

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.443/93

Monday, this the 7th day of February, 1994.

SHRI N DHARMADAN, MEMBER(J)

SHRI S KASIPANDIAN, MEMBER(A)

NP Kuttan

Peon

INHS Sanjivani

Kochi-682 004.

- Applicant

By Advocate Mr PK Mohammed

Vs.

1. Surgeon Captain Commanding Officer,
INHS Sanjivani,
Kochi-682 004.

2. Flag Officer Commanding-in-Chief,
INHS Sanjivani,
Kochi-682 004.

3. Union of India represented
by the Secretary,
Ministry of Defence,
New Delhi.

- Respondents

By Advocate Mr K Karthikeya Panicker, ACGSC

O_R_D_E_R

N DHARMADAN, MEMBER(J)

Applicant is a Peon working under the second respondent from 10.6.1980. He is coming for the second time against the penalty proceedings initiated against him on the following two charges:

"Article-I

That the said Shri NP Kuttan while functioning as Peon in Ship's office of INHS Sanjivani has disobeyed the lawful orders of his superior officer and caused inconvenience to the section.

Article-II

That the said Shri NP Kuttan while functioning as Peon in Ship's office of INHS Sanjivani has behaved in a disorderly manner with his superior during working hours and created disturbance in Ship's office."

2. Earlier when the penalty of withholding of increment for a period of one year with effect from 15.12.1992 was imposed against the applicant, he filed an appeal and approached this Tribunal by filing OA-1654/92. We allowed the application at the admission stage itself quashing the impugned order of penalty and disposed of the application with the following observation/direction:

"3. In view of this submission, we admit the application, set aside the impugned order at Annexure-B1 and E. We direct the applicant to submit his explanation to the charge sheet at Annexure-A2 within a period of two weeks from the date of communication of this order. We also direct the first respondent to consider the explanation submitted by the applicant to the charge sheet at Annexure-A2 and to take appropriate decision within a period of two months from the date of receipt of the explanation from the applicant. There is no order as to costs."

3. Thereafter, applicant filed Annexure-G representation denying the charges and contended that the applicant has a clear record and meritorious service, he secured awards and good entries. He also requested for dropping the charge accepting the explanation, in the alternative he further requested that an enquiry may be ordered in which the following registers should be summoned and perused:

"(i) inward register maintained in the office of the ship INHS Sanjivani, Kochi-4 from 2.6.91 after the transfer of B Nag, Logistic Officer, till 1.11.91.

(ii) Outward register maintained in the Ship's office INHS Sanjivani from 2.6.91 to 1.11.91.

(iii) FMO and SDS Register maintained in the Ship's Office INHS Sanjivani for the period 2.6.91 to 1.11.91."

4. He also moved for summoning two witnesses to be examined on his side.

5. The second respondent passed the impugned order Annexure-H dated 29.1.1993 rejecting the request of the applicant for dropping the disciplinary proceedings or conducting enquiry with the following observation:

"(i) the records are not material relevant to the case at all.

(ii) the witnesses mentioned in the submission are also awarded minor penalty for their misbehaviour in the recent past as such their statement without any more explanation cannot be considered as impartial and factual.

(iii) in accordance with CCS(CCA) Rules 1965 inquiry is not mandatory to impose minor penalty."

6. The second respondent did not give any opportunity to the applicant before arriving at the conclusions in the impugned order. It is obligatory on his part, before coming to the conclusion that the applicant has disobeyed the lawful orders of the Superior Officer creating disturbances and imposing the penalty of withholding of next increment for a period of one year without cumulative effect with effect from 15.12.1992/ to hear the applicant also. It is against the very same penalty that the applicant filed earlier OA-1654/92 denying the charges and requesting for an enquiry. This Tribunal directed as per Annexure-F judgement to consider the explanation and pass appropriate orders. If as a matter of fact after considering the explanations and the contentions of the applicant, the first respondent takes a decision to penalise the applicant, it goes without saying that he is bound to follow

the procedural formalities under the rules for imposing the penalty.

7. In the light of the denial of the charges and his request for summoning of documents and examination of witnesses, the 1st respondent is bound to conduct an enquiry particularly when the applicant has indicated his genuine interest in establishing his innocence in the enquiry. When such a request has been made by the applicant as indicated above, it is obligatory on the part of the first respondent to conduct an enquiry and find out the truth and thereafter take a decision as to whether the delinquent employee is guilty or not. His unilateral decision without following the procedure for imposing punishment and the denial^{of}/₂ an opportunity to the applicant is illegal.

8. Since the applicant has specifically denied the charges and asserted that he has clean record of service, ^{are of the view} we/₂ that first respondent is not justified in not having perused the documents and examined the witnesses before coming to the conclusion that the charges are proved^{and}/₂ the penalty imposed on the applicant in the facts and circumstances of the case cannot be sustained.

9. In the result, we set aside Annexure-H order and remit the case back to the first respondent for conducting the enquiry in accordance with Rule 14 of the CCS(CCA) giving opportunity to the applicant to establish his innocence. The procedural

formalities in accordance with the rules should be strictly complied with in the enquiry.

10. The application is allowed to the extent indicated above.

There shall be no order as to costs.

S. Kasipandian

(S KASIPANDIAN)
MEMBER(A)

N. Dharmadan
7.2.94

(N DHARMADAN)
MEMBER(J)

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