

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.69/2001

Thursday this the 2nd day of January, 2003.

C O R A M

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

N.P.Kuttan,
Peon, I.N.H.S., Sanjivani,
Naval Base, Kochi - 4.
Residing at :
Ottathengal House,
Vezhapura P.O, Ramangiri,
Kuttanad Taluk,
Alleppey District

Applicant

[By Advocate Mr.T.C.Govindaswamy]

Vs.

1. The Union of India represented by
the Secretary to the Ministry of Defence,
New Delhi.
2. The Flag Officer Commanding in Chief,
Headquarters, Southern Naval Command,
Kochi - 682 004.
3. The Chief Staff Officer (P&A),
Headquarters, Southern Naval Command,
Kochi - 682 004.
4. The Surgeon Captain,
Commanding Office, Headquarters,
Southern Naval Command,
Kochi - 682 004.

Respondents

[By Advocate Mr.C.Rajendran, SCGSC]

The application having been heard on 7.11.2002, the
Tribunal on 2.01.2003 delivered the following:

O R D E R

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant is a Peon working in I.N.H.S Sanjivani
under the respondents with effect from 10.6.1980. He was
issued with a charge sheet No.269/3/4 dated 11.11.94 (Annexure
A-2) by the 4th respondent alleging certain misconduct.

Thereafter a penalty bearing No.2696/77 dated 10.1.2000 (Annexure A-5) was issued by the 3rd respondent by which applicant's pay has been reduced to two stages from Rs.3200/to Rs.3080/- in the time scale of pay of Rs.2550-3200 without the effect of postponing future increments. Appeal was filed against the said order and vide order Annexure A-7 dated 16.7.2000 the penalty was affirmed.

2. Aggrieved by the said orders the applicant has filed this Original Application under Section 19 of Administrative Tribunal's Act, 1985 seeking the following reliefs :-

- (a) Call for the records leading to the issue of Annexure A-2, A-5 and A-7 and quash the same and direct the respondents to grant consequential benefits thereof;
- (b) Award costs and incidental to this application;
- (c) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

3. The applicant further averred in the O.A that while he was working as a Peon, the 4th respondent under Rule 16 of CCS (CCA) Rules, 1965 has issued a charge memorandum with the following allegations:-

"Article I: On 1st November, 91 at about 12.30 hrs. Shri N.P.Kuttan, Peon did disobey the lawful orders of his Superior Officer and caused inconvenience to the section.

Article II: On 1st November, 91, Shri N.P.Kuttan, Peon did behave in a disorderly manner with his Superior during working hours and created disturbance in Ship's office."

4. The applicant was sick and laid up due to typhoid and reply to the charges could not be submitted within time. An ex-parte order dated 14.1.92 was passed by the 4th respondent withholding his annual increment for a period of one year with effect from 15.12.92 without cumulative effect. The 2nd respondent on appeal affirmed the penalty. Aggrieved by that order the applicant has filed O.A.No.1654/92 before this Hon'ble Tribunal praying for quashing the penalty advice and the appellate order. This Tribunal allowed the Original Application and quashed the impugned orders and disposed of the application with the following observation :

" In view of this submission, we admit the application, set aside the impugned order at Annexure B1 and E. We direct the applicant to submit his explanation to the Charge Sheet at Annexure A2 within a period of two weeks from the date of communication of this order. We also direct the first respondent to consider the explanation submitted by the applicant to the charge sheet at Annexure A2 and to take appropriate decision within a period of two months from the date of receipt of the explanation from the applicant. There is no order as to costs. "

5. In obedience of the directions of this Hon'ble Tribunal, the applicant submitted his explanation denying the charges. While the 2nd respondent vide order dated 29.1.93 rejected the request of the applicant for dropping the disciplinary proceedings and conducting fresh inquiry. Aggrieved by that, the applicant filed O.A 443/93 and this Tribunal vide order dated 7.2.94 allowed the Original Application with the following observations :

" Since the applicant has specifically denied the charges and asserted that he has clean record of service, we are of the view that the first respondent is not justified in not having perused the documents and witnesses before coming to the conclusion that the charges are proved and penalty imposed on the applicant in the facts and circumstances of the case cannot be sustained.

In the result, we set aside Annexure H order and remit the case back to the first respondent for conducting the enquiry in accordance with Rule 14 of the CCS(CCA) giving opportunity to the applicant to establish his innocence. The procedural formalities in accordance with the rules should be strictly complied with in the enquiry. "

6. Thereafter, vide Annexure A-2, Annexure A-1 charge sheet dated 22.11.91 was cancelled and a fresh charge sheet bearing No.269/3/4 dated 11.11.94 has been issued which contained the following articles of charge.

" Article I : That the said Shri N.P.Kuttan while functioning as Peon in Ship's Office of INHS Sanjivani has disobeyed the lawful orders of his superior officer and caused inconvenience to the Section, which is in contravention of Rule 3(i) (iii) of CCS (Conduct) Rules, 1964.

Article II : That the said Shri N.P.Kuttan, while functioning as Peon in Ship's Office of INHS Sanjivani has behaved in a disorderly manner with his superior during working hours and created disturbance in ship's office which is in contravention of Rule 3(i) (iii) of CCS (Conduct) Rules, 1964.

7. The case was referred to the 3rd respondent who enjoys the power of appointing authority as well as the disciplinary authority. Thereafter, one K.D.Babu, Junior Design Officer, Naval Shipyard, Kochi was appointed as Enquiring Authority and one M.Sankara Narayanan was appointed as Presenting Officer. The two defence witnesses were examined. After examination of the defence witnesses, the enquiry abruptly ended without subjecting the applicant to self examination and without questioning the applicant against the evidence, if any, found against him. It is contented that the whole enquiry was vitiated with serious illegalities and finally the Presenting Officer submitted his written brief contenting that the charges have been proved.

8. Highlighting the various illegalities in the enquiry, the applicant's Defence Assistant by his representation dated 24.2.98 submitted his defence statement, Annexure A-3. Without considering the same, the Inquiry Officer submitted his report finding the applicant guilty of charges. The true copy of which is Annexure A-4 dated 7.9.98 which is perverse and arbitrary. The applicant by his representation dated 2.11.98 addressed to the third respondent filed his objections to the enquiry report. The third respondent imposed the penalty of reduction of applicant's pay by two stages from Rs.3200/- to Rs.3080/- in the time scale of Rs.2550 - 3200 for a period of two years without the effect of postponing his future increments. The true copy is Annexure A-5 dated 10.1.2000. The applicant submitted detailed appeal dated 2.3.2000 vide Annexure A-6 which was rejected by the 2nd respondent vide Annexure A-7 order dated 10.7.2000. The penalty imposed to the applicant remains affirmed. Annexure A-7 is arbitrary, discriminatory and contrary to law without application of mind.

9. Respondents had filed a detailed written statement contenting that the applicant was charge sheeted for minor penalty under Rule 16 of CCS (CCA) Rules, 1965 and was given an opportunity to represent and on failure to submit his statement, a penalty of withholding of one increment without cumulative effect for a period of one year was imposed.

10. Applicant filed Original Applications mentioned above and 4th respondent conducted fresh enquiry in accordance with Rule 14 of the CCS (CCA) Rules, 1965 and was given an

opportunity to the applicant to establish his innocence. Thereafter, a full-fledged inquiry was conducted and orders were issued imposing penalty considering the gravity of the conduct. The misconduct committed by the applicant on 1.11.91 was while on duty. He was afforded opportunity to make his defence statement. As per directions of this Hon'ble Tribunal, respondents conducted an enquiry afresh in accordance with Rule 14 of CCS (CCA) Rules, 1965 and a fresh charge sheet was issued in accordance with the directions of this Court. As per the Rules, an enquiry is mandatory if the charges are not accepted by the delinquent. The applicant denied the charges. Hence enquiry was proceeded, giving full and fair opportunity to the applicant to prove his innocence. The proceeding was conducted in strict compliance of the procedures laid down in Rule 14 of the CCS (CCA) Rules, 1965. The disciplinary authority and appellate authority have given due consideration and application of mind to pass the impugned orders, which are not faulted. The grounds raised in the Original Application are either tenable or sustainable. Fair opportunity was granted to the applicant to defend his case and cross examined the witnesses. But he did not avail the opportunity despite repeated directions by the Inquiring Authority. The appellate authority also considered the appeal by giving a suitable reply. There is no procedural lapses occurred at the initiating stage or during the process of inquiry or thereafter nor there are any special reasons for considering the appeal preferred by the applicant sympathetically and therefore, the application is liable to be dismissed.

11. Applicant filed rejoinder submitting that contrary to the directions contained in the judgment dated 7.2.94, respondents issued a fresh charge sheet denying reasonable opportunity to the applicant.

12. Respondents filed additional reply statement contenting that the inquiry officer analysed the case with reference to articles of charge based on the statement of witness and available documentary evidence.

13. Shri T.C.G.Swamy appeared for the applicant and Shri C.Rajendran, SGCSO appeared for the respondents. Learned counsel for the parties has taken us through the factual aspects of the case and Shri T.C.Govindaswamy, Learned Counsel for applicant argued that reasonable opportunity was not granted to the applicant and the enquiry ended abruptly generally on the circumstances appearing against him in evidence. Referring to Sub Rule 18 of Rule 14 of CCS (CCA) Rules, 1965, the Enquiry Officer is bound to generally question the applicant on the circumstances appearing against him in evidence. Non compliance of Rule 14 (18) by the Enquiry Officer has resulted in substantial prejudice to the applicant. The whole enquiry is therefore, vitiated with serious illegalities.

14. Learned counsel for respondents submitted that the applicant was satisfied and he has signed the proceedings sheets which will prove that the same was conducted strictly following the principles laid down in Rule 14. Therefore, the pleadings in the O.A and arguments advanced is not tenable and sustainable.

15. We have heard learned counsel for the parties, gone through the pleadings, evidence and materials on record.

16. The applicant was a peon and the alleged charges are :-

- (i) Disobey the lawful orders of his superior officer and caused inconvenience to the Section.
- (ii) Behaved in a disorderly manner with his superior during working hours and created disturbance in Ship's office .

An ex-parte order was passed against him, which he challenged in O.A 1654/92 before this Tribunal. The Tribunal quashed the impugned order of penalty and as per directions charges were not dropped. Then the applicant filed O.A.No.443/93 and by setting aside the impugned order the matter was remitted to the 1st respondent for conducting the enquiry in accordance with Rule 14 of CCS (CCA) Rules, giving opportunity to the applicant to establish his innocence. The procedural formalities in accordance with the rules should be strictly complied with during the enquiry. Fresh charge sheet was given adding Rule 3 (i) (iii) of CCS (Conduct) Rules, 1964 and the imputation of charges was referred to the 3rd respondent, who enjoys the power of appointing authority as well as the disciplinary authority. K.D.Babu was appointed as Enquiring authority and M.Sankara Narayanan was appointed as the Presenting Officer.

17. One of the grounds taken by the applicant is that in Annexure A-1 order, this Tribunal directed the 4th respondent to conduct an enquiry for the allegations levelled against him

in accordance with Rule 14 giving opportunity to the applicant to establish his innocence. In purported compliance of the direction, the 4th respondent issued Annexure A-2 fresh charges which has not been intended by this Tribunal. Annexure A-2 charge does not claim loyalty to Annexure A-1 order. Annexures A-5 and A-7 orders emanate the Annexure A-2 also is liable to be quashed. It is true that this Tribunal had not given any direction to issue any fresh charge. On the other hand, what has been ordered is to continue with the disciplinary proceedings on the same charges giving a reasonable opportunity to the applicant to contest the matter and permit him to prove his innocence. Therefore, though it may be a mistake notion on the part of respondents to issue fresh charges, the question is to be looked into is whether his fresh charges had caused any prejudice to the applicant. On going through the fresh charge Annexure A-2, it will be seen that it is not exactly re-production of the earlier charge. The overt act of the applicant has been brought under Rule 3 (i) (iii) of CCS (Conduct) Rules, 1964. Therefore, we do not find any cause which has prejudiced the applicant and which cannot be the reason for quashing the impugned orders. Another limb of the contention and argument is that Rule 14 (18) of the CCS (CCA) Rules, 1965 empowers a Government servant under suspension is eligible to function as defence counsel, if his services are required by an accused official. Merely because an official is under suspension does not mean that he has ceased to be a Government servant, and request of the applicant to be defended by a suspended employee was turned down by the Inquiry Officer. This is a patent

violation of Rule 14 (18) of the CCS (CCA) Rules, and the impugned orders to be set aside. We find good reason to allow this O.A on this ground since opportunities were denied to the applicant in defending his case.

18. Then again, Rule 14, Sub Clause 18 denotes that the " inquiry officer is bound to question the applicant on the circumstances appearing against him." This is an enabling provision to give opportunity to the delinquent official to explain the incriminating evidence of witnesses who have spoken against him. This valuable right is synonymous to Section 313 of the Criminal Procedure Code. If the explanation is acceptable the Inquiry Officer can accept it which will have a good effect on the result of the orders and punishment thereof. Obviously in this case, such an opportunity was not given to the applicant, which is a serious irregularity in the procedure that is adopted by the respondents in this case and therefore, there is good ground for the interference of the impugned orders by this Court. Since the procedure is defaulted it is a fact that the inquiry has been abruptly stopped without subjecting the applicant for explanation and without questioning the applicant generally on the circumstance appearing against the evidence and he was denied opportunity to cross examine the prosecution witnesses. All these procedures were in violation of natural justice and we are of the view that the respondents had not complied with the principles of natural justice in proceeding with the enquiry.



..11 /-

19. It is also pertinent to note that non compliance of Rule 14, Clause 18 is a patent irregularity committed in the procedure. In a decision reported in AIR 1998 SC 853, against the order of C.A.T., Hyderabad Bench, Ministry of Finance & another Vs. S.B.Ramesh, the Hon'ble Supreme Court has laid down that non compliance of Sub rule 18 of Rule 14 of CCS (CCA) Rules, is a mandatory provision which has been lost sight by the Inquiring authority in this case. Hon'ble Supreme Court finding fault with the Inquiring authority on the question of not granting an opportunity to cross examine the witnesses, set aside the said order of C.A.T. In this case also sufficient opportunity was not given to cross examine the witnesses in support of the charge and no steps have been taken to question the applicant under sub rule 18 of Rule 14 of CCS (CCA) Rules. The omission to it is a serious error committed by the Inquiring authority and abruptly closing the proceedings declaring the applicant ex-parte is also in violation of the principles of natural justice. In our view, the Inquiry Officer could have given due consideration and attention to these proceedings when it was specifically remanded by this Tribunal of the earlier proceedings in O.A.No.443/93 with the following observation/direction.

"In the result, we set aside Annexure H order and remit the case back to the first respondent for conducting the enquiry in accordance with Rule 14 of the CCS (CCA) giving opportunity to the applicant to establish his innocence. The procedural formalities in accordance with the rules should be strictly complied with in the enquiry."

20. Considering the above aspects and cumulative evaluation, we are of the view that the Enquiry Officer has



very callously dealt with the enquiry infringing and violating the rules and procedure that should have been adopted in such enquiry as discussed in detail above. Therefore, we find no reason to sustain the impugned orders, Annexures A-2, A-5 and A-7 deserve to be set aside.

21. In the conspectus of facts and consideration, we set aside Annexures A-2, A-5 and A-7 and the applicant is entitled for all consequential benefits. With the above observation, we allow the Original Application. No order as to costs.

Dated, 2nd January, 2003.



K.V.SACHIDANANDAN
JUDICIAL MEMBER



G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

A P P E N D I X

Applicants Annexures:

1. A-1: True copy of the order dated 7.2.94 in O.A No.443/93 passed by this Hon'ble Tribunal.
2. A-2: True copy of the Charge Memorandum No.269/3/4 dated 11.11.94 issued by the 4th respondent.
3. A-3: True copy of the representation (Defence Statement) submitted by this Hon'ble Tribunal.
4. A-4: True copy of the report submitted by the Enquiry Officer forwarded by the third respondent under letter No.CS/2696/77 dated 7.9.98.
5. A-5: True copy of the Penalty Advice No.2696/77 dated 10.1.2000 issued by the 3rd respondent.
6. A-6: True copy of the appeal dated 2.3.2000 less its annexures submitted by the applicant.
7. A-7: True copy of the Appellate order No.CS 2696/119 dated 10.7.2000 issued by the 2nd respondent.

* * * * *

vs