

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 59 of 1990
T. A. No.

DATE OF DECISION 26-3-1990

S Sekharan Nair Applicant (s)

M/s GP Mohanachandran, KR Haridas &

M Jayachandran Advocate for the Applicant (s)

Versus

Head, Personnel & General Respondent (s)
Administration, VSSC, Trivandrum & 3 others

Mr KA Cherian, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV 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 *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Y*
4. To be circulated to all Benches of the Tribunal? *Y*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant Mr S Sekharan Nair, Tradesman 'E' in Vikram Sarabhai Space Centre, Trivandrum has challenged the validity, propriety and correctness of the order dated 10.9.1987 at Annexure-A1 issued by the first respondent placing the applicant under suspension, the order dated 15.6.1989 at Annexure-A4 issued by the first respondent imposing on him the penalty of reduction to lower post of Tradesman 'E' in the time scale of pay of Rs.1400-40-1800-E8-50-2300 for a period of one year from the date of the order and proposing to treat the period of suspension as non-duty, the order dated 6.9.1989 at Annexure-A7 issued by the first respondent deciding

to treat the period of suspension as non-duty, the order dated 16.10.1989 at Annexure-A10 issued by the second respondent, the appellate authority, confirming the Annexure-A5 punishment order and the order dated 6.7.1989 at Annexure-A11 issued by the third respondent fixing his pay at Rs.1400-40-1800-EB-50-2300 from 15.6.1989 to 14.6.1990 and has prayed that these orders may be quashed. The facts as averred in the application can be briefly stated as follows.

2. While the applicant was working as Tradesman 'F' in E.M.D., V.S.S.C., Trivandrum by the impugned order at Annexure-A1 dated 10.9.1987 ~~he was placed under suspension.~~ Thereafter, a memorandum of charges Annexure-A2 dated 30.10.1987 was served on him. There were four heads of charges. The following are the articles of charge:

"Article-I"

Shri S Sekharan Nair, (now under suspension) SC No.25935, T/man 'F' EMD who had been deployed at the Central Water Chilling Plant, on 3.9.1987 at about 14.30 hours shouted at and threatened Shri NK Kuriala, Tech: Asst. 'C' EMD/EAC, with dire consequences.

Shouting at and threatening superiors with dire consequences are serious misconduct and also unbecoming of a Government servant in violation of Rule 3(i)(iii) of the CCS(Conduct) Rules 1964.

Article-II

Shri S Sekharan Nair (now under suspension) SC No. 25935, T/man 'F', EMD on 3.9.1987 at about 15.30 hours shouted at Shri K Ganesan, Tech. Asst. 'C', EMD in vulgar and abusive language and also threatened to beat him.

Shouting at superiors and abusing in vulgar language and also threatening to beat are acts unbecoming of a Govt. servant in violation of Rule 3(i)(iii) of the CCS(Conduct) Rules 1964.

Article-III

Shri S Sekharan Nair (now under suspension) SC No. 25935, T/man 'F', EMD on 8.9.1987, at about 15.30 hours was engaged in a scuffle with Shri Jacob Mathew, T/man, EMD/EAC, in the Central Water Chilling Plant.

Engaging in a scuffle with co-worker in the office premises during duty hours is a serious misconduct and also unbecoming of a Government servant in violation of Rule 3(i)(iii) of the CCS(Conduct) Rules 1964.

Article-IV

Shri S Sekharan Nair (now under suspension) SC No. 25935, T/man 'F', EMO, reported for duty on 3.9.1987 and 8.9.1987 under the influence of intoxicated drugs/drinks and acted in an unruly manner.

Reporting for duty under the influence of intoxicated drugs/drinks and acting in an unruly manner are serious misconducts in violation of Rule 22(b) & (c) and Rule 3 (i)(iii) of the CCS(Conduct) Rules, 1964."

On receipt of the memorandum of charges, the applicant submitted an explanation denying the charges in toto. The first respondent ordered an inquiry to be held. The inquiry was held by the Inquiry Authority duly appointed and the applicant also participated in the inquiry. On completion of the inquiry, the Inquiry Authority submitted his report to the first respondent holding that all charges except charge No. I were proved beyond there was doubt while regarding charge No. I/ were only M A preponderance of probabilities. On receipt of the report of inquiry, the Disciplinary Authority without furnishing a copy of the inquiry report to the applicant, passed the impugned order at Annexure-A4 holding that all the charges were proved. Against the proposal to treat the period of suspension as non-duty, the applicant submitted an explanation Annexure-A6 contending that the proposal was illegal and in contravention of the provisions of FR-54. But without considering these objections, the Disciplinary Authority passed the impugned order at Annexure-A7 treating the period of suspension as non-duty and limiting the emoluments due during the period to the subsistence allowance already disbursed to him. Against the punishment imposed on him under Annexure- A4 order and against the order at

Annexure-A7, the applicant preferred two appeals. The appeals were disposed of by the second respondent dismissing the same and confirming the punishment imposed on the applicant by the Disciplinary Authority. On 6.7.1989, the third respondent had issued the order at Annexure-A.11 fixing the pay of the applicant at Rs.2000/- in the scale of Rs.1400-40-1800-EB-50-2300 from 15.6.1989 to 14.6.1990. The third respondent had no authority to pass any such order. Though the applicant preferred an appeal, the second respondent dismissed that also in his order at Annexure-A10. The order of the Disciplinary Authority accepting the report of the Inquiry Authority is unsustainable in law as the whole proceedings is vitiated since the inquiry has been held in gross violation of the principles of natural justice. The applicant was not given a fair and reasonable opportunity to defend himself. The applicant had requested for supply a copy of the preliminary inquiry report. Though the officer who conducted the preliminary inquiry was examined as a witness in support of the charge, the Inquiry Authority refused to supply a copy of the inquiry report to him thereby causing great prejudice to his defence. Therefore, the entire proceedings is vitiated and for that reason the Annexure-A4 order is unsustainable. The appellate authority has not considered the important grounds raised by the applicants in his appeal memorandum and therefore the appellate order is also bad in law. The non-supply of the copy of the Inquiry Officer's report before the Disciplinary Authority proceeded to decide the question of guilt of the applicant has also vitiated the proceedings. Hence the applicant prays that the impugned.

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orders may be quashed and the respondents be directed to treat the period during which the applicant was under suspension as spent on duty ~~xxxxxxxxxxxxxx~~ and to pay him full pay and allowances for this period.

3. In the reply statement the respondents have contended that the inquiry was held properly in compliance with the principles of natural justice, that preliminary inquiry report was not supplied because it was a confidential document, that the rules did not provide for supplying a copy of the inquiry report before the Disciplinary Authority took a decision on the basis of the report and that there is absolutely no merit in the contentions of the applicant that the proceedings are vitiated.

4. We have heard the learned counsel for the parties and also carefully gone through the documents produced and also the file relating to the disciplinary proceedings made available to us by the learned Central Government Standing Counsel appearing for the respondents.

5. Though the impugned orders have been challenged on the various grounds including that findings of the Inquiry Authority accepted by the Disciplinary Authority are perverse, the applicant has raised two questions of law in support of his contention that the impugned orders are vitiated. It has been contended that the punishment order at Annexure-A4 is vitiated because before it was passed by the Disciplinary Authority finding him guilty of all the charges without supplying a copy of the Inquiry Report and giving him an opportunity to make his

representation against the acceptability of the report. The respondents in the reply statement met this contention by stating that in the CCS(CCA) Rules, there is no provision to supply a copy of the inquiry report before the Disciplinary Authority decided the question of guilt and that the departmental instructions directing supply ^{of} a copy of the inquiry report before ^{was taken} a decision by the Disciplinary Authority was issued only after the Disciplinary Authority had already passed the impugned order in this case. But in Premnath K Sharma V. Union of India and Others(SLJ 1988(3) CAT, 449) a Larger Bench of the Tribunal has held that non-supply of copy of the inquiry report and denial of an opportunity to make a representation against acceptability of the report to the delinquent Government servant vitiates the disciplinary proceedings from the stage of receipt of report by the disciplinary authority. In Union of India & Ors. 1094) V. Mohd. Ramzankhan(1990(2)SCALE/ the Supreme Court has held that the non-supply of a copy of the inquiry report and denial of an opportunity to make a representation to the delinquent vitiates the disciplinary proceedings. So In this case since the punishment awarded to the applicant is reduction in rank, the applicant is entitled to the protection of proviso to Article 311(2) of the Constitution. Therefore for the non-supply of copy of the inquiry report, the impugned order at Annexure-A4 is vitiates.

6. Even if the copy of the Inquiry Authority's report was not supplied to the applicant and for that reason, the impugned order at Annexure-A4 is vitiates if the inquiry upto

that stage was in order the respondents could have been given liberty to recommence the disciplinary proceedings from the stage of receipt of Inquiry Authority's report. But in this case we find that the very inquiry is vitiated for non-observance of principles of natural justice. A government servant facing a disciplinary proceedings on a charge of misconduct is entitled to a fair and reasonable opportunity to defend himself unless he is supplied with copies of the documents proposed to be relied on by the disciplinary authority to prove the charges against him. he will not be in a position to make effective defence to cross examining the witnesses and producing counter evidence, if required. In this case, the Inquiry Report itself shows that the request on behalf of the applicant to supply a copy of the preliminary inquiry report was turned down by the Inquiry Authority on the ground that the above document was of confidential nature and that it could not be supplied. It should be remembered that the officer who conducted the preliminary inquiry has been examined as a witness before the Inquiry Authority and evidence regarding the preliminary inquiry conducted by him has been elicited. So it cannot be said that the report of inquiry submitted by the witness is not relevant at all. There is merit in the contention of the applicant that the non-supply of a copy of the inquiry report has resulted in prejudice to his defence. In Kashinath Dikshita V. Union of India (ATR 1986(2) SC, 186) the Supreme Court has observed as follows:

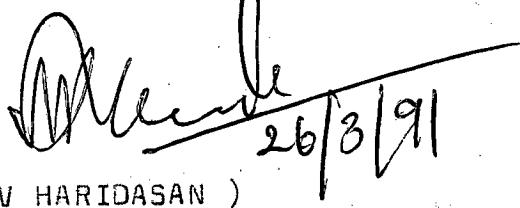
"When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an

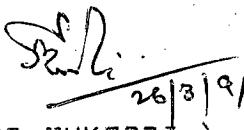
effective manner. And no one facing a departmental inquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In absence of such copies, how can the concerned employee prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf."

As observed by us earlier since the officer who conducted the preliminary inquiry has been examined as witness No.8 on behalf of the disciplinary authority to establish the charges against the applicant, it cannot be said that the preliminary inquiry report and the statements recorded by him of the witnesses questioned by him were not relevant. If the applicant had probably been supplied with these documents, he could have cross-examined the witnesses including witness No.8 in a more effective manner. Therefore we are convinced that the refusal on the part of the inquiry authority to supply to the applicant a copy of the preliminary inquiry report has caused prejudice to his defence and for that reason the disciplinary proceedings is vitiated for non-observance of principles of natural justice. In Jagannath Behera V. Union of India and others (1989(9) ATC, 21, the Cuttack Bench of the Central Administrative Tribunal has held that the non-supply of the copy of the preliminary inquiry report and the statement of the witnesses to the delinquent in that case have caused prejudice to him and that therefore the proceedings were vitiated. In this case also we find that the disciplinary proceedings which culminated in Annexure-A4 order is vitiated for non-observance of the principles of natural justice for the same reason. The

appellate authority has not considered this aspect of the case though the applicant had specifically raised this ground in his appeal memorandum. Therefore the appellate order also is bad in law. In view of our finding that the entire disciplinary proceedings against the applicant is vitiated, we find that it is unnecessary to go into the other contentions of the applicant such as perversity of findings etc.

7. In the conspectus of facts and circumstances, we allow the application and quash the impugned orders Annexure-A4, A7, A10 and A11 and the applicant is exonerated of all the charges. The respondents are directed to pay to the applicant full pay and allowances for the period during which he was under suspension and to treat this period as spent on duty. If there has been any reduction in his emoluments by reason of the imposition of the punishment which has been set aside, we direct that the arrears of salary and allowances should be disbursed to him as if the punishment had not taken effect. The disbursement of the arrears of pay and allowances as directed above should be made within a period of two months from the date of communication of this order. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

26-3-1991

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