

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

MONDAY THIS THE 10th DAY OF NOVEMBER, 2003

OA 607/02

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

A.V.Karunakaran,
Mech.(AS) H.S.II,
Naval Aircraft Yard,
Kochi (under orders of compulsory
retirement from service) residing at
Anjilitharayil House,
Kanjiramatton PO.Applicant

(By Advocate Mr.K.A. Abraham)

V.

1. The Commodore Chief Staff Officer (P&A)
Headquarters, Southern Naval Command,
Kochi.
2. Flag Officer Commanding in Chief,
Headquarters, Southern Naval Command,
Kochi.
3. The Chief of Personnel,
Naval Headquarters,
New Delhi.Respondents

(By Advocate Mr.C. Rajendran, SCGSC)

The application having been heard on 22.10.2003, the
Tribunal on 10. 11.2003 delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant A.V.Karunakaran, Ex-Mech(AS)H.S.II,
Naval Aircraft Yard, Kochi has filed this application
seeking to set aside the Enquiry Report (Annexure.A11), the
order dated 12.7.2001 (A.13) of the 1st respondent imposing
on the applicant the penalty of compulsory retirement from
service as also ordering that on such compulsory retirement
he would be entitled for pension and gratuity at the rate of

✓

2/3rd of the entitled pension and gratuity subject to the minimum pension prescribed under Rule 40(3) of the Central Civil Services Pension Rules, 1972 as also the order dated 20.2.2002 (A.15) of the second respondent, the appellate authority, confirming the Annexure.A13 order of the disciplinary authority and for appropriate relief.

2. The factual matrix is briefly stated as under. The applicant while working as Mechanic (AS) Highly Skilled II was suffering from serious rheumatic arthritis during February, 1997. He therefore, applied for medical leave from 5.3.97 to 1.6.97 supported by a medical certificate issued by authorised registered medical practitioner. The leave was granted. As he did not become allright as advised by the same medical practitioner, the applicant applied for extension of leave from 2.6.97 to 29.8.97 on medical grounds supported by a medical certificate. However , the competent authority issued a letter (A.1) dated 10.6.97 addressed to the Medical Officer, ISM, Ernakulam requesting the medical officer to examine the applicant and report whether he was suffering from rheumatic arthritis as certified by Dr.C.I.John and whether he was suffering from the said decease even then,marking a copy to the applicant and directing him to appear before the medical board. The wife of the applicant on receipt of a copy of Annexure.A1 letter informed the Commdr.Superintendent, Naval Aircraft Yard that her husband was at that time undergoing a special treatment under a Tribal Physician at Wayanad which could not be discontinued, that it was not possible either to communicate

(h)

with the applicant or for the applicant to appear before the Medical Officer during the course of the treatment and requesting that the Medical Board for second medical opinion be put off till the treatment was over or to grant the extension of leave applied for (Annexure.A2). She also wrote to the District Medical Officer, Indian System of Medicines (A3) requesting postponement of the medical board to a future date informing that her husband would not be in a position to appear on 27.6.97. The applicant who got cured of his ailment rejoined duty on 16.7.97 producing a certificate of fitness from the authorised medical attendant who had issued the medical certificates. The office of the second respondent had sent a letter on 20.6.97 to the Superintendent of Police, Ernakulam to report whether the applicant had left India (A4) and another letter to the Regional Passport Officer, Ernakulam on 25.6.97 (A5) as whether the applicant had obtained a passport. The Superintendent of Police allegedly issued Annexure.A6 reply stating that it was understood that the applicant had left for Bombay on 6.3.97, then to Kuwait on 11.3.97 worked there for some time and returned. The Regional Passport Officer has allegedly written Annexure. A7 letter stating that the applicant had been given a passport in lieu of his previous passport No.M.716541 dated 9.11.92 said to have been lost. Under these circumstances the applicant was served with a memorandum of charge dated 26.11.97 (A8). There were four articles of charges which read as follows:

Article I: That the said Shri A.V.Karunakaran whilst employed as Mech(AS)HS II in Naval Aircraft Yard, Kochi did remain unauthorisedly absent from duty w.e.f. 02 Jun 97 to 15 Jul 97. The said act of Shri A.V.Karunakaran is in violation of Rule 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.

M

Article II:

That the said Shri A.V.Karunakaran whilst employed as Mech (AS) HS II did mislead the administration by submitting false medical certificate. The said act of Shri A.V.Karunakaran is in contravention of Rule3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.

Article III:

That the said Shri A.V.Karunakaran whilst employed as Mech.(AS) HS II did obtained an Indian Passport No.A.0804308 without obtaining No Objection Certificate from the Competent Authority. The said act of Shri A.V.Karunakaran is in violation of Rule3(1)(iii) of Central Civil Services (conduct) Rules, 1964.

Article IV:

That the said Shri A.V.Karunakaran whilst employed as Mech (AS) HS II left Indian for a Foreign Country viz. Kuwait and secured employment at "Floor International Company" of Kuwait without obtaining permission of the competent authority. The said act of Shri A.V.Karunakaran is in violation of Rule 15(1)(b) of Central Civil Services (conduct) Rules, 1964.

3. The applicant submitted a reply to the Memorandum of Charges (A9) emphatically denying all the imputations against him and stating that there was no reason to reject his application for leave and that he was not guilty of any misconduct. An enquiry was thereafter held. The Enquiry Officer submitted Annexure.A11 report holding the applicant guilty of the charges. Although the applicant submitted a representation explaining why and how the findings of the enquiry officer could not be accepted, as they were perverse and not supported by any legal evidence, the disciplinary authority accepted the findings and held the applicant guilty of the charges and imposed on him the penalty of compulsory retirement and reduction of pensionary benefits. Although the applicant filed a detailed appeal, the appellate authority rejected all the contentions of the

m

applicant by the impugned order Annexure.A15 confirming the penalty of compulsory retirement as also the reduction on pensionary benefits. Aggrieved the applicant has filed this application under Section 19 of the Administrative Tribunals Act seeking setting aside the impugned orders with all consequential benefits to him.

4. The impugned orders are mainly assailed on the ground that the enquiry was not held in conformity with the rules and principles of natural justice, that the documents listed in Annexure.A8 Memorandum of charges were all relied on by the disciplinary authority to find the applicant guilty without these documents being brought on record and without examining the persons competent to prove them, that the alleged reports of the Superintendent of Police and Passport Officer were treated as evidence without examining the officials who allegedly sent these reports and that as there was absolutely no evidence to establish the charges of unauthorised absence or leaving India without permission or obtaining passport without receiving a no objection certificate from the department, the finding that the applicant was guilty was vitiated, unwarranted from evidence, perverse and unsustainable and the penalty imposed is also therefore void and inoperative. It has also been alleged that the applicant was not given a reasonable opportunity to state his defence either orally or in writing or to adduce evidence in defence nor was he questioned as required under Sub Rule 18 of Rule 14 of the CCS (CCA) Rules and that for these reasons the enquiry is vitiated. The

M

appellate authority has not considered these aspects and therefore the appellate order is also devoid of application of mind, alleged the applicant.

5. The respondents have filed a reply statement in which they contend that the enquiry has been held in conformity with the principles of natural justice and affording the applicant reasonable opportunity to defendant, that the finding been based on documentary as also oral evidence, there is no merit in the application.

6. We have carefully gone through the entire pleadings and all the materials brought on record and have heard at length the arguments of the learned counsel of the applicant Shri K.A.Abraham and of Shri C.Rajendran, SCGSC who appeared for the respondents. Shri K.A.Abraham, learned counsel of the applicant confined his argument to mainly three points namely (1) the enquiry was not held in conformity with the rules as the disciplinary authority failed to bring on record the documents which he relied on without examination of the witnesses who were competent to prove the documents (2) the finding that the applicant is guilty is per verse as it is based on no evidence at all and (3) the penalty is illegal and grossly disproportionate to the alleged misconduct.

7. We shall ~~xxxxx~~ consider the second point first. Adverting to this contention the learned counsel of the applicant referred us to that part of the proceedings of the

✓

enquiry which contain depositions of all the witnesses upto the conclusion of the enquiry. Going through the testimonies of all the witnesses examined in support of the charges in its entirety we find that none of the witnesses have either stated that the applicant was unauthorisedly absent or that he had obtained passport without obtaining a no objection certificate of the department or that he had left India during the period of absence and obtained employment elsewhere. The only evidence adduced is that the applicant did not report for duty from 2.6.97 to 10.7.97. The enquiry authority as also the disciplinary authority came to the conclusion that the applicant left for Bombay on 6.3.97, went to Kuwait, got employed under Floor International Company from 11.3.97 to 12.7.97, returned from Kuwait on 13.7.97 on the basis of Annexure.A6 letter alleged to have been written from the District Police Office for the Superintendent of Police Ernakulam and for finding that the applicant without intimation and permission of his office obtained a passport on the basis of Annexure.A7 letter dated 14.8.97 alleged to have been written from the office of the Regional Passport Office for Regional Passport Officer wherein it was stated that the applicant was granted a passport No. 0804308 dated 24.6.96 in lieu of his earlier passport dated 9.11.92 which ^{was} reported lost and that in this application for passport there was no column to indicate profession. The learned counsel argued that no officer who had written the letter to the Superintendent of Police or to the Regional Passport Officer nor anyone who received these letters were examined, that the authors of Annexures.A6 and

A7 letters were not summoned and examined although the enquiry officer had during the proceedings stated that these officers would be summoned and examined, that therefore, no probate[✓] value can be attached to Annexures A6 and A7 as the authors of these letters are unknown and the veracity of the contents have not been established by subjecting the authors in cross examination and that any decision based on these two letters is per verse and not supported by any evidence at all. He further argued that as none of the documents described in Annexure A8 to the Memorandum of Charges has been put to any of the witnesses examined and as no order was made by the enquiry authority in the file that these documents have been brought on record, the enquiry authority has committed a serious error in law by placing absolute reliance on these documents and coming to the conclusion that the applicant was guilty of all the charges. The learned counsel further argued that the 1st respondent having granted him leave for the period 5.3.97 to 1.6.97 on the basis of the medical certificate issued by Dr.C.I.John, the authorised medical practitioner and had allowed the applicant to rejoin duty on the basis of the fitness certificate issued by him was not justified in doubting the genuineness of Annexure R.4 certificate. He further argued that as the intimation calling upon the applicant to appear before the medical board was not served on him as he was at that time undergoing treatment at Wynad under a Tribal Medical Practitioner, the applicant cannot be faulted for not appearing before the medical board and as a medical board was not thereafter convened, the action on the part of

✓

the respondents in initiating disciplinary proceedings against the applicant without taking a decision regarding grant of leave sought by him from 2.6.97 was unjust. He further argued that as the applicant reported for duty when he became allright, the entire action taken against the applicant was unwarranted, ill-advised and malafide. Referring to the penalty of compulsory retirement and reduction of the pensionary benefits, the counsel argued that the penalty is not only disproportionate to the alleged misconduct but is not in accordance with the provisions of law.

8. The learned counsel of the respondents on the other hand argued that as the applicant was aware that extension of leave from 2.6.97 onwards was not granted his absence was unauthorised and there was nothing wrong in relying on Annexures A6 and A7 letters of the Superintendent of Police and Regional Passport Officer since there was no reason to doubt the correctness of the contents of these letters. The findings therefore being based on proper evidence, the learned counsel contend that no interference is called for in the matter. The learned counsel argued that the penalty imposed on the applicant is well deserved and cannot be considered disproportionate or illegal.

9. As the misconducts with which the applicant was charged were very serious and the penalty imposed is also very severe, we have to see whether the enquiry has been held in conformity with the rules and principles of natural justice, whether the applicant has been afforded reasonable

opportunity to establish his innocence and whether the finding of guilt has been arrived at on the basis of some evidence legally acceptable. It is seen from the proceedings of the enquiry that after the closure of the evidence in support of the charge, the applicant was not required to state his defence either orally or in writing. It is also seen that the applicant was not questioned on the evidence appearing against him in the testimonies of the witnesses or in the documents brought on record at the enquiry. The questioning of the delinquent government servant on the evidence appearing against him is intended to give the government servant an opportunity to explain any fact or circumstances in the evidence which would inculpate him. It is a very important and substantial opportunity available to a Government servant to defend himself. We find that that this very important opportunity has been denied to the applicant. Since the documents listed in Annexure.III to the Memorandum of Charges have not been brought on record examining any one of the witnesses the applicant could not have understood that the enquiry authority or the disciplinary authority would rely on these documents, as they did not form part of the evidence at the enquiry and although they were listed as documents in Annexure.III to the memorandum of charges. If the enquiry officer had questioned the applicant with reference to Annexure.A6 or Annexure.A7 or any of the documents for that matter, it would have been open for the applicant to say that these documents could not be relied on as the same have not been proved. It is true that documents which are

✓

admitted could be marked in evidence without examining any witness on the concurrence of the parties. Here throughout the proceedings there is no order of the Inquiry Officer bringing the documents on record ~~as~~ ⁱⁿ admission of parties or otherwise. Therefore not questioning the applicant as required under Sub Rule 18 of Rule 14 of the CCS (CCA) Rules has undoubtedly caused prejudice to the applicant in his defence. The argument of the learned counsel that the enquiry has not been held in accordance with the rules and in compliance with the principles of natural justice which caused prejudice to him therefore has merit.

10. Coming to the question whether any of the findings of the Inquiry Authority and the Disciplinary Authority in this case is based on some evidence or is totally per verse, we find ourselves unable to disagree with the arguments of the learned counsel of the applicant that there is no iota of evidence at all which would bring home the guilty of the applicant in any one of the articles of charges. Regarding unauthorised absence from 2.6.97 onwards the applicant had as is evident from Annexure.R.3 leave application sought extension of leave from 2.6.97 to 29.8.97 on the ground of illness and it is seen that Annexure.R.4 certificate was issued by Dr.C.I.John on 2.6.97. It is stated in the reply statement as the leave application was dated 28.5.97 and the medical certificate attached thereto was issued on 2.6.97 it could not be accepted that the medical certificate was genuine. Apparently it may appear that the said contention has some force but on a careful scrutiny of Annexure.R.3 it

would be evident that the leave application though dated 28.5.97 was despatched only on 5.6.97 after Annexure.R.4 certificate was issued by Dr.C.I.John. If there was any doubt on the genuineness of the medical certificate it was open for the respondents to call upon the applicant to explain the discrepancy or to counter check the correctness of the certificate contacting Dr.C.I.John who issued the medical certificate. Even assuming that the action of the respondents in calling upon the applicant to appear for a second medical opinion before a medical board was right since it is ^{✓✓} evidence that the communication did not reach the hands of the applicant as he was allegedly away in Wayanad on receipt of a reply from the wife of the applicant explaining the circumstances under which the applicant could not be contacted the competent authority should have afforded another opportunity to the applicant to appear before a medical board. However, in between the applicant actually joined duty. From the material on record as the medical officer who issued Annexure.R.4 certificate has not been questioned nor has it been established that the claim of illness during the period was false, we are of the considered view that the findings that the applicant was unauthorisedly absent from duty after 2.6.97 and that he produced false medical certificate are based on no evidence at all as no witness has testified that the absence of the applicant was not on account of illness which prevented him from reporting for duty and the medical certificate was false. The finding that the applicant was guilty of the other charges based on Annexures.A6 and A7 letters are also

✓

according to us totally per verse. Annexure.A6 is a letter alleged to have been issued from the District Police Office signed by somebody for Superintendent of Police which reads as follows:

No.1593/G1/SBA/97ER. District Police Officer,
Ernakulam Rural, Aluva
Dated 29.7.97.

From

Superintendent of Police,
Ernakulam Rural, Aluva.

To

The Civilian Admin.Officer,
Naval Aircraft Yard,
Kochi-682004.

Sir,

Sub: Long leave - verification of Sr A.V.Karunakaran
regarding.

Ref: No.272/6/579(discip.) dated 20.6.97.

....

Please refer to the subject and reference cited.

Enquiries were made about Shri A.V. Karunakaran, Nangeth House, Amballoor PO, Ernakulam mentioned therein.

It is known that Sri A.V.Karunakaran was on Medical Leave from 5.3.1997 onwards. On 6.3.97 he left for Bombay and from there left for Kuwait on 11.3.97 and worked at "floor International Company" at Kuwait during the period from 11.3.97 to 12.7.97. He returned from Kuwait on 13.7.97 and at present he is present in his house at Amballoor. It is also known that he had already obtained a passport earlier and travel abroad during the year 1993 for four months.

This is for information.

Yours faithfully,

Sd/-

For Superintendent of Police
Ernakulam Rural, Aluva.

It is not evident from Annexure.A6 who conducted the enquiry, who was contacted to collect the details and whether the contents are true and correct. Without

✓

examining the author of this letter and establishing the veracity of the contents no reasonable person can on the basis of this letter come to a conclusion that the applicant had left for Bombay on 6.3.97, thereafter left for Kuwait and returned on 13.7.97. Similarly what is contained in Annexure.A7 is that a passport was issued to the applicant on 24.6.96 in lieu of a passport which had been issued to him previously in the year 1992 which was lost. The author of this letter also ^{having} finding not been examined or offered for cross examination, we are of the considered view that no reliance could be placed by any reasonable person to conclude that the applicant obtained a passport without obtaining no objection certificate from the competent authority or without disclosing his profession as no evidence in that regard is available. Surprisingly even the officials who sought these information from the Superintendent of Police and Regional Passport Officer or who received Annexures.A6 and A7 letters were not examined.

11. On a careful scrutiny of the entire materials on record, we find that the finding that the applicant is guilty of the charges has been arrived at not on the basis of any evidence which is legally acceptable and the finding therefore are per verse.

12. Coming to the legality of the penalty, the question of penalty would arise only in case the guilt is established. Now that we find that the findings of guilt

are perverse the legality of the penalty does not assume any importance. However, it is seen that apart from a penalty of compulsory retirement a reduction in the pension otherwise admissible and gratuity has been ordered, which is not provided in any of the rules. Reduction in the pension to 2/3rd subject to the minimum pension and reduction of gratuity is not a penalty which can be imposed on a government servant according to the provisions of Rule 11 of CCS (CCA) Rules.

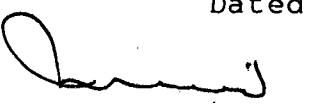
13. In the light of what is stated above, we find that the impugned orders Annexure A13 and A15 are liable to be set aside. Since the impugned order of penalty and also appellate order are to be set aside it goes without saying that the applicant has to be reinstated in service with all consequential benefits as if these orders did not have any legal effect.

14. In the facts and circumstances of the case we are of the considered view that the interests of justice would be met if the applicant is ordered to be reinstated forthwith in service, to treat the period between the date of compulsory retirement and reinstatement as duty for all purposes, to regularise the period of absence between 2.6.97 till 18.7.97 by grant of Extra Ordinary Leave on medical grounds and to pay the applicant 50% of the pay and allowances for the period between the date of compulsory retirement and reinstatement.

m

15. In the result, the application is allowed. The impugned orders Annexure.A13 and Annexure.A15 are set aside. The respondents are directed to reinstate the applicant forthwith in service, to treat the period between the date of compulsory retirement to the date of reinstatement as period spent on duty, to regularise the period between 2.6.97 and 18.7.97 by grant of Extra Ordinary Leave on medical grounds and to pay the applicant 50% of the arrears of pay and allowances for the period between the date of his compulsory retirement and reinstatement. The above direction shall be complied with within a period of two months from the date of receipt of a copy of this order. No order as to costs.

Dated the 10th day of November, 2003


T.N.T. NAYAR
ADMINISTRATIVE MEMBER

(s)


A.V. HARIDASAN
VICE CHAIRMAN