, therefore, of the view that the impugned order is absolutely in order and there is nothing to interfere with the same. Therefore we do not find any reason to set aside the same. We are therefore of the view that there is no merit in this OA and the applicant is not entitled to the relief claimed for.

11.The OA is dismissed accordingly. MA.No.127/2009 stands disposed of. There shall be no order as to costs.

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