

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No. 554 2000.

Thursday this the 7th day of September, 2000.

CORAM:

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

M.K. Koya,
Technical Assistant (dismissed from service),
District Panchayat, Kavarathi,
Lakshadweep, residing at:
Malmikakkad, Kalpeni, Lakshadweep. Applicant

(By Advocate Shri M.R. Rajendran Nair)

vs.

1. The Chief Executive Officer,
District Panchayat,
Union Territory of Lakshadweep.
2. Administrator,
Union Territory of Lakshadweep,
Kavarathi.
3. Union of India represented by
the Secretary to Government of India,
Ministry of Home Affairs,
New Delhi. Respondents

(By Advocate Shri P.R.Ramachandra Menon, ACGSC)

The application having been heard on 7.9.2000, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A1 and A7, to declare that his dismissal from service as illegal and to direct the respondents to reinstate him in service with all consequential benefits including backwages and continuity of service.

2. While the applicant was working as Agricultural Demonstrator in October 1979, according to the respondents,

some of his acts were to be taken note of and disciplinary proceedings were initiated against him. Accordingly a charge memo was served on the applicant. He submitted his written statement of defence. Enquiring authority submitted the enquiry report. Enquiry Officer came to the conclusion that the charge levelled against the applicant was not proved. The disciplinary authority served A-1 on the applicant imposing the penalty of dismissal from service. Consequently, A-7 order was issued directing the applicant to hand over all the files and other records to the Extension Service Assistant and submit a copy of charge handing over list to the authority concerned.

3. A-1 order was issued without a show cause notice by the disciplinary authority and also without complying with any procedure, says the applicant.

4. Respondents resist the O.A. contending that the reasons for disagreement and finding of the disciplinary authority have been recorded in A-1 order. None of the provisions of rule 15 requires issuance of show-cause notice to the Government Servant in the event of the disciplinary authority disagreeing with the findings of the inquiring authority.

5. It is the specific case of the applicant that the inquiring authority found the charges against him having not proved but the disciplinary authority without giving an



opportunity of being heard and behind his back A-1 order dismissing him from service was issued and it is unsustainable.

6. What is the legal position in such situation is clearly held in Punjab National Bank and others vs. Kunj Behari Misra reported in (1998) 7 SCC 84 where it has been held that:

"If the enquiry officer had given an adverse finding, as per Karunakar case the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority."

7. There is no averment made in the reply statement to the effect that before passing A-1 order the applicant was afforded an opportunity of being heard. There is no material also made available to show that the applicant was given an opportunity of being heard before passing A-1 order.



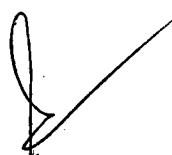
8. In the reply statement it is stated that none of the provisions of Rule 15 requires issuance of show cause notice to the Government servant in the event of disciplinary proceedings with the findings of the inquiring authority.

9. Paragraph 3 of O.M. No. 11012/22/94-Estt. (A) dated 27.11.1995 issued by Government of India, Department of Personnel and Training says that :

"Where the inquiring authority holds a charge as not proved and the disciplinary authority takes a contrary view, the reasons for such disagreement in brief must be communicated to the charged officer along with the report of inquiry so that the charged officer can make an effective representation. "

So, there is an O.M. which mandates giving an opportunity to the applicant in a case like this.

10. In Yogenath D. Bagde Vs. State of Maharashtra and another ((1999) 7 SCC 739) it has been held that though the rule does not specifically provide that before recording its findings, the Disciplinary Authority will give an opportunity of hearing to the delinquent officer but the requirement of "hearing", in consonance with the principles of natural justice, has to be held that before the disciplinary Authority finally disagrees with the findings of the Inquiring Authority, it would give an opportunity to indicate that the findings recorded by the Inquiring do not suffer from any error and that there was no occasion to take a different view.

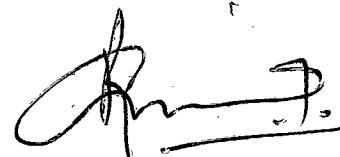


11. In the light of the O.M. referred to in the above cited rule the stand of the respondents that Rule 15 of CCS(CCA) Rules does not say of issuance of a show cause notice cannot be accepted.

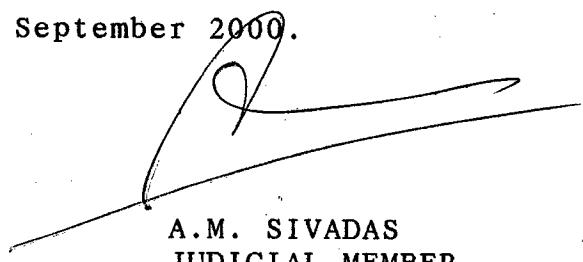
12. Accordingly, A1 & A7 are quashed. Respondents are directed to reinstate the applicant forthwith with all consequential benefits. We make it clear that this will not stand in the way of the respondents in proceeding against the applicant under the CCS(CCA) Rules from the stage of submission of the report by the Inquiring Authority in accordance with rules.

13. O.A. is disposed of as above. No costs.

Dated the 7th September 2000.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

IV

LIST OF ANNEXURES REFERRED TO:

1. Annexure A1: True copy of the Order F.No.5/5/96-CVO dated 16.5.2000 issued by the 2nd respondent to the applicant.
2. Annexure A7: True copy of the Order F.No.1/54/98-DP/611(K) dated 19.5.2000 issued by the 1st respondent to the applicant.

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