

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION No.180/00296/2019

Tuesday, this the 10th day of December, 2019

C O R A M :

Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member

Hon'ble Mr.Ashish Kalia, Judicial Member

Sri.M.K.Aboo,
MES – 109620,
Fitter Pipe (SK), Military Engineer Services,
O/o.the Assistant Garrison Engineer (I) (R&D),
Thrikkakara P.O., Kakkanad, Kochi – 682 021. ...Applicant

(By Advocate Mr.P.K.Madhusoodanan)

v e r s u s

1. Chief Engineer R&D,
Military Engineer Services,
Picket, Secunderabad – 500 003.

2. The Chief Engineer,
Head Quarters, Southern Command,
Pune – 411 001.

3. Commander Works Engineer (NW),
Military Enginner Services,
Kataribagh, Naval Base P.O.,
Kochi – 682 004.

4. Union of India represented by its Secretary,
Ministry of Defence, South Block,
New Delhi – 110 001.

5. Col.R.K.Nair M.R.,
Director, Discipline & Vigilance,
Office of the Chief Engineer, Head Quarters,
Southern Command, Pune – 411 001. ...Respondents

(By Advocate Mr.M.T.Muraleedharan, ACGSC [R1-4])

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This application having been heard on 29th November, 2019, the Tribunal on 10th December, 2019 delivered the following :

O R D E R

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

The O.A is filed by Shri.M.K.Aboo aggrieved by Annexure A-16 charge memo dated 14.9.2018 issued by the 1st respondent on the very same cause of action for which he has been proceeded against thrice and was awarded punishment which had been set aside by this Tribunal vide order dated 9.4.2018 in O.A.No.180/187/2018. The Articles of Charge framed against the applicant reads as under :

That MES – 109620 Shri.MK Aboo, Fitter Pipe (SK) while serving with AGE (I) R&D Kochi has committed the following lapses.

MES – 109620 Shri.MK Aboo, Fitter Pipe (SK) while submitting the replies to show cause notices at various occasions had concealed/denied the fact that he has received sitting fee, travelling allowance and honararium for various periods from Edathala Service Co-operative Bank Ltd. No.3430, Edathala, Aluva Ernakulam District, Kochi, while working as President of the said bank. Thus he has violated Rule 3, Sub Rule 1(i), (iii) & (vi) of CCS (Conduct) Rules 1964 of not maintaining absolute integrity, not maintaining of honesty and thus acted in a manner of unbecoming of a Govt. servant.

2. This is the fourth round of litigation by the applicant. The applicant has a series of orders passed in his favour by the Hon'ble Tribunal and Hon'ble High Court pertaining to the issue at hand. Earlier the applicant has filed O.A.No.180/187/2018 wherein the applicant had pointed out that at the instance and influence of the one N.M.Rafeeq the respondents have issued the charge memo dated 22.11.2017 on

the same matter and he had been awarded punishment by his disciplinary authority. The Tribunal vide its order dated 9.4.2018 passed the following order :

11. We have heard Shri.P.K.Madhusoodhanan, learned counsel for the applicant and Shri.N.Anilkumar, Sr.PCGC (R) on behalf of the respondents. As is seen from the facts on record there are other O.As filed by the same applicant relating to his voluntary retirement application and transfer of station. Here we are concerned with the specific issue relating to a charge sheet dated 22.11.2017 (impugned : Annexure A-15). It is seen that the applicant had been proceeded against on the ground that he had involved himself in the activities of a Service Cooperative Bank, being elected to its Director Board. As per Annexure A-7 issued after an inquiry, the 3rd respondent had brought the issue to closure by awarding a recorded warning to the applicant. He was also instructed to sever his connections with the bank which admittedly the applicant has done.

12. Keeping aside the issue of VRS application as well as his transfer which was subsequently cancelled, and which are in any case subject matter of other O.As before this Tribunal, the central issue here is the second charge memo. **On a perusal of Statement of Articles of Charge annexed with the memorandum it is apparent that the very same charges which had been the subject matter of the show cause at Annexure A-5 have been resurrected and issued under three parts. All relate to his association with the Edathala Service Cooperative Bank, Aluva, Ernakulam between the period from 20.11.1992 to 30.11.2016. Viewed from this perspective, we are not willing to accept the averment made in the reply statement that the complaint forming the basis for the impugned show cause notice “is an altogether new one”. We cannot discern any circumstances or instances in the impugned order which had not been raised in the earlier notice at Annexure A-5. Clearly the respondents have hung further action on the same peg on which they had issued the warning.**

13. The applicant has maintained that the 3rd respondent who brought the earlier action to a conclusion as per Annexure A-7 is his Disciplinary Authority. In the reply statement the respondents maintain that it is the 2nd respondent “at present”. We do not have anything on record to dispute the averment made by the applicant regarding the competence of the 3rd respondent to act as a Disciplinary Authority over the applicant. Rather, the respondents have contended that “the warning issued by the Disciplinary Authority was erroneous and not in order”. **The reason given is that the warning is not considered as a punishment of any kind under CCS (Conduct) Rules. The argument that the Disciplinary Authority may not have found it necessary to impose any of the punishments mentioned in CCS (Conduct) Rules at all does not seem to have entered into their consideration. The term “punishment posting” mentioned in Annexure A-11 is also categorized by the respondents in the reply statement as a “mistake”. The repeated mistakes and errors admitted by the respondents are**

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unworthy of a storeyed, regimented organization and befits more the proverbial Tower of Babel, where each denizen speaks in a different voice.

14. After carefully examining the facts on record and the pleadings made before us, we conclude that the applicant has merit on his side. We allow the O.A and quash and set aside Annexure A-15 along with any consequent action undertaken. No costs.

(emphasis supplied)

3. O.A.No.180/525/2017 is filed by the applicant aggrieved by rejection of his application seeking voluntary retirement in accordance with relevant Voluntary Retirement Scheme. The O.A was disposed of by this Tribunal vide order dated 17.7.2017. The operative portion of the order reads as follows :

3. Learned counsel for the respondents points out that the voluntary retirement application can be considered on merit at this point of time. The learned counsel also brings to my attention Annexure A-12 whereby an endorsement has been made to Respondent No.2 by Respondent No.3 to process the VRS application at the earliest.

4. Considering the circumstances it is felt that ends of justice will be met if a direction is issued to Respondent No.2 or any other authority vested with the power to consider the VRS application of the applicant in accordance with law, as expeditiously as possible and in any case within a month of receipt of a copy of this order.

5. OA is disposed of as above. No order as to costs.

4. In the meantime, the applicant has been served with transfer order dated 27.9.2017 and movement order dated 28.9.2017 was issued by the AGE (1) R&D, Kochi in lieu of punishment and in order to initiate disciplinary proceedings afresh under Rule 14 of the CCS (CCA) Rules on the very same cause of action. The applicant has challenged the transfer order before this Tribunal by filing O.A.No.180/811/2017. However vide

communication dated 2.2.2018 the respondents themselves have cancelled the transfer and posting order and accordingly the case was closed vide order dated 5.2.2018.

5. Thereafter the respondents in purported compliance of the aforesaid order of this Tribunal dated 17.7.2017 in O.A.No.180/525/2017, had passed order dated 23.9.2017 rejecting his VRS application. Against the rejection order dated 23.9.2017 the applicant has again approached this Tribunal by filing O.A.No.180/816/2017 which was allowed vide order dated 13.4.2018.

The aforesaid order reads as follows :

The matter seems to be covered on facts by our order in O.A. 180/187/2018 dated 9.4.2018. Therefore, they do not subsist for any further impediment for the applicant to superannuate on voluntary basis.

2. The Tribunal have carefully gone through the reply as well as the letter from Shri N.N.Rafique. If the Tribunal go by Annexure R.2 which is written by Mr.N.N. Rafique, action should be initiated against so many superior officers who had apparently permitted the applicant to go during duty hours and canvas deposits for the said Co-operative Bank. Reference is also made to Annexure R-2/3 saying that the applicant had obtained consent and favours of the superiors and co-workers because they were able to get loans and other privileges from the Co-operative Bank, Edathala wherein the applicant was the President of the Bank.

3. Under Section 14 of the Specific Relief Act, no man can be compelled to continue in service if the applicant do not want to continue in Government employment, assuming that the contention taken by the applicant that he did not know that being a social worker in the co-operative movement was prohibited and was for a long year period he is serving the public and only at the fag end of his career then such a complaint had come up. Applicant would say that on coming to know that this is not a correct thing for a govt. servant to do, he had immediately resigned and had also sought for voluntary retirement. Since The Tribunal have already quashed the chargesheet against the applicant nothing remains as an impediment against his voluntary retirement. If the disciplinary inquiries are postulated on Annexure 3 R-2 is to commence and continue, it will be an empty issue as lots of people who may have genuinely believed that they are doing the right thing may also be unnecessary called in this issue.

4. There is no allegation apparently as the applicant's activities have prejudiced the interests of the Govt organisation. Apparently, one hostile person had given so many complaints. But as the allegations that the applicant had become a politician by being a member of Edathala Service Co-operative Bank as its President cannot be entirely correct. Political activities and cooperative society activities are entirely two different things and Cooperative Societies activities are controlled by Co-Operative Society's Act. There appears to be a lot of grey areas in its operations. Therefore, the benefit of doubt will have to go to the applicant. It is held that he is eligible to have his voluntary retirement as apparently no further proceedings are pending against him. This will be done within one month next.

5. O.A. is allowed. No costs.

6. The respondents had filed R.A.No.180/31/2018 against the order in O.A.No.180/816/2017 which was dimissed under circulation vide order dated 13.6.2018. It reads as follows :

It is stipulated by the respondents as in the OA that the applicant who is a Union Government employee has been under the watch of the office of the Superintendent of Police, Ant-Corruption Bureau, Central Range which is the State organisation, whereas participation in a criminal activity is prejudicial to employment whether under the Union or State. The alleged infraction has the nexus of private individuals who has hostile animus to the applicant.

2. The respondents rely on Annexure RA4 No.25013/3/2010-Estt(A) dated 27.02.2014 wherein it is said that it shall be open to the appropriate authority to withhold permission to a Government servant who seeks to retire under FR 56(k) or 56(m) on the following circumstances: "If judicial proceedings on charges which may amount to grave misconduct are pending."

3. On 17.04.2018 that is four days after the judgment under impeachment to indicate that the criminal miscellaneous petition was transferred to the Hon'ble Court of Enquiry Commissioner and Special Judge and number CMP 537/2015 for hearing the complainant. It is not indicated whether the complainant is the original complainer or the office of the Superintendent of Police. Therefore during the currency of consideration of voluntary retirement no criminal case was pending against the applicant as it had not yet been taken cognizance of a criminal court besides applicant is an employee of Union Government and the wordings used in the DOPT Circular are not indicative of a wider horizon allowed in the jurisdiction of these both authorities. If the applicant had a life as a member of co-operative society it may or may not be relevant to his employment, but he will face that at the appropriate time.

4. The reason being that, is one private person seem to have filed complaint after complaints against the applicant which we have gone through and as it has all the hallmarks of politically or personally motivated harangue that may not be a reason sufficient for denying the employee to voluntarily retire from Government service which is actually his bread and butter. When he found that he cannot continue his social activity and Governmental employment together it is for him to decide to continue one or the other. Therefore this letter of Annexure RA3 read with Annexure RA4 will not pose any obstacle against the applicant getting voluntary retirement. Annexure RA5 is also not intended to prevent any employee leaving his service as under a specific enactment of laws of land no man can be compelled to commit his personal service against his will. Prevention of leaving his service is to prevent further prejudice in the department in question and not to alleviate personal hostility of a private individual. Just because the police force has registered an FIR against somebody it does not have any other effect against any one which will tantamount to diminish the constitutional right of any citizen. Therefore there is no merit. RA dismissed. No costs.

7. The respondents challenged the order in O.A.No.180/816/2017 before the Hon'ble High Court of Kerala which vide judgment dated 18.7.2019 disposed of the same as follows :

We do not find any infirmity either in Ext. P5 order or in Ext. P8 order in as much as the two charge sheets against the respondent already stands quashed evident by Ext.R5 order. It is however brought to our notice that O.A.No.296/2019 is pending on the file of the Central Administrative Tribunal challenging the third charge sheet served on the respondent.

The Original Petition is disposed of directing the Tribunal to pass final orders in O.A.No.296/2019 within a period of two months uninfluenced by Exts. P5 and P8 orders in the circumstances.

The Original Petition is disposed of.

8. The applicant submitted that in spite of all these aforesaid orders in his favour, on the basis of the complaint dated 7.8.2018, again a memorandum dated 14.9.2018 was served on him on 17.9.2018 calling upon him to submit written statement of defence and to state whether he desires to be heard in person. The applicant submitted his written statement on 25.9.2018 specifically denying the charges alleged to have been framed against him.

He pointed out therein that at Para 4 of the additional reply statement filed by the 1st respondent in O.A.No.180/816/2017 as well as at Para 6 of the reply statement filed in O.A.No.180/187/2018 reference is made to telephone bill expenses, travelling expenses and other personal expenses etc. relating to the complaint dated 10.2.2017 made by Shri.N.M.Rafeeq which is said to have been taken cognizance of the disciplinary authority in O.A.No.180/187/2018 and to reagitate the very same issue in order to satisfy the personal hostility of an individual, Shri.N.M.Rafeeq, and to further harrass him by initiating disciplinary proceedings for the third time, is illegal and violative of Article 20(2) of the Constitution of India. He requests to drop the charges, affording him an opportunity of being heard.

9. As grounds the applicant submits that the competent statutory authority has already taken cognizance of the very same matter and there is no provision in the CCS (CCA) Rules or any other rules or regulations enabling to initiate fresh disciplinary proceedings again on the very same cause of action/subject matter in issue on which a disciplinary case had already been taken and brought to a conclusion.

10. The respondents have filed their reply statement wherein they have stated that the present show cause notice was issued for a distinct and different offence ie., receipt of Rs.479260/- by the applicant from the Edathala Co-operative Bank. They submit that the charge sheet had been issued when new facts related to receipt of Rs.479260/- by the applicant

were brought to the notice and payment details were got authenticated through a board of officers by the Chief Engineer R&D Secunderabad and the Assistant Registrar of Co-operative Bank Aluva. Further a mere charge sheet or show cause notice does not give rise to any cause of action because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. They have relied upon the judgments of the Hon'ble Apex Court in **Union of India & Anr. v. Kunisetty Sathyanarayanan (2006) 12 SCC 28** and judgment of Hon'ble High Court of Calcutta in W.P.No.12986 of 2011 in **Chunilal Mukherjee v. Gluconate Health Limited & Ors.**

11. The applicant has filed a rejoinder reiterating his contentions in the O.A and submitting that issuance of multiple charge sheets are all related to his association with the Edathala Co-operative Bank, Aluva, Ernakulam between the period from 20.11.1992 to 30.11.2016 as found in para 12 of the order in O.A.No.180/187/2018 (Annexure A-1) and the present charge sheet cannot at all be treated as an altogether new one even after the very same issue were raised in the reply statements filed by the respondents in O.A.No.180/187/2018 and in O.A.No.180/816/2017 unsuccessfully.

12. We have heard Shri.P.K.Madhusoodhanan on behalf of the applicant and Shri.M.T.Muraleedharan, ACGSC on behalf of Respondent Nos.1 to 4. The respondents maintained that the charges was

levelled against the applicant vide Memo dated 14.9.2018, for receiving Rs.479260/- in the form of various allowances and claimed that it is distinct and different offence from the earlier proceedings. However, it is seen that this Tribunal after having gone through the statement of Articles of Charge had passed the final order in O.A.No.180/187/2018 declaring all charges relating to his association with the Edathala Service Cooperative Bank, Aluva, Ernakulam between the period from 20.11.1992 to 30.11.2016 as null and void. Thus, we unhesitatingly negate the statement of the respondents that the basis of the impugned show cause notice issued now is an altogether new one. Even the period mentioned in the present charge sheet falls within the same time zone, being from 2004 to 2017. On a close perusal of the facts before us, we regrettably come to the conclusion that the sole reason for issuance of Annexure A-16 by the 1st respondent appears to be the undue influence exerted by Shri.N.M.Rafeeq to harass and cause grave hardship to the applicant. Article 20(2) of the Constitution of India spell out that no person shall be prosecuted and punished for the same offence more than once. The time tested law maxim, namely, *nemo debet bis vexari* further stipulates that no man shall be put twice in peril for the same offence. The applicant appears to be at the receiving end of unending persecution with respect to his association with the Cooperative Bank and this Tribunal is being called upon to adjudicate the issue over and over again.

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13. In the light of the facts and circumstances of this case and in the background of the orders referred to, we allow this O.A. Annexure A-16 order is quashed and set aside. There shall be no order as to costs.

(Dated this the 10th day of December 2019)

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00296/2019

1. **Annexure A1** - True copy of the final order dated 9.4.2018 in O.A.No.180/187/2018.
2. **Annexure A2** - True copy of the representation dated 22.2.2017, submitted by the applicant through proper channel, to the 3rd respondent.
3. **Annexure A3** - True copy of the letter dated 6.3.2017 of the 2nd respondent.
4. **Annexure A4** - True copy of the show cause notice dated 30.11.2016 to the applicant issued by the 3rd respondent.
5. **Annexure A5** - True copy of the explanation dated 1.12.2016 submitted by the applicant.
6. **Annexure A6** - True copy of the 'warning' issued vide letter dated 19.1.2017 by the 3rd respondent.
7. **Annexure A7** - True copy of the office order dated 14.2.2017 from the office of Garrison Engineer.
8. **Annexure A8** - True copy of letter dated 1.5.2017 of the 3rd respondent.
9. **Annexure A9** - True copy of the order dated 17.7.2017 in O.A.No.180/525/2017 of this Hon'ble Tribunal.
10. **Annexure A10** - True copy of the order dated 13.4.2018 in O.A.No.180/816/2017 of this Hon'ble Tribunal.
11. **Annexure A11** - True copy of the order dated 13.6.2018 in Review Application No.180/31/2018.
12. **Annexure A12** - True copy of the memorandum of charges dated 22.11.2017 of the first respondent, (except the listed documents in Annexure – All).
13. **Annexure A13** – True copy of the written statement of defence dated 30.11.2017 submitted by the applicant.
14. **Annexure A14** - True copy of the reply statement dated 2nd March, 2018 filed on behalf of the respondents in O.A.No.180/187/2018.

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15. Annexure A15 - True copy of the rejoinder dated 12.3.2018 filed by the applicant in O.A.No.180/187/2018.

16. Annexure A16 - True copy of the Memorandum dated 14.9.2018 of the 1st respondent along with the Annexures and Exhibits therein (except the letters in Malayalam of P.I.O and the copies of the General Ledger which is not legible and readable).

17. Annexure A17 - True copy of the written statement of defence dated 25.9.2018.

18. Annexure A18 - True copy of the judgment dated 18.7.2019 in O.P. (CAT) No.133/2018 on the file of the Hon'ble High Court of Kerala, Ernakulam.

19. Annexure R1 - True copy of the judgment order of Hon'ble High Court of Calcutta in W.P.No.12986 (w) of 2011 in Chunilal Mukherjee vs. Gluconate Health Limited and Ors.
