

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 44 of 1991
T. A. No.

DATE OF DECISION

16-1-1992

K Vaidyanathan _____ Applicant (s) in person

Advocate for the Applicant (s)

Versus

Director General, Department Respondent (s)
of Telecommunications, New Delhi

Mr NN Sugunapalan, SCGSC _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Tribunal

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

in the Principal Bench
This application originally filed as OA-1741/88 by

the applicant Shri K Vaidyanathan, a retired Divisional Engineer
Telephones under Section 19 of the Administrative Tribunals Act
was transferred by the Hon'ble Chairman by order dated 14.12.1990
to this Bench under Section 25 of the A.T.Act. The applicant
has prayed for the following relief:

- i) to pass a final exoneration order in the disciplinary action, and
- ii) to give him all the consequential benefits that flow from this final order with costs within two months

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2. The facts necessary for the disposal of this application can be briefly stated as follows. The applicant, Shri K Vaidyanathan was proceeded against under Rule 14 of the CCS(CCA) Rules, 1965 for irregularly claiming and drawing House Rent Allowance for the period from 27.11.1968 to 30.6.1974 furnishing house rent receipt in respect of a house No.18, Malappa Gramani Street, Aynayaram, Madras-23 which were ^{allegedly} granted by one of his close relatives, Shri AL Ganesan. He was awarded a penalty of reduction by one stage from Rs.1000/- to Rs.960/- in the time scale of Rs.650-1200 for a period of one year without cumulative effect. Aggrieved by this order, the applicant preferred an appeal which (Annexure-A1) was disposed of by the President [✓] in consultation with the Union Public Service Commission setting aside the punishment, without prejudice to further action being taken against him as a result of the fresh proceedings to be initiated against him on the completion of further investigation into the case. When the penalty was set aside in appeal, the applicant filed a writ petition in the Hon'ble High Court of Karnataka praying that he should be promoted as if the penalty had not taken effect with all consequential benefits. The High Court of Karnataka disposed of the O.P. directing the respondents to give effect to the promotion order dated 16.7.1979 which was kept in abeyance in view of the further investigation being held in respect of misconduct. In compliance of the judgement of the Karnataka High Court, by order dated 11.5.1982, the applicant was promoted ⁱⁿ to hold charge the senior time scale of I.T.S.Group-A and he was

posted as Divisional Engineer in Bombay Telephones against an existing vacancy. It was also stated in that order dated 11.5.1982 that the deemed date of promotion of the applicant would be taken as 3.11.1978 and that no arrears of pay and allowances would be admissible to him as per instructions contained in the Ministry of Home Affairs OM No.F.7/28/63-Estt.

(A) dated 22.12.1964. While so, the CBI investigated into the misconduct of the applicant and the applicant was prosecuted before the Metropolitan Magistrate, Madras for an offence under Section 420 of the IPC. The Magistrate convicted him for the offence and sentenced him to R.I. for six months and to pay a fine of Rs.500/- and in default thereof to go R.I. for one month. On an appeal by the applicant, the conviction and sentence were set aside by the Court of Sessions, Madras by judgement dated 4.4.1984. When no appeal had been filed by the CBI or by the Department to the knowledge of the applicant against the judgement of the Sessions Court and as fresh disciplinary proceedings cannot be initiated against him after his retirement the applicant has filed this application praying that a final order of exoneration in the disciplinary proceedings should be passed and that he should be given all consequential benefits flowing from such an order.

3. The applicant had retired from service on superannuation on 30.6.1985.

4. The respondents have in the reply statement contended that as the CBI has filed an appeal before the High Court/

the order of acquittal passed by the Court of Sessions which is pending, no final order have been passed in the disciplinary proceedings and therefore the applicant is not entitled to have an order of exoneration passed. It has been further contended that, since the applicant has been promoted giving effect to the date of promotion as on 3.11.1978 and as all the retirement benefits available to him on superannuation were given to him he is not entitled to any further reliefs. They have also indicated that the applicant may be directed to state clearly as to what further consequential benefits he is claiming.

5. The applicant has filed Miscellaneous Petition No. 582/90 in reply to the contentions raised by the respondents in their reply statement. In this Miscellaneous Petition the applicant has catalogued the various consequential benefits which he claims as a result of an order of exoneration. In this Miscellaneous Petition the applicant has quoted a portion of the judgement of the Karnataka High Court in Writ Petition No.1443/81 which reads as follows:

"A writ in the nature of mandamus shall be issued to the respondents to give effect to the order of promotion passed on 16.7.1979 Annexure-A in so far as it relates to the petitioner. The petitioner will also be entitled to all consequential benefits which flow out of such promotion Compliance in three months."

Placing reliance on the above direction of the High Court of Karnataka the applicant claims that, as consequential

benefits he was entitled to be promoted to higher post and for higher retirement benefits and for the arrears of pay. He has summed up the reliefs claimed as consequential benefits as follows:

- i) To be considered for promotion to the Senior Time Scale of ITS (A) from 1972, and for the JAG of ITS (A) from 1979.
- ii) To be considered for posting in special pay posts both in the Senior Time Scale of ITS (A) and JAG of ITS (A) at New Delhi and in the field units.
- iii) To be considered for deputations- domestic and foreign- in both the Sr. Time Scale of ITS (A) and JAG of ITS (A).
- iv) To get full salary and other service benefits from the deemed date of promotion /posting in the aforesaid higher posts (Para 5 i to vi).
- v) To get damages - general and tort - for the losses caused by the failure of the respondents to give me the consequential benefits within the time limit set by the High Court.

6. Since the applicant had indicated that it would be impossible for him to appear either in person or through counsel to argue the case, the application might be disposed of on merits. We heard the learned ^{as} ~~SCGSC~~ ^{who} ~~appeared~~ for the respondents and have also carefully perused the pleadings and documents available on record.

7. The relief No.I is that the respondents should be directed to pass an final order in the disciplinary proceedings. As per the averment in the application the disciplinary proceedings against him was initiated in the year 1973. An order imposing on the applicant a punishment of reduction by one stage from Rs.1000/- to Rs.960/- in the Time Scale of Pay in Rs.650/- 1200 year. For a period of one without cumulative effect was passed in the disciplinary proceedings by order dated 4.10.1978. By appellate order dated 12.3.1980 the punishment order was set aside, though liberty was reserved to the department for further action being taken against the applicant as a result of fresh proceedings to be initiated ~~to~~ on completion of the investigation into the case. On the basis of the observation in the appellate order, an enquiry was conducted by the CBI and the applicant was prosecuted under Section 420 IPC before the Metropolitan Magistrate, Madras. Though the Magistrate convicted the applicant and sentenced him to undergo Rigorous Imprisonment for ~~to~~ six months and pay a fine of Rs.500/- and in default ~~to~~ thereof to undergo RI for one month, this conviction and sentence were set aside and the applicant was acquitted by Court of Sessions Madras in Criminal R.C.No.1/1984 by judgement dated 4.4.1984. It is the case of the applicant that, no appeal to his knowledge has so far been filed by the CBI or by the department before the Hon'ble High Court,

while the respondents have contended that an appeal against the order of acquittal passed by the Court of Session is pending before the High Court of Madras. But, we find no record to show that an appeal is pending had been produced. The respondents have not even furnished the number of the appeal. The respondents have contended that, no final order has been passed in the disciplinary proceedings because of the pendency of the appeal. Any way as the applicant has in a Miscellaneous Petition claimed the costs incurred by him to contest the case before the High Court. 'It has now came out that, an appeal is pending'. Be that as it may, it is a common case that the applicant has retired on superannuation in the year 1985. The disciplinary proceedings initiated against the applicant in the year 1973 has been finally disposed of by the Appellate Order dated 12.3.1980 at Annexure-A1. The punishment imposed on the applicant was set aside by this order. Though liberty was reserved with the department to initiate fresh proceedings, so far no fresh disciplinary proceedings has been initiated against the applicant. Now that the applicant has retired from service on superannuation, no fresh disciplinary proceedings in view of the bar in Rule 9(2) of the CCS(Pension)Rules,1972. can be initiated. The applicant in the paragraph 6 of the application has stated that the respondents had in the reply filed by them in Review Application 9 and 10 of 1987 before the Madras Bench of the Tribunal on 25.6.1987 stated that no fresh proceedings were contemplated against the applicant. Since the only disciplinary proceedings initiated against the applicant have been finally disposed of by the Annexure-A1 order and as no proceedings thereafter have been initiated against him the question of passing a final order of exoneration

does not arise. An order of exoneration is necessary only in case a disciplinary proceedings is pending.

Admittedly no disciplinary proceedings is pending.

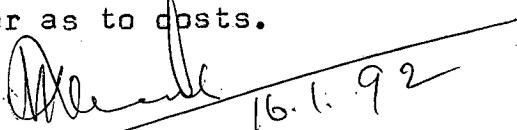
Therefore, the prayer No.1 in the application is misconceived.

8. The second prayer of the applicant is that he should be given all consequential benefits that flows from the final order of exoneration. After the punishment imposed on him by the Disciplinary Authority was set aside by the Appellate Order, Annexure-A1, the applicant had filed a Writ Petition before the Hon'ble High Court of Karnataka praying that the respondents should be directed to give effect to the order of his promotion dated 16.7.1979 and to give him all consequential benefits. The High Court of Karnataka allowed this application and directed the respondents to give effect to the order of promotion passed on 16.7.1979 and also declared that the applicant will be entitled to all consequential benefits which flow out of such promotion and directed compliance in three months. The respondents had in compliance with the above judgement, by order dated 15.1.1982 given effect to the order of promotion dated 16.7.1979 assigning the deemed date of promotion as 3.11.1978. But he was not given arrears of pay and allowances on the basis of the instruction contained in the Ministry of Home Affairs OM No.F.7/28/63-Estt.(A) dated 22.12.1964.
/ If the applicant was aggrieved by non-payment of the

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arrears of pay and allowances on account of the late promotion the applicant should have challenged that portion of the order denying him arrears of pay and allowances in time. This order was passed on 11.5.1982, more than three years prior to the date on which the jurisdiction powers and authority of the Tribunal became exercisable by the Tribunal under the Administrative Tribunals Act. Not only the claim is stale and belated, but also it is a case where this Tribunal has no jurisdiction to entertain a grievance which arose more than three years prior to the above said date. Therefore the claim of the applicant for the arrears of pay and allowances has to be negatived. For the same reason consequential benefits which have been allegedly denied to the applicant despite the judgement of the High Court of Karnataka referred to above cannot be directed to be given by us, for these flow out of the directions of the High Court of Karnataka and if the applicant had any grievance in this regard he should have approached the High Court in time, especially when a time limit of 3 months have been laid down for compliance of those directions. Hence we are of the view that the applicant is not entitled to any reliefs as claimed in this application. But we would like to make it clear that no disciplinary action against the applicant is pending nor can one be legitimately initiated against him since he has retired from service as early as on 30.6.1985.

9. In the conspectus of facts and circumstances, finding no merit in the application, we dismiss the same without any order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER

16-1-1992


(NV KRISHNAN)
ADMVE. MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. MP 696/92 in
T.A. No. OA 44/91 199

DATE OF DECISION 29.5.92

K.Vaidyanathan

Applicant (s)

in person

Advocate for the Applicant (s)

Versus

D.G. Telecom, New Delhi

Respondent (s)

Mr. N.N.Sugunapalan

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V.Krishnan, Administrative Member

The Hon'ble Mr. A.V.Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

N.V.Krishnan, AM

The applicant has filed MP 696/92 in OA 44/91 in which final orders had been passed by us on 16.1.92.

The applicant has stated that he does not want any oral hearing.

2. We have heard the respondents.

3. The applicant claims that the MP is filed in the light of the observation made in our order dated 31.3.92 rejecting another application filed by him, which was treated as a ~~review~~ review application and registered as RA 40/92, that a MP cannot be filed in an OA which has been disposed of finally

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except for any clarification or for the purpose of effective implementation of the final order.

4. The MP has been filed making three prayers for the ~~the stated to be~~ implementation of the findings/recorder in the final judgment.

As the original application was dismissed, it is not clear what remains for implementation. Nevertheless, we consider the prayers made.

5. The first prayer is that the respondents may be directed to pass an order quashing the disciplinary proceedings and give him all consequential benefits listed in the MP within one month, as an effective implementation of the following finding, stated to be recorded in para 8 of the judgment:

"But we would like to make it clear that no disciplinary action against the applicant is pending nor can one be legitimately initiated against him...."

This is not a finding. This is a clarification we gave after recording the following finding:

"Hence we are of the view that the applicant is not entitled to any reliefs as claimed in the application.

6. The only relief sought by the applicant in regard to the disciplinary action was relief (i) i.e. to pass an exoneration order in the disciplinary action. We have held in para 7 of the judgment that the question of passing a final order of exoneration does not arise, because the disciplinary proceedings initiated against him have been finally disposed of by Ann.1 order and no proceedings have been initiated thereafter against him and that an order of exoneration is

necessary only in case a disciplinary proceeding is pending. As no such case is pending, the prayer in the application was held to be misconceived.

7. There was no prayer in the OA for quashing the disciplinary proceedings, as is now made in the MP. As the matter has been raised by the applicant, it is only necessary to state that after the Ann.1 order was passed in the disciplinary proceedings, the facts relating to the same charge were investigated by the CBI and the applicant was initially convicted by the lower Court of an offence under section 420 of I.P.C. However, the appellate court set aside the conviction and the sentence imposed on the applicant. Against this appellate order, the CBI has initiated proceedings in the High Court of Madras.

& Criminal
Therefore, the proceedings initiated against the applicant will come to an end only if final judgment is delivered

by the High Court in appeal. Unless the High Court holds

/ the applicant cannot contend that there was no justification for initiating the D.E. and hence they deserve to be quashed.

8. The second prayer is that the claims made in MP 743/90 and para 13 of the MP 172/91 in OA 44/91 may be allowed as effective implementation of the findings stated to be

recorded in our final judgment.

9. MP 743/90 containing a prayer for a sum of Rs60,000 as costs incurred by him in defending the criminal case against him has already been dismissed by a separate order.

If he is aggrieved by it, it is open to him to seek other legal remedies.

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10. The claims raised in MP 172/91 had already been considered in our judgment and nothing remains for further consideration.

11. The third prayer of the applicant is somewhat extraordinary. He requests that if the two aforesaid prayers cannot be considered in this application for any reason, this Tribunal may be pleased to suggest alternate remedy in the matter. The only suggestion that we can give him is to approach a counsel for expert legal advice.

12. In the circumstances, this MP is dismissed.


(A.V. Haridasan)

Judicial Member


(N.V. Krishnan)

Administrative Member

29.5.92

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

RA-40/92

in O. A. No. 44/91

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DATE OF DECISION 31-3-1992

Shri K. Vaidyanathan

Applicant (s)

In person

Advocate for the Applicant (s)

Versus
D.G., Deptt of Telecom.,

Respondent (s)

New Delhi.

Shri N.N. Sugunapalan

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V. Krishnan

- Administrative Member

&

The Hon'ble Mr. A.V. Haridasan

- Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? Y
2. To be referred to the Reporter or not ? W
3. Whether their Lordships wish to see the fair copy of the Judgement ? W
4. To be circulated to all Benches of the Tribunal ? W

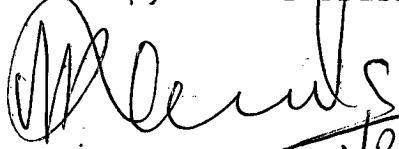
JUDGEMENT

(Hon'ble Shri A.V. Haridasan, Judicial Member)

Shri K. Vaidyanathan, applicant in O.A. 44/91, has filed this Miscellaneous Application with a number of prayers. The O.A. has already been disposed of finally. No.M.P. is also pending. An M.P. cannot be filed in an O.A. disposed of finally except for any clarification or for the purpose of effective implementation of the final order. The purpose of this application is neither of this. The applicant has averred that in case an M.P. cannot be entertained this petition may be treated as a review application. The applicant has stated

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that the O.A. has not been properly disposed of and that several of the prayers contained in the O.A. as well as M.P. have not been effectively adjudicated. We are of the view that the applicant is not entitled to challenge the wisdom of the decision in the final order in a review application. No error apparent on the face of the facts or any other circumstance warrenting a review of the final order passed in O.A.44/91 is brought out in this M.P. Therefor, we are of the view that this/petition does not deserve any consideration. We, therefore, reject the same. A copy of the order may be communicated to the applicant.


(A.V. HARIDASAN)
JUDICIAL MEMBER

3K3/92

31-8-1992


(N.V. KRISHNAN)
ADMINISTRATIVE MEMBER

31-3-92