

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 550
550

1990

DATE OF DECISION 15-2-1991

P.C. Krishnanunni

Applicant (s)

Mr. M.R. Rajendran Nair

Advocate for the Applicant (s)

Versus
The Deputy Collector (P&E)

Respondent (s)
Central Excise, Collectorate of
Central Revenue Buildings, I.S. Press Road, Cochin
and 2 others

Advocate for the Respondent (s)
Mr. P. Sankaran Kutty Nair, ACGSC R 1 to 3

CORAM:

The Hon'ble Mr. S.P. Mukerji, Vice Chairman

The Hon'ble Mr. N. Dharmadan, 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

N. Dharmadan, Judicial Member

In 1982 the applicant while working as Sepoy in the Central Excise, Admali, an enquiry under Rule 14 of the CCS (CCA) Rules 1965 was proposed to be conducted against the applicant. Annexure-I memorandum was issued to him. Though the applicant submitted Annexure -II representation against the proposed enquiry and sought for a personal hearing, an Enquiry Officer was appointed, without considering Annexure -II and the request of the applicant, by Annexure-III order dated 31-3-83. While the enquiry was in

progress, on 7-2-85 the applicant submitted Annexure-IV representation to the Enquiry Officer (EO for short) for production of some documents before the examination of witnesses. By Annexure-V order, the EO disposed of the representation stating that the documents except the Attendance Register cannot be made available. The enquiry, according to the applicant was completed and Annexure-VI enquiry report was submitted finding the applicant guilty of the only three charges viz. Articles III, IV and V. The officer also found that the charge in Article-II was not proved but charge in Article-I has been found partially proved. Accepting the findings of the enquiry authority, the Disciplinary Authority, the first respondent, passed Annexure VII Order dated 17-4-86 imposing the penalty of reduction of pay by eight stages from Rs.220/- to Rs.196/- in the time scale of Rs.196-232 for a period of 8 years with effect from 19-4-86. It was further directed in the penalty order that the applicant will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay. The applicant's appeal was disposed by Annexure-VIII order. The applicant submitted a memorial to the President of India which was

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stated to have been rejected when the applicant filed OA 37/88. The Tribunal passed Annexure-X judgment on 21-12-89 directing that the appellate authority to dispose of the appeal in accordance with law. Thereafter, the appellate authority passed Annexure-XI order dated 29-3-90 rejecting the appeal without affording a personal hearing. The applicant is challenging Annexures III, VI, VII and XI on various grounds.

2. The applicant raised various grounds and submitted that the appellate authority had not discharged the appellate function by giving reasonable hearing to the applicant with regard to his contentions raised in appeal. According to the applicant, no such hearing was given to him before the disposal of the appeal after the directions by this Tribunal in Annexure-X judgment. He submitted that, there is no disposal of the appeal by the appellate authority in the eyes of law. He further submitted that the enquiry authority only found charge No.1 partially proved but the disciplinary authority disagreed with the enquiry authority with regard to his finding in charge No.1 to the extent of holding that the charge had been fully proved. The punishment

is bad since the applicant was not served with a copy of the enquiry report before imposing the penalty of reduction of pay after disagreeing with the findings and conclusions arrived at by the enquiry authority.

3. The applicant's averments in ground-C reads as follows:

"...The disciplinary authority before coming to the conclusions that the charges are proved on the basis of the enquiry report did not furnish a copy of the enquiry report to the applicant and afford him an opportunity of hearing. Enquiry report is only a material before the enquiry authority and the enquiry report cannot be relied on without giving an opportunity of being heard to the applicant..."

4. The answer given by the respondents in the reply is very unsatisfactory and unacceptable in the light of the views consistently being taken by the Tribunal after following the decisions laid down by the Supreme Court in the subject. The relevant portion of the reply statement reads as follows:

"...The above rules do not stipulate to give opportunity of being heard or to furnish copy of Enquiry report before imposing penalty. However, a copy of the Enquiry report was furnished to him along with the disciplinary order...."

Admittedly, the applicant was neither given a chance before taking a decision to impose punishment of reduction in pay nor was he given a copy of enquiry report in

advance. The fact that there is disagreement by the disciplinary authority with the findings of the enquiry authority with respect to charge II is clear from the following extracts from Annexure VIII penalty order.

"....In view of this, the E.O. has come to the conclusion that charge No.1 is partially proved..."

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"...As such I find that, it is immaterial whether the sepoy was competent authority or not. In his official capacity as a Government servant, he had asked for some kind of consideration which amounts to demanding illegal gratification. I hold that the charge that Shri P.C. Krishnan Unni demanded illegal gratification stand proved...."

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"...I hold that the charges, I, III, IV and V stand proved as discussed above....."

5. Recently we have decided similar case in which there is disagreement by the disciplinary authority with the findings and conclusions of the enquiry authority and held as follows: (Anagur Bhaskar V. GM, Southern Railway, Madras and other, OA 482/89 -un-reported case):

"...We have recently considered this issue in detail in T.K. Gopinathan V. Union of India and 4 others, OA 259/88, the same Bench held as follows:

"...By taking a unilateral decision behind the back of the applicant who was found to be not guilty on the first and third elements of the charge, the disciplinary authority has violated the elementary principles of natural justice and the principle of reasonable opportunity enshrined under Article 311(2) of the Constitution of

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India. It was held by the Supreme Court in Narayan Misra V. State of Orissa 1969 SLR 567 that if the enquiry officer exonerates the charged officer but the disciplinary authority disagrees, the charged officer must be given a notice before the disciplinary authority comes to a conclusion against him. The following observations made by the Supreme Court in that case will be pertinent to be quoted:

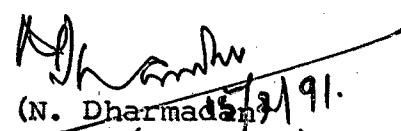
"Now if the conservator of Forests intended taking the charges on which he was acquitted into account, it was necessary that the attention of the appellant ought to have been drawn to this fact and his explanation, if any, called for. This does not appear to have been done. In other words, the conservator of Forests used against him the charges of which he was acquitted without warning him that he was going to use them. This is against all principles of fair play and natural justice. If the Conservator of Forests wanted to use them, he should have apprised him of his own attitude and given him an adequate opportunity. Since that opportunity was not given, the order of the conservator of Forests modified by the State Govt. cannot be upheld. We accordingly, set aside the order and remit the case to the Conservator of Forests for dealing with it in accordance with law. If the Conservator of Forests wants to take into account, the other two charges, he shall give proper notice to the appellant intimating to him that those charges would also be considered and afford him that those charges would also be considered and afford him an opportunity of explaining them" (emphasis added) (in the above quotation the term acquittal was with reference to the acquittal by the enquiry officer and not by any Court)..."

Similarly, in M.D. Mathew V. Union of India and two others, OA 478/89, this Bench in which one of us (Shri N. Dharmadan) was a party considered an identical question and held as follows:

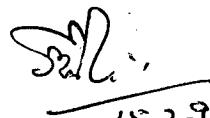
"..Legal position on this subject is well settled that when there is disagreement between the enquiry authority and the disciplinary authority with regard to the findings and conclusions to the dis-advantage of the delinquent, before the imposition of punishment on the delinquent he should be given an opportunity of being heard. Fairness requires such an opportunity to be given by the Disciplinary Authority. This Tribunal is consistently taking the view that such an opportunity has to be given to the delinquent Govt. employee in the interest of justice before the imposition of the punishment of passing adverse orders in that behalf..."

6. In the light of the decisions of this Tribunal quoted above, we are of the view that the applicant is entitled to succeed. Accordingly, we set aside the order of disciplinary authority as confirmed in appeal by the appellate authority and direct the respondents to grant the applicant all consequential benefits in accordance with law, as if no disciplinary action was pending against him. But the respondents are at liberty to proceed against the applicant from the stage of submission of the enquiry report by the enquiry authority and notifying the reasons for the disagreement with regard to charge No.1 as indicated above, if they decide to proceed against the applicant and pursue the enquiry proceedings further in accordance with law.

7. In the result, the application is allowed. There will be no order as to costs.


(N. Dharmadikar)
Member (Judicial)

15-2-91


15-2-91
(S.P. Mukerji)
Vice Chairman