

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 608/93

Wednesday, this the 9th day of February, 1994

SHRI N. DHARMADAN, MEMBER (J)
SHRI S.KASIPANDIAN, MEMBER(A)

M. Abdulkarim, LDC,
O/o NCC Directorate,
Trivandrum-10.

.. Applicant

By Advocate Shri G.Sasidharan Chempazhanthiyil.

V/s

1. Dy. Director General,
NCC (K&L), Trivandrum-10.

2. Director General, NCC,
West Block No.4, RK Puram,
New Delhi - 66.

3. Sri Lt. Col. Sudhakar Singh
(Inquiry Officer), Commanding
Officer-I, Kerala Girls Dn.,
NCC, Trivandrum-10.

.. Respondents

By Advocate Shri C.N.Radhakrishnan, ACGSC.

ORDER

N. DHARMADAN

The applicant is approaching this Tribunal for the third time. He seeks for quashing of the punishment imposed as per Annexures-X and XI.

2. Originally, on 25th March, 1987, he was served with a charge memo for proceeding against him under Rule 16 of the CCS (CCA) Rules. Later, it was followed by a penalty advise imposing a punishment of withholding two increments with cumulative effect. When the appeal filed against the same was rejected, he filed OAK 322/87 which was allowed as per Annexure-I judgment with the following directions:-

..... 2/-

"5. In the above facts and circumstances we allow the application to the extent of setting aside the impugned orders at Annexure-4 and Annexure-7 to the application and direct that denovo disciplinary proceedings should be taken against the applicant in accordance with law, from the stage of framing and serving of the charge sheet. There will be no order as to costs."

2. Thereafter, Annexure-VI order was passed on 16.7.90 imposing a punishment of reduction of pay by four stages from Rs.1350 to Rs.1240 in the scale of Rs.950-1500 for a period of four years w.e.f. 1.8.90 with further observation that reduction will have effect of postponing his future increments. The said order was challenged in the subsequent original application No.107/91 which was allowed after setting aside the appellate order and remitted the case back to the appellate authority for a fresh consideration in all aspects with special reference to sub-rule (2) of Rule 27 of CCS (CCA) Rules, 1965.

3. The contention of the applicant in this case is that the appellate authority has taken a vindictive attitude towards the applicant and enhanced the penalty on account of the repeated filing of original applications. He further submitted that the authority did not apply mind to the facts of the case with special reference to sub-rule (2) of Rule 27 of CCS (CCA) Rules, 1965. In fact, accord-ing to him, there was no consideration of the quantum of penalty in terms of the direction of this Tribunal in the earlier judgment with a view to reducing the same. The original punishment imposed on the applicant on 8.6.87 was minor when compared to the subsequent punishment after the judgment and the evidence relied on by the authorities are the same. This Tribunal in two earlier judgments analysed all the aspects and indicated that the punishment is severe and does not commensurate with the gravity of the offence. However, a sympathetic consideration of the grievance of the applicant at least in regard to the

quantum of punishment is called for. It appears that the authorities have not examined the issues involved in this case in proper perspective in the line indicated by this Tribunal in the earlier judgments.

4. Learned counsel for the respondents relied on the decisions of V.R.Katarki vs. State of Karnataka, AIR 1991 SC 1241, and State of Maharashtra vs. Madhukar Narayan Mardikar, AIR 1991 SC 207, and submitted that this Tribunal shall not interfere with the quantum of punishment alone unless the Tribunal is satisfied that the orders are bad and unsustainable and liable to be set aside on other grounds as well.

5. It is settled proposition of the law that the quantum of the appointment is to be fixed and settled by the statutory authorities with reference to the facts of each case and the gravity of the offence. They would use their discretion while fixing the quantum of punishment bonafide after due application of mind to the relevant facts and circumstances uninfluenced by any other extraneous considerations.

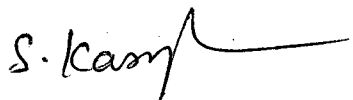
6. In the instant case, the original punishment was only a minor penalty of withholding of two annual increments of the applicant as per the order passed on 8.6.87. That was confirmed by the appellate authority who passed the order on 16.9.87. That order was set aside by Annexure-I judgment. Later the punishment was increased and converted it into a major penalty. No reason has been given for enhancing the punishment to a major penalty of reducing the pay of the applicant from Rs.1350/- to Rs.1240/- in the scale of Rs.950-1500 with the further direction to postpone the reduction for a further period of four years in the future. This was also set aside and remitted the case back for further fresh consideration. The impugned orders were passed after the second judgment.

7. We are not very much impressed by the reasons stated in the impugned order. However, we are not going to the merits at this stage. In the light of the objections raised at the time of hearing, learned counsel for the applicant submitted that his client is proposing to file a revision petition before the competent authority under the provisions of the CCS (CCA) Rules.

8. Having heard the learned counsel on both sides and after careful consideration of the facts and circumstances of the case, we are of the view that the appropriate remedy to the applicant against the impugned order is to file a revision petition before the appropriate authority. In this view of the matter, as indicated above, it is not necessary for us to go into the merits of the case. The application can be disposed of with appropriate directions.

9. Accordingly, we dispose of the application with the direction to the applicant to file revision petition, if so advised, within three weeks from the date of receipt of a copy of this judgment. If such a revision petition is filed as directed above, it shall be considered and disposed of on merits, in accordance with law.

10. The application is disposed of as above. There will be no order as to costs.



(S.KASIPANDIAN)
MEMBER(A)



(N.DHARMADAN)
MEMBER(J)

V/-