CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.87/2001

Monday this the 26th day of August,2002

CORAM:
HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T.NAYAR,ADMINISTRATIVE MEMBER

M.P.Sasidharan,
Bosun,CIFNET Unit,
Chennai, residing at
Kalathiparambil House,
Pizhala P.O.,
Ernakulam District. .. Applicant

(By Advocate Sri M.R.Rajendran Nair)

vs.

1. Union of India represented
by the Secretary to Government of India,
Ministry of Agriculture ,
Department of Animal Husbandry and Dairying,
New Delhi.

2. Joint Secretary to the Government of India,
Department of Animal Husbandry and Dairying,
Krishi Bhavan, New Delhi.

3. The Director,
Central Institute of Fisheries, Nautical &
Engineering Training(CIFNET),Diwans Road,
Kochi-16. .. Respondents

(By Advocate Sri P.M.M.Najeeb Khan, ACGSC)

The Application having been heard on 26.8.2002, the Tribunal on the same day delivered the following:-

ORDER

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

The order dated 1.4.98 (A-11) of the 3rd respondent (Disciplinary Authority) imposing on the applicant, a Bosun, of the Central Institute of Fisheries Nautical & Engineering Training (CIFNET for short) a penalty of recovery of a sum of Rs.50,700/- as also the order dated 10th June 2000 of the 2nd respondent (Appellate Authority) upholding the finding of guilt but reducing the penalty to one of withholding of increment for a

period of two years without cumulative effect are called in question in this application filed under Section 19 of the Administrative Tribunals Act.

2. The historical backdrop which led to the impugned orders are comprehensively stated as follows:

3. The vessel called Bluefin of which the applicant at the relevant time was the Bosun met with an accident on 22.2.1993 which resulted in damage to three pillars of an electrical crane belonging to Integrated Fisheries Project. He was served with a show cause notice to which he submitted an explanation that the accident was occurred for reasons beyond his control. However, on the basis of preliminary enquiry with which the applicant was not associated, a penalty of recovery of Rs.50,700/- was imposed on the applicant by the 3rd respondent. Aggrieved the applicant filed O.A.918/94 which was disposed of by the Tribunal by order dated 24.3.1995 setting aside the order of penalty on the ground that the order was passed without giving a reasonable opportunity to the applicant to defend himself. However, it was made clear in the order that the order would not preclude the competent authority from proceeding a fresh enquiry against the applicant in accordance with law. The 3rd respondent thereafter issued A-3 memorandum of charge to the applicant on 26.12.1995 alleging that the applicant had caused huge financial loss to the Government due to utter negligence on his part and had thereby violated rule 3(1) (ii) of the CCS (Conduct) Rules 1964.

4. Though the applicant demanded for supply of copies of the

documents referred to in A-3 memorandum of charge they were not supplied to him. The applicant submitted an appeal dated 24.4.96 to the 2nd respondent requiring appointment of an adhoc disciplinary authority on the ground that the 3rd respondent had already shown his prejudiced mind in the memorandum of charge wherein it was stated that it was established that the applicant was solely responsible for the loss. This request of the applicant for appointment of adhoc disciplinary authority was rejected by A-8 order dated 13.1.97. Thereafter, an enquiry was held and completed. The enquiry officer submitted his report A-9 dated 13.10.97 wherein it was observed after detailed discussion that the crane crash was not due to the applicant's mishandling of the vessel .It was, however, observed that the applicant could have been little more alert and vigilant in the absence of his master and averted the accident.The third respondent considering the enquiry report and the representation submitted by the applicant found the applicant guilty of the charge and imposed on him a penalty of recovery of pecuniary loss occurred to the Government for Rs.50,700/-by impugned order A11. The applicant aggrieved by the impugned order A11 submitted an appeal raising various grounds including that the finding was perverse . The 2nd respondent, the appellate authority, considered the question of proportionality of the penalty only and reduced the penalty imposed on the applicant to one of withholding of an increment for a period of two years without cumulative effect. Aggrieved by these two orders the applicant filed this application. It has been alleged in the application that the enquiry had been in gross violation of principles of natural justice, because the applicant was not supplied with copies of documents mentioned in

memorandum of charge to enable him to effectively refute the averments in the memorandum of charge that the disciplinary authority having already disclosed his prejudiced mind in the charge sheet has made himself unable to act in a fair and reasonable manner that the evidence on record did not establish the guilt of the applicant, that the appellate authority has not applied its mind to the various grounds raised by the applicant in his memorandum of appeal and that the impugned orders are unsustainable.

5. The respondents in their reply statement contend that the impugned orders having been passed in accordance with the rules, no interference is called for.

6. We have with meticulous care gone through entire pleadings and material placed on record and heard the arguments of Shri Hariraj, learned counsel appearing for the applicant. Shri Hariraj mainly stressed three points in his argument. The first point stressed by Shri Hariraj is that the article of charge,read with the statement of imputations does not disclose any misconduct. The second point stressed by him is that the disciplinary authority has disclosed his prejudiced mind in the memorandum of charge itself and therefore the enquiry proceedings and the A-11 order passed by him are vitiated and therefore, not

sustainable. The 3rd point raised by himself is that, the finding that the applicant is guilty, is not supported by any legal evidence.

7. We shall deal with these arguments by the learned counsel of the applicant. In support of the argument that the memorandum of charge does not disclose any misconduct, the learned counsel of the applicant referred to the articles of charge wherein it is stated that:

> "Thus, the said Shri M.P.Sasidharan, Bosun has made a huge financial loss to the Government due to the utter negligence on his part."

8. Learned counsel referred to us a ruling of the Apex Court in State of Punjab and others vs.Ram Singh ;AIR 1992 SC 2188 ,wherein it was held that a mere error of judgment or negligence may not amount to a misconduct. In this case what is alleged is "utter negligence" which undoubtedly would amount to a misconduct. Showing utter negligence in duties clearly shows lack of devotion to duty.Therefore we do not find any merit in this argument.

9. Sri Hariraj next referred us to the statement of imputation in the last paragraph stated as follows:

> "It is convinced beyond doubt that the incident has taken place due to the gross negligence, carelessness and due to lack of devotion to duty in r/o Shri M.P.Sasidharan, Bosun and hence he is solely responsible

for the loss sustained to the Government. Shri M.P.Sasidharan has thus violated Rule 3(1) (ii) of the CCS (Conduct) Rule 1964."

(emphasis supplied)

He argued that the same disciplinary authority who had earlier imposed on the applicant a penalty of recovery of pecuniary loss to the tune of Rs.50,700/- has a total prejudiced mind which is discernible from what is quoted above and that it was,therefore, not proper for him to act as a disciplinary authority as the proceedings commencing from A-3 and resulting in A-11 is therefore vitiated. In support of this arguments, the learned counsel referred to us the judgement of the Hon'ble High Court of Punjab and Haryana in Hansraj Gupta Vs. State of Punjab (1992 (1) SLR 146) as also the ruling of the Calcutta High Court in Bimlakanta Mukherjee Vs. State of West Bengal and others in 1980 (2) SLR 233). We find considerable force on the argument of the counsel for the applicant.Although for the purpose of holding an enquiry there should be an allegation that it appeared that the applicant had committed a misconduct an allegation that the applicant was solely responsible for the loss sustained by the Government exposes the closed and prejudiced of the disciplinary authority. An authority who has come to a final conclusion that the applicant alone was responsible for the loss, having a closed mind, cannot be expected to act fairly and justly.

10. Now we will consider the question whether the finding that the applicant is guilty of the misconduct is warranted by evidence on record. We have gone through the enquiry report in its entirety with meticulous care. There are only three

eye-witnesses to the occurrence. SW-1 Mr.G.T.Pillai has stated in his deposition that the wind only contributed for the entangling. He did not implicate the applicant with any misconduct or negligence. SW-3, Shri T.X.Sebastian who was a Chief Engineer has deposed that the applicant Shri Sasidharan had applied his mind and entangling was not due to improper application of mindby the applicant. SW-6, Shri K.Raghavan, Sr. Deckhand in his statement deposed that had the applicant been a little more careful, the damage could have been avoided. SW-7, Shri RR Joseph deposed that Shri Sasidharan handled the vessel properly and that the damage caused was not due to mishandling of the vessel by him. Apart from the observations of SW-6 that had the applicant been more careful the damage could have been avoided which is only an opinion,there was absolutely no evidence at all on record which would lead a person with ordinary prudence to the conclusion that the applicant did not show care and caution ordinarily expected of him in performance of his duty as Bosun. The enquiry authority has therefore, in its report held that the applicant has not wilfully contributed for the crane crash and it was not due to his mishandling of the vessel.Therefore the evidence on record disproves the charge that the applicant was "utterly negligent" and was solely responsible for the loss . The observation in the enquiry report that if more care was taken, the crash could have been avoided, does not prove the misconduct, because it was already held that the crash was not on account of the applicant's mishandling of the vessel.

11. The disciplinary authority in his letter A-10 forwarding a copy of enquiry report stated that the enquiry officer has

concluded that the applicant was guilty, while as a matter of fact there was no such finding. But in the impugned order the the disciplinary authority has taken a contrary stand, that the finding of the enquiry authority that "it is not due to mishandling of Sri Sasidharan" cannot be accepted. If the disciplinary authority intended to disagree with the finding of the enquiry authority, it should have in fairness indicated that intention to the applicant before the applicant submitted his representation in response to the enquiry report. The action on the part of the disciplinary authority in this case making the applicant to believe that the finding of the I.O. would be accepted in toto and ultimately taking a different view also discloses a prejudiced mind. It has also caused prejudice to the applicant inasmuch as he could not attempt to dispell the doubt.

12. Further, on a careful scrutiny of the evidence adduced at the enquiry in toto we find nothing at all on the basis of which a finding could be arrived at that the applicant was guilty of utter negligence in performing his duties.The finding that the applicant is guilty is therefore perverse.

13. We have gone through A-1 order of the Appellate Authority. Under rule 27 of the CCS(CCA) Rules,the appellate authority is enjoined with the responsibility of deciding (a) whether the proceedings have been held and completed in conformity with the rules; (b) whether the finding recorded is warranted by evidence and (c) whether the penalty imposed is commensurate with the

misconduct proved or unduly harsh? In this case, the appellate authority has not applied its mind to the procedural aspects as also to the vital question as to whether the finding is supported by evidence. The impugned order A-1 is therefore liable to be set aside for non-application of mind.

14. In the light of the above discussions, we find that the impugned orders A-1 and A-11 are unsustainable and therefore, we set aside these orders with all consequential benefits to the applicant. There is no order as to costs.

(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER

(A.V.HARIDASAN)
VICE CHAIRMAN

rv/njj

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the order F.No.3024/96-Fy(Admn.) dated 10.6.2000 issued by 2nd respondent to the applicant.

2. A-2: True copy of the final order dated 24.3.95 in OA No.918/94 of this Hon'ble Tribunal.

3. A-3: True copy of the memo of charges vide No.F.14-5/94 Admn. dated 26.12.95 issued by the 3rd respondent to the applicant.

4. A-4: True copy of the representation dated 5.1.96 submitted by the applicant to the 3rd respondent.

5. A-5: True copy of the memo No.14-5/95 Admn. dated 25.1.96 issued by the 3rd respondent to the applicant.

6. A-6: True copy of the written statement of defence dated 6.2.1996 submitted by the applicant to the 3rd respondent.

7. A-7: True copy of the representation dated 26.4.96 submitted by the applicant to the 2nd respondent.

8. A-8: True copy of the memo No.14-5/94-Admn. dated 13.1.97 issued by the 3rd respondent to the applicant.

9. A-9: True copy of the enquiry report dated 13.10.97 submitted by the enquiry officer/ Senior Instructor (Fishing).

10. A-10: True copy of the memo No.14-5/94-Admn. dated 31.10.97 issued by the 3rd respondent to the applicant.

11. A-11: True copy of the order No.F.14-5/94 Adm. dated 1.4.98 issued by the 3rd respondent to the applicant.

12. A-12: True copy of the appeal dated 18.5.98 submitted by the applicant to the 2nd respondent along with the application for stay.

13. A-13: True copy of the telex message dated nil issued by the 3rd respondent.

14. A-14: True copy of the representation dated 16.3.2000 submitted by the applicant to the 2nd respondent.

15. A-15: True copy of the memo No.14-5/94-Admn. dated 6.6.2000 issued by the 3rd respondent to the applicant.

16. A-16: True copy of the representation dated 20.6.2000 submitted by the applicant to the 2nd respondent.

17. A-17: True copy of the memo No.14-5/94-Admn. dated 31.7.2000 issued by the 3rd respondent to the applicant.

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