

Central Administrative Tribunal,  
Madras Bench.  
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O.A.No.50 of 1987.  
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Wednesday the thirteenth day of January, One thousand  
nine hundred and eighty eight.  
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Present:

The Hon'ble Shri C.Venkataraman, Admn. Member  
and

The Hon'ble Shri G.Sreedharan Nair, Judl.Member.  
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T.G.Vijayan ... Applicant.

vs.

1. Controller General of Defence  
Accounts, West Block, Ramakrishnapuram,  
New Delhi-110 066.
2. Controller of Defence Accounts (ORs)  
South Tynampet, Madras-18.
3. Sri S.Bagheerathan, Enquiry Officer,  
ACDA, 1/o PAO (ORs) BEG Kirkee,  
Poona-3.
4. Accounts officer I/C P.A.O.(ORs)  
DSC, Cannanore.
5. Government of India represented  
by the Secretary, Ministry of Finance,  
New Delhi. ... Respondents.  
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For applicant: M/s.O.V.Radhakrishnan &  
V.N.Subhangan.

For respondents: Mr.K.Karthikeya Panicker.  
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(The judgment of the Tribunal was delivered by  
the Hon'ble Shri G.Sreedharan Nair, Judl.Member)  
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The applicant while working as temporary Auditor,  
Pay and Accounts Office, Cannanore, was proceeded  
against under Rule 14 of the Central Civil Services

(Classification, Control and Appeal) Rules, 1965,  
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for short 'the Rules', by a memorandum of charges issued on 31-3-1981 alleging contravention ~~of the~~ of the provisions of clause (ii) of Sub-rule (1) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964. The charge against him was that he remained absent from duty without any report and sanction of leave from 29-10-1980 and did not make adequate arrangement for the receipt of official communications sent to him during his absence. In March 1980, the applicant was transferred to Ahamed Nagar, but there was an interim stay of the order by the High Court of Kerala in O.P.No.1129 of 1980. That order was subsequently vacated by the High Court on 19-8-1980 and the applicant was relieved from Cannanore on 10-10-1980. The case of the applicant is that he was on leave on medical grounds and as such he was not in a position to join duty at Ahamed Nagar immediately after relief.

It is stated that at first he applied for leave for the period from 19-9-1980 to 28-9-1980 and again for commuted leave from 29-9-1980 to 28-10-1980 supported by medical certificate which was sanctioned by the second respondent. According to him, as he did not recover from his illness he was not in a position to report for duty on the expiry of the leave and the matter was promptly reported to the second respondent and an application for commuted leave for 90 days from 29-10-1980 along with medical certificate was also sent under certificate of posting. After the expiry of the period of leave earlier applied for, he alleges that extension of leave was requested with medical certificate. In the circumstances, it is pleaded by the applicant that when the memorandum of charges was served on him, he submitted a representation pointing out that he has submitted leave applications. However, when he was informed that



an Inquiry Officer was appointed and that the enquiry would commence on 3-11-1981 at Ahamed Nagar, he sent a letter to the Inquiry Officer requesting to postpone the enquiry beyond the expiry of the leave, so that he may recover from his illness. The applicant had also made a request for the assistance of one Shri A.N.Banerji to assist him in the enquiry, but the Controlling Authority of Shri A.N.Banerji informed the Inquiry Officer that he could not be made available for attending the enquiry on 3-11-1981. The applicant alleges that despite the above request, the Inquiry Officer held the enquiry on 3-11-1981 itself exparte following which he submitted his report to the disciplinary authority on 10-11-1981. The first respondent, though not the disciplinary authority in respect of the applicant, acting as the disciplinary authority accepted the findings of the Inquiry Officer and by his proceedings dated 2-5-1983 imposed upon the applicant the penalty of removal from service. The order was

confirmed by the appellate authority.

The applicant prays for quashing the order removing him from service. The grounds urged are that the first respondent was not competent to pass the order, the order is bad as it was not preceded by a valid and proper enquiry in accordance with the principles of natural justice and after affording reasonable opportunity of being heard. It is also urged that the penalty imposed is disproportionate to the gravity of the alleged charge.

In the reply filed on behalf of the respondents it is contended that after the expiry of the leave that was sanctioned to the applicant, though the order of stay was vacated by the High Court, the applicant did not report at his new office at Ahmed Nagar as directed. Hence, he was directed to report for duty. The telegram as well as the letter sent by Registered post were returned undelivered with the endorsement that the

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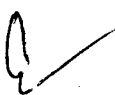
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addressee is not found. It was in the above circumstances that the memorandum of charge was issued to the applicant. The respondents contend that they have not received the letters stated to have been sent by the applicant for extension of leave. The enquiry was conducted exparte because the applicant failed to appear in spite of number of chances afforded to him. However, it is admitted that the letter sent by the applicant on 29-10-1981 along with the medical certificate for adjournment of the enquiry fixed on 3-11-1981 was received by the Inquiry Officer on 7-11-1981. It is stated that the proceedings have been validly conducted in accordance with the rules and that the order imposing the penalty is valid. As regards Auditors/Clerks appointed prior to 25-3-1967 in the Defence Accounts Department, it is contended that the first respondent is the appointing

authority and the second respondent is the disciplinary authority.

The main point that was canvassed by the counsel of the applicant was that the Inquiry Officer should not have proceeded to hold the enquiry exparte. It was submitted that by so doing, the applicant has been denied a reasonable opportunity of defending himself and as such the proceedings are vitiated. On an anxious consideration of the material on record, we are persuaded to agree.

The penalty that has been imposed on the applicant is one of removal from service. A civil servant can be removed from service only after giving him an opportunity of being heard in accordance with the mandatory provisions contained in clause (2) of Article 311 of the Constitution of India. No doubt, while laying down the procedure of imposing a major



penalty, in Sub-rule (20) of Rule 14 of the Rules, an Inquiring Authority is enabled to hold the enquiry *exparte* in a case where the Government servant fails or refuses to comply with the provisions of the Rule.

In the instant case, it is to be noted that the applicant was at Cannanore and the enquiry was proposed to be held at Ahamed Nagar. According to the applicant, he was confined to bed and was not in a position to travel to Ahamed Nagar and it was on that ground that he <sup>did not</sup> ~~report~~ for duty at Ahamed Nagar but applied for extension of leave. When the applicant received intimation regarding the holding of <sup>the</sup> ~~an~~ enquiry at Ahamed Nagar on 3-11-1981 he had sent on 29-10-1981 a letter by Registered post to the Inquiry Officer stating the circumstances and praying for adjournment of the enquiry. It is in evidence that the letter actually reached the office



of the Inquiry Officer on 2-11-1981, but since he was not available from 2-11-1981 to 6-11-1981 it was delivered to him only on 7-11-1981. It has also to be noted that the particular defence assistant nominated by the applicant, whose assistance was duly sanctioned, could not be relieved to attend the enquiry on 3-11-1981 and the fact was intimated to the Inquiry Officer by the Controlling Authority of the defence assistant. In the aforesaid circumstances, holding the enquiry on 3-11-1981 in the absence of the applicant or his assistant, was unfair. It is also to be noted that the Inquiry Officer concluded the enquiry on 3-11-1981 itself. When the matter was brought to the notice of the applicant by the Inquiry Officer, the applicant immediately sent a request to him to review the exparte proceedings and to conduct the enquiry after affording opportunity to him to participate. But on the ground that he had already submitted the

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enquiry report and as such has become functus officio he rejected the request. Thereupon, the applicant is seen to have pursued the matter by filing a representation before the disciplinary authority. However, the disciplinary authority was also not amenable.


It was submitted by counsel of the applicant that even the copy of the report of the Inquiry Officer was not furnished to the applicant before the disciplinary authority found the applicant guilty of the charge and imposed the penalty. It was stressed that if at least that was done, the applicant would have got an opportunity to impress upon the disciplinary authority not to accept the report of the Inquiry Officer. There is considerable force in the submission. In

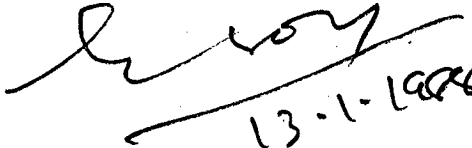
K.S.Sekharan Kutty vs. Senior Superintendent of Post Offices, Alwaye Division, Alwaye and others

(O.A.844 of 1986 decided on 17-6-1987) a Bench of this Tribunal to which one of us was a party

(Shri G.Sreedharan Nair) has held that the failure on the part of the disciplinary authority to furnish a copy of the report of the Inquiry Officer does amount to denial of reasonable opportunity contemplated by clause (2) of Article 311 of the Constitution.

It follows that the order dated 2-5-1983 imposing on the applicant the penalty of removal from service, as confirmed by the appellate order dated 26-11-1985 is not sustainable. We quash the same, and remit the matter to the disciplinary authority for conducting the enquiry afresh on the same memorandum of charges after affording reasonable opportunity to the applicant to defend himself.

  
(G.VENKATARAMAN)  
MEMBER (A)  
13-1-1988

  
(G.SREEDHARAN NAIR)  
MEMBER (J)  
13-1-1988.

Index: Yes/~~No~~.

S.V.