

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.83/1999

Wednesday this the 28th day of June, 2000.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI G.RAMAKRISHNAN, MEMBER (A)

R.Bhasurendra Babu,
S/o. K.Raghavan Pillai,
Kavumkara Illam,
Ummenchira P.O.,
Thalassery.(U.D.C.(S.G.)(dismissed)
Central Provident Fund Commissioner's Office,
Thiruvananthapuram) Applicant

(By Advocate Sri K.S.Madhusoodhanan)

vs.

1.	Additional Central Provident Fund Commissioner(South Zone), (Appellate Authority), Bharkathpura, Hyderabad, A.P.	
2.	Regional Provident Fund Commissioner, Bhavishyanidhi Bhavan, Pattom, Thiruvananthapuram-4.	... Respondents

(By Advocate Shri N.N.Sugunapalan)

The Application having been heard on 6.6.2000, the Tribunal
on 28.6.2000 delivered the following:-

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant while working as U.D.C.(S.G.) absented
from duty from 25.10.1994 to 10.6.96, reported for duty on
11.6.96 and again absented from duty from 12.6.96 and
rejoined duty on 12.3.97. The leave application submitted
by him for regularisation of absence from duty for the
period from 25.10.94 to 10.6.96 and from 12.6.96 to 12.3.97
on medical grounds was rejected and the period was treated
as dies-non by the Assistant Provident Fund Commissioner by
order dated 7.4.97(Annexure A1). The applicant was

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thereafter served with a memorandum of charges dated 26.3.97. The only Article of Charge reads as follows:-

"That the said Shri R.Bhasurendra Babu, UDC(SG) while working in the Office of the Regional Provident Fund Commissioner, Pattom, Thiruvananthapuram, is unauthorisedly abstaining from duty from 25.10.94. By doing so Shri R.Bhasurendra Babu, UDC(SG) has violated clause (III) of sub rule (I) of Rule 3 of the Central Civil Services (Conduct) Rules 1964, read with Regulation 27 of the Employees Provident Fund (Staff and Conditions of Service) Regulation, 1962."

The statement of imputation of misconduct reads as follows:-

"Shri R.Bhasurendra Babu is an employee of the Employees Provident Fund Organisation. He has been working as UDC (SG) in the office of the Regional Provident Fund Commissioner, Pattom, Thiruvananthapuram, while working so he has abstained from duty from 25.10.94. The leave application received in the office on 12.6.96. The leave was not sanctioned by the competent authority. This decision had been communicated to him vide Memo No.KR/Adm.E.1(7)96 dated 1.7.96. This from 25.10.94 Sri R.Bhasurendra Babu is unauthorisedly absent from

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duty. Sri R.Bhasurendra Babu, UDC (SG) has thus committed grave misconduct violative of Rule (iii) of Sub-Rule(1) of Rule 3 of CCS(Conduct)Rules 1964 read with Regulation 27 of the EPF(Staff & Conditions of Service)Regulation,1962."

The applicant in his explanation submitted to the memorandum admitted the absence from duty but stated that it was on medical grounds. The Regional Provident Fund Commissioner was appointed as Enquiry Officer. In the sitting of the enquiry held on 11.2.98, the Enquiry officer added one more charge that the applicant absented from duty on 12.6.96. In the proceedings dated 12.2.98, the charges were shown as :

- 1) Sri R.Bhasurendra Babu unauthorisedly absenting from duty from 25.10.94 to 10.6.96.
- 2) He was absenting duty from 12.6.96."

When the above said charges were presented, the applicant seems to have admitted the charges with a qualification that he absented from duty on medical grounds and under circumstances beyond his control to attend duty, but requested to finalise the case as early as possible based on that admission. The Enquiry Officer held the charge proved on the admission and submitted the report. After serving a copy of the enquiry report and getting a representation of

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the applicant, the disciplinary authority passed an order dated 14.7.98(Annexure A5) imposing on the applicant the penalty of dismissal from service. Aggrieved by the above order, the applicant filed an appeal and the first respondent, the appellate authority rejected the appeal and confirmed the penalty of dismissal from service by the order Annexure A8. It is aggrieved by this that the applicant has filed this application seeking to have the Annexure A8 order set aside and for a direction to the second respondent to reinstate the applicant in service forthwith with all consequential benefits. It is alleged in the application that the enquiry was held irregularly, that the Enquiry Officer unauthorisedly added one more charge than the charge framed by the disciplinary authority, that certain documents which were not made available to the applicant were relied on by the respondents thereby violating the principles of natural justice, that while in the memorandum of charge Annexure A2 the charge related to absence from duty from 25.10.94 to 10.6.96 and from 12.6.96 only, the order of the disciplinary authority and the appellate authority holding guilty from 12.6.96 to 12.3.97 also was illegal, that the absence between 25.10.94 to 10.6.96 had been regularised by order at Annexure A1 as dies-non, no action for unauthorised absence could have been taken against the applicant and that under these circumstances, the impugned order which is devoid of application of mind has to be struck down.

2. In a detailed reply statement, the respondents have

sought to justify the impugned order on the ground that the enquiry was held in conformity with the rules, that treating the period as dies-non under FR 17(1) was without prejudice to the disciplinary authority's right to take proceedings under the Discipline and Appeal Rules against the applicant and that there is no infirmity in the proceedings or the impugned order.

3. Sri K.S.Madhusudhanan, the learned counsel of the applicant argued that the entire proceedings is vitiated because the Enquiry Officer has read over a charge different from the charge framed by the disciplinary authority and held that the applicant admitted the charge in toto, while the applicant had in fact admitted his absence from duty but qualified it by saying that it was on medical grounds and under circumstances beyond his control. This statement of the applicant according to the learned counsel did not amount to an unqualified admission of a guilt and therefore the Enquiry Officer was not justified in holding that the charges were admitted by the applicant. We find considerable force in this argument. The only article of charge contained in the Memorandum of Charge dated 23.6.97(Annexure A2) has already been extracted in the first paragraph supra. The Statement of Imputations also have been extracted in the same paragraph. It would be evident from a reference to the Article of Charge that the allegation was that the applicant absented from duty from 25.10.94 and that either in the Article of Charge or in the

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Statement of Imputation of misconduct, there was no indication as upto what date the applicant absented from duty. A reading of the Statement of Imputations would give the impression that even on 26.3.97, the date on which the charge was framed, the applicant was absenting from duty while undisputedly the applicant had reported for duty on 11.6.96 though again absented from 12.6.96 and had rejoined duty on 12.3.97. Regarding the period of unauthorised absence, there was no definiteness and it was totally vague. However the proceedings dated 12.2.98 of the Enquiry officer would show that a charge different from what was contained in the Article of Charge and Statement of Imputations was presented, it would be profitable to extract the proceedings of the Enquiry Officer dated 12.2.98(Annexure A3) which reads as follows:

"Proceedings of the Enquiry officer in respect of the charges framed against Sri R.Bhasurendra Babu, UDC(SG).

12.2.1998

"As scheduled, today at 11.00 A.M. the inquiry conducted. Sri R.Bhasurendra Babu, UDC(SG), the charged official appeared. Sri R.Janardhanan Pillai, APFC & Presenting Officer also appeared. Sri R.Janardhanan Pillai presented the charges framed against Sri R.Bhasurendra Babu. The charges are:

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- 1) Sri R.Bhasurendra Babu unauthorisedly absenting from duty from 25.10.94 to 10.6.96.
- 2) He was absenting duty from 12.6.96.
- 3) On presenting the charges framed against Sri R.Bhasurendra Babu, he admitted the charges with a qualification that he absented from duty on medical grounds and in the circumstances beyond his control to attend the duty. He was requested to finalise the case as early as possible based on his admission of charges."

In the Article of Charge and Statement of Imputation there was no allegation that the applicant was absenting from duty from 12.6.96 or that he absented from duty on 10.6.96. The Enquiry Officer was not authorised or competent to frame a different charge or to make an amendment to the charge which can be done only by the disciplinary authority. The power of Enquiry Authority as per the Government of India Decision No.13 under Rule 14 of the CCS(CCA) Rules contained in Swamy's Manual on Disciplinary Proceedings for Central Government Servants at page 49 vide D.G.,P&T's letter No. 5/3/81-VT. dated the 14th December,1981 reads as follows:-

(13)Power of Inquiry Authority(Explanation below Rule 23(i))-- The position, as it emerges, is that an inquiring authority is not competent to issue a formal charge-sheet to the charged officer, but is only competent to record its findings on any article

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of the charge different from the original articles of the charge, if the proceedings of the inquiry establish the same, provided that the findings on such article of charge are recorded by the inquiring authority only if the Government servant has either admitted the facts on which such articles of charge are based or has had a reasonable opportunity of defending himself against such articles of charge."

It is evident from Annexure A3 that the Enquiry Officer has exceeded the limit of the power conferred on him and had put to the applicant a charge different from the charge framed by the disciplinary authority. The Enquiry Officer also has not recorded the statement of the applicant admitting the charge. However when the Enquiry Officer enters a finding of guilt on the admission of the charge, the admission of the charged officer should be recorded in his own words under signature. That has not been done. It is seen from Annexure A3 that when the charges as shown in Annexure A3 was put to the applicant, he admitted the charge with a qualification that he absented from duty on medical grounds and under circumstances beyond his control to attend duty. This should not have been taken by the Enquiry Officer as an unconditional and unequivocal admission of guilt. Therefore the finding of the Enquiry officer which was accepted by the disciplinary authority is vitiated for serious procedural irregularity which was prejudicial to the applicant. Only if a charge which is definite is put to the charged officer

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and if the charged officer admits the same unequivocally , a further enquiry can be dispensed with and a finding of guilt arrived at . In this case we find that there was no definite charge and that there was no unequivocal admission. We say that there was no definite charge because neither in the Article of Charge nor in the Statement of Imputation there is any indication as upto what date the applicant remained absent from duty, though it is stated that he was absenting from duty from 25.10.94 while it is beyond dispute that the applicant had reported for duty on 11.6.96 left on 12.6.96 and again rejoined duty on 12.3.97. Therefore on the date on which the memorandum of charge was issued that is on 26.3.97, the applicant was not absenting from duty. This aspect of the case was not considered by the disciplinary authority or the appellate authority. It is seen that the appellate authority has observed in paragraph 6(1) of the impugned order Annexure A8 as follows:-

"His past conduct and unauthorised absence from 5.8.75 to 7.4.76 and 2.6.80 to 28.4.82 and 12.6.96 to 12.3.97 clearly shows that the appellant is a habitual absentee who absents himself without applying any leave."

It is evident that the appellate authority has taken into consideration the applicant's past conduct and unauthorised absence for earlier period without notifying the applicant of the same. Thus it is seen that the enquiry held against the applicant as also the impugned order of the appellate

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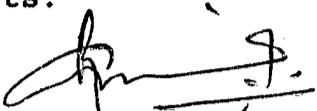
authority suffers from serious infirmities, lacunae and lapses which has resulted in miscarriage of justice to the applicant. We are of the considered view that the impugned order Annexure A8 and the order of dismissal from service contained in Annexure A5 which has got merged in Annexure A8 are liable to be set aside.

4. In the result, the application is allowed. The impugned order Annexure A8 is set aside. However as the impugned order has been set aside as the order has been vitiated for procedural irregularity and denial of principles of natural justice, we give liberty to the respondents to hold further enquiry against the applicant on the Memorandum of Charge Annexure A2 by issuing necessary corrigendum and from the stage of service of charge as amended on the applicant. To enable the disciplinary authority to proceed with such further enquiry, the applicant shall be deemed to have been placed under suspension with effect from the date of his dismissal from service. The disciplinary authority shall take a decision either to recommence the disciplinary proceedings or not to do so as expeditiously as possible, but at any rate within a period of one month. If it is decided to recommence the proceedings, the arrears of subsistence allowance from the date of dismissal from service shall be paid to the applicant within one month from that date. If a decision to

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recommence the proceedings is not taken, as aforesaid, then the applicant shall be reinstated in service and given all consequential benefits without delay. There is no order as to costs.



(G. RAMAKRISHNAN)
MEMBER (A)



(A.V. HARIDASAN)
VICE CHAIRMAN

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List of Annexures referred to in the Order:

1. Annexure A1 True copy of the Memo No. KR/Adm.E1(7)/97 dated 7.4.97 issued by the Asst.P.F.Commissioner.
2. Annexure A2 True copy of Memo No.KR/R.C.Sect/Vig/97 dt. 26.3.97 issued by the 2nd respondent with statement of article and copy of imputation.
3. Annexure A3 True copy of the enquiry proceedings dated.12.2.98 issued by the Enquiry Officer.
4. Annexure A5 True copy of the dismissal order No.KR/RCs Sect/Vig.(98) dt. 14.7.98 issued by the 2nd respondent.