

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.79/2005

TUESDAY THIS THE 28th DAY OF NOVEMBER 2006

C O R A M:

HON'BLE SMT SATHI NAIR, VICE CHAIRMAN
HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBERM.B.Renukumar, Technical Officer(T5)
Central Plantation Crops Research Institute
Kayamkulam.

Applicant

(By Mr.R.Rajasekharan Pillai, Advocate)

Vs.

- 1 The Indian Council of Agriculture Research
Krishi Anusndhan Bhavan, PUSA, New Delhi
represented by the Secretary.
- 2 The Director, Central Plantation Crops Research
Institute, Kasargod.
- 3 The Joint Director Central Plantation Crops Research
Institute, Kayamkulam.

Respondents

(By Mr.T.P.Sajan, Advocate)

O R D E R

HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant, a Technical Officer (T5) CPCRI, Kayamkulam, is aggrieved by the Inquiry report Annx.AVIII holding that the following article of charge framed against him is sustainable:

“Article Charge” I

While Shri Renukumar was functioning as Technical Officer (TS) (Farm) at CPCRI Regional Station, Kayangulam, certain irregularities in accounting the EL/Commututed Leave etc. availed by him were noticed by the Work Study Committee during November, 2001. During the period 1996-2000 though he has availed 199 days EL/Commututed leave in 84 spells

as reflected in the Attendance Register only 85 days were debited in the leave account. 114 days of leave (EL/Commutted Leave) availed by Shri Renukumar in 51 spells for the period from 30.5.1996 to 30.3.2000 were not entered in the SB/Leave Account though these were reflected in the Attendance Register maintained in the Farm Section. The leave application and joining reports for the avove spells of leave were also not available in the personal file. It was also observed that even though his leave application and joining reports for the period from 19.3.1998 to 21.3.1998 and 29.2.2000 are available in his personal file and corresponding leave entries made in the Service Book/Leave account as also in the Attendance Register Shri Renukumar has affixed his initials by tampering the Register.”

He is also aggrieved by Annx.A-XI order dated 30.10.2003 of the disciplinary authority imposing the following penalties on him:

- i)Reduction of pay by three stages from Rs.7700 to Rs.7100 in the time scale of pay of Rs.6500-200-10500 with cumulative effect for 3 years.
- ii)He will not earn increments of pay during the period of reduction and on expiry of the period the reduction will not have the effect of postponing his future increments of pay.
- iii)The penalty will take effect from the date of issue of this order.

The other aggrieved order is the Annx.A-XIII appellate order dated 18.10.2004, issued by the appellate authority rejecting his appeal and confirming the penalty imposed by the disciplinary authority.

2 The brief background of the case is that when the irregularities as mentioned in the Article of Charge came to the notice of the respondent department, a Committee consisting of Dr.J.J.Solomon, Sh.B.Ismail Sahib and Shri K.Thampi was constituted and they verified the Service Book and Attendance Register entries for the period 1.1.96 to 31.3.2000 in respect of the applicant, Smt.Bhanumathy, Smt.P.Saraswathy Amma and Shri A.S.Panicker. While the leave entries made in the Attendance Register tallied with reference to the entries made in the leave account of Smt.K.Bhanumathy, Smt.P.Saraswathy Amma and Sh.A.S.Panicker, in the case of the applicant the following spells of leave entires



made in the attendance register were not entered in the Leave account and Service Book and there were no leave applications and joining reports pertaining to these spells found in the personal file.

<u>Sl.No.</u>	<u>Period of leave</u>	<u>Kind of leave</u>	<u>No.of days</u>
1	30.5.96 to 31.5.96	EL	2 days
2	1.6.96	EL	1 "
3	14.2.97 to 15.2.97	EL	2
4	27.5.97 to 28.5.97	EL	2
5	19.8.97 to 25.8.97	EL	7
6	4.5.97 to 5.9.97	EL	2
7	8.12.97 to 10.12.97	EL	3
8	12.5.97 to 13.5.97	EL	2
9	20.5.98 to 27.5.98	EL	2
10	26.5.98	EL	1
11	10.7.98	EL	1
12	15.7.98	EL	1
13	23.7.98 to 4.7.98	EL	2
14	10.8.98 to 11.8.98	EL	2
15	27.8.98	EL	1
16	8.9.98 to 9.9.98	EL	2
17	14.9.98 to 15.9.98	EL	2
18	15.10.98 to 16.10.98	EL	2
19	26.10.98 to 27.10.98	EL	2
20	5.11.98 to 11.11.98	Com.Leave	7
21	18.11.98 to 19.11.98	EL	2
22	26.11.98 to 27.11.98	EL	2
23	10.12.98 to 11.12.98	EL	2
24	1.1.99 to 2.1.99	EL	2
25	5.1.99 to 6.1.99	EL	2
26	16.1.99	EL	1
27	25.1.99	EL	1
28	16.2.99 to 18.2.99	EL	3
29	3.3.99 to 5.3.99	EL	3
30	17.3.99 to 18.3.99	EL	2
31	5.4.99 to 6.4.99	EL	2
32	3.5.99 to 7.5.99	Com.Leave	5
33	13.5.99 to 15.5.99	EL	3
34	2.6.99 to 3.6.99	EL	2
35	22.6.99 to 23.6.99	EL	2
36	28.6.99 to 29.6.99	EL	2
37	8.7.99 to 9.7.99	EL	2
38	13.7.99 to 14.7.99	EL	2
39	22.7.99	EL	1
40	29.7.99 to 31.7.99	EL	3
41	12.8.99 to 13.8.99	EL	2
42	28.9.99 to 30.9.99	EL	3
43	14.10.99 to 16.10.99	EL	3

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44	4.11.99 to 6.11.99	EL	3
45	7.12.99 to 8.12.99	EL	2
46	6.1.2000 to 7.1.2000	EL	2
47	19.1.2000 to 20.1.2000	EL	2
48	1.3.2000	EL	1
49	18.3.2000 to 20.3.2000	EL	3
50	23.3.2000 to 24.3.2000	EL	2
51	30.3.2000	EL	1
Total			114 days

Since those leave applications and joining reports were not available in the personal file they were not entered in the Service Book. Even though his leave applications and joining reports for the period 19.3.98 to 21.3.98 and 29.2.200 (4 days) were available in the personal file and leave entries were made in the Leave account/Service Book, in the Attendance Register the applicant had affixed his initials for those days. The respondents sought explanation vide Annx.A-II dated 7.6.2000 for the aforementioned irregularities noticed by the Committee to which he submitted Annx.A-III explanation stating that he was not the custodian of the attendance register and leave applications. The Attendance Register was in the custody of his immediate superior and leave applications in the prescribed form and joining report were forwarded to the office by the same person. If any irregularities or foul play is found in the Attendance Register, leave entries or joining reports, it was entirely with his knowledge and he should have reported the matter in time. Thereafter, vide Annx.A-IV memo dated 14.9.2000, the applicant was asked to submit fresh leave application alongwith his joining report as per the details given to him. Accordingly, he has submitted 50 leave applications and they were transmitted to the Technical Officer (Farm) CPCRI (RS), Kayangulam, for recommendations and later all the leave applications received from the applicant have been entered in the Service Book.

3 After nearly of two years the respondents issued a memorandum dated

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27.5.02 proposing to initiate disciplinary proceedings under Rule 14 of the CCS (CCA) Rules 1965 against the applicant. The contentions of the respondents were that it could be reasonably assumed that the applicant was aware of his leave account and he had intentionally suppressed the fact for his benefit and the statement of the applicant that somebody else had tampered his initials in the Attendance Register looks unconvincing as nobody other than him was the beneficiary of such irregularities in the attendance register and Service Book. Therefore, the Inquiry Officer, held that the charges are sustainable. Agreed by the aforesaid report of the Inquiry Officer, the disciplinary authority has proposed to impose the penalty of reduction of pay by five stages from Rs.7700 to Rs. 6700 in the time scale of pay of Rs.6500-200-10500 with cumulative effect for 3 years. The applicant made Annx.A-X representation dated 30.9.03 against the aforesaid proposal and stated that while working as Technical Officer at Kayamkulam, it was noticed that some of the leave applications submitted by him got 'imposed'. Based on an enquiry by Dr.J.J.Solomon, Principal Scientist, Shri Thampi, Ass Admn Officer and Shri B Ismail Saheb, Asst Fin & Accts Officer, directed him to submit fresh applications and accordingly he gave fresh leave applications which were duly sanctioned and the whole matter has been settled then and there. The whole issue was raked up after two years by a Work Study Committee which visited Kayamkulam station and recommended for an enquiry on the above 'once settled case' and as a follow up action an enquiry was ordered by the then Head of Vittal Station. He further submitted that after giving fresh applications, there was no reason for re-opening the settled case after two years. Due to this incident he was also transferred to the headquarters where there was no post and had to be accommodated against Technical Information Officer (T-6) post. Because of the present proposal of reduction in the pay for three years, a heavy loss of about

Rs.75000 is slapped on his face causing heavy and undue hardship. He has also noted that the Inquiry Officer mainly relied upon the statements of Sh.TKN Nambiar, AAO and did not consider any other point at all. It is further stated that the Presenting Officer himself has never claimed the case as proved. After considering the aforesaid representation of the applicant as well as the Inquiry Report, the disciplinary authority imposed the penalty of reduction of pay by 3 stages from Rs.7700 to Rs.7100 with cumulative effect for 3 years. The applicant submitted Annx.A-XII appeal dated 12.12.03 but the same was rejected by the appellate authority vide Annx.A-XIII order dated 18.10.04.

4 The applicant has challenged the aforesaid impugned Inquiry Report, disciplinary authority's order and the appellate authority's order on the ground that the issue which has already been concluded and settled two years earlier was resurrected purely on surmises and conjectures without any basic foundation of factual matrix and the enquiry itself was unwarranted as the charges is not based on any solid materials but purely on the alleged Inquiry Report said to have been prepared indicting almost every one including the applicant. He has also submitted that the enquiry was vitiated because he had requested for examination of two witnesses such as Head Central Plantation Crops Research Institute Regional Station, Dr.P.K.Koshy and retired Assistant Administrative Officer Shri K.Thamby on his behalf as defense witnesses. However he was not permitted to examine them on the ground that they had already been retired from service. He has also submitted that Annx.A-XI order imposing upon him the penalty is not a speaking order and the disciplinary authority did not apply his mind while passing the same. He referred the judgment of the Apex Court in SN Mukharjee Vs. Union of India reported in AIR 1990 SC 1984 wherein it has been held that "... in our opinion, therefore the requirement that reasons be recorded should govern the decisions of



an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decisions is subject to appeal, revision or judicial review". He has also challenged the appellate order as the appellate authority had not cared to dwell the basic rubric of the scheme of the provisions contained in Rule 27 of the CC&A Rules and therefore, the order suffers from the basic vice of arbitrariness and non-application of mind. He has also submitted that in the case of the co-delinquent, P.K.Sahi, the respondent No.1 took a liberal view and he has been completely exonerated of the punishment by Annx.A-XIV order. It is submitted that the same rationale should have been applied in his case also and therefore Annx.A-XIII order is discriminative and opposed the principles of equality and fair play.

5 We have heard Sh.Rajasekharan Pillai for the applicant and Shri T.P.Sajan for the respondents.

6 We have noticed that the charge against him was that he had committed certain irregularities in accounting of his leave. It was alleged that the leave applications and joining reports of certain spells of leave were not available and for some other spells of leave his leave applications and joining reports were available in the Personal File but corresponding leave entries were not made in the Service Book/leave account. There was also an allegation that the applicant had affixed his initials in the Attendance Register by way of tampering. A perusal of the Inquiry Report itself shows that according to the oral deposition of Sh.P.K.Sahi, whatever leave applications entered in the Inward Register maintained in the dispatch and diary section were entered in the Service Book/Leave account and he was not aware of any leave applications were misplaced or missed. There is no finding that the applicant had tampered with the Attendance Register or he himself was responsible for the missing applications and joining reports. There is also no finding that the applicant was responsible for

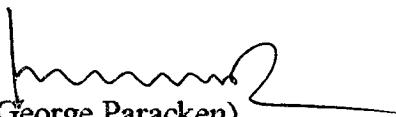


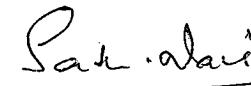
keeping the Service Record and Personal File. It is only an assumption on the part of the Inquiry Officer that the applicant was aware of the position of his leave applications and he intentionally suppressed the fact for his benefit. The Inquiry Report also does not say that the charge levelled against the applicant was proved but it only states that the charge is "sustainable". The disciplinary authority, on the contrary stated in its order that the Inquiry Officer after holding enquiry held that the charges have been 'proved' whereas no such conclusions have been arrived at by the Inquiry Officer. Moreover once the Inquiry Officer finds the charge is 'sustainable', it has to be proved during the enquiry by means of legal evidence. In the absence of any such findings, the Disciplinary Authority could not have held that the charge was proved. Even though a charge against the applicant was that he had tampered with the attendance register, there was neither any evidence nor any findings to that effect in the Inquiry Report. The Disciplinary Authority's order is a non-speaking order in as much as says only that the representation of the applicant dated 30.9.2003 (Annx.AX) was considered without having dealt with any of the points raised therein. The appellate order also suffers from the same infirmity as the appellate authority has not considered any of the contentions raised by the applicant in his appeal while confirming the order of penalty imposed by the disciplinary authority. Further, we observe that Sh.P.K.Sahi, Assistant, who was actually responsible for keeping the Service Records of the applicant has been let off by the same disciplinary authority while maintaining the punishment imposed upon the applicant without considering his representation. Both the disciplinary authority and the appellate authority have failed to apply their mind while imposing the penalty and up-holding the same respectively.

7 In the result, the O.A is allowed. Resultantly the Annx.A-VIII, Inquiry Report, Annx.A-XI, disciplinary authority's orders and Annx.A-XIII, appellate



authority's orders are quashed and set aside. The respondents are directed to restore the pay and increments and disburse the amount already with-held from his pay. The aforesaid directions shall be implemented by the respondents positively within three months from the date of receipt of a copy of this order. In the facts and circumstances of the case there shall be no order as to costs.


(George Paracken)
Judicial Member


(Sathi Nair)
Vice Chairman.

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