

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 88 of 2003

Thursday, this the 20th day of October, 2005.

C O R A M :

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

M. Sreedevi,
Enforcement Officer,
Enforcement Directorate (FEMA),
Government of India,
C.G.O's Complex, Poomkulam,
Vellayani, Trivandrum.

... Applicant.

(By Advocate Mr. Joshi N. Thomas)

V e r s u s

1. Union of India represented by its
Secretary, Ministry of Finance,
North Block, New Delhi : 110 001
2. The Revenue Secretary,
Government of India,
Ministry of Finance & Company Affairs,
Department of Revenue, North Block,
New Delhi : 110 001
3. The Director of Enforcement,
Enforcement Directorate (FEMA),
Government of India,
Lok Nayak Bhavan, Khan Market,
New Delhi : 110 003.

... Respondents.

(By Advocate Mr. P.S. Biju, ACGSC)

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O R D E R
HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

This O.A is filed against the order A/10 issued by the disciplinary authority imposing the major penalty of reduction of pay on the applicant by two stages from Rs. 8500/- to Rs. 8100/- in time scale of pay of Rs. 6500-200-10500 for a period of two years with immediate effect and postponing future increments and A/12 order and also the A/12 appellate order, confirming the order of the disciplinary authority. It is averred in the OA that while she was working as Enforcement Officer, a team of officers consisting of the applicant, Shri P. Radhakrishnan and Shri C.P. Nair (both Assistant Enforcement Officers) alongwith Shri Eliyas Kuruvilla, Staff Car Driver, proceeded to Chertala for getting permission of the Judicial First Class Magistrate, Chertala, to examine and record a statement from the detenu in Jail Custody in Crime No. 31/98 of Kuthiathodu Police Station. According to the applicant, since the Court adjourned the case to another date, the officers could not examine the detenu and, therefore, they returned from Chertala and reached Trivandrum at 8.45 p.m on the same day, i.e. 12.2.98. Since the office is far away at an interior place, it was difficult to get transport facility from there at night, the applicant got down in Trivandrum City. As per practice, the

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tour box was locked and entrusted to the Staff Car Driver with a direction to handover the tour box to the Chowkidar in the office or to keep the tour box inside the staff car after properly locking the staff car and garage. When the next day, the A.E.O who was holding the key of the tour box opened the box, it was found that the documents/files were missing. On questioning the Staff Car Driver, Shri Eliyas Kuruvilla, as to the missing of documents, he admitted that the documents said to be missing were kept in his residence and knowing the same, the applicant and other officers rushed to the residence of Staff Car Driver and recovered the documents on 13.2.1998 itself. Subsequently, after lapse of one year, A/4 memorandum of charges was issued to the applicant, which was denied by the applicant. An enquiry officer was appointed to enquire into the incidence. The enquiry officer though confirmed the charges, suggested not to impose any major penalty on the applicant. But vide impugned order A/10 dated 22.2.2002, the disciplinary authority imposed a major penalty on the applicant without recording reasons for disagreement on the enquiry report. The applicant filed appeal before the 2nd respondent which was also rejected vide A/12 order, confirming the order of the disciplinary authority. Aggrieved, the applicant has filed this OA, challenging both the orders A/10 and A/12 and praying for the following main

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reliefs:

"To call for the records leading to order No. C-3/6/98 dated 22.2.2002 Annexure A/10 and order No. F.No. 16/20/2002 – Ad.IC dated 3rd December, 2002 Annexure A/12 and to quash the same as illegal and arbitrary.

To stay Annexure A10 and A12 orders pending disposal of Original Application."

2. The respondents have filed a detailed reply statement contending that a team of officers including the applicant proceeded to Cherthala in connection with investigation of a case of FERA violation and for recording statement of accused persons who were in judicial custody in the matter of Crime No.31 of 1998 of Kuthiathodu Police Station. After an enquiry as contemplated under Rule 14 of the CCS (CCA) Rules, 1965, the applicant was imposed with a major penalty by the disciplinary authority which was confirmed by the appellate authority also. Since the documents in the tour box were important inasmuch as based on these documents, investigation was to be made against the persons, the applicant has acted in an irresponsible and negligent manner. The disciplinary authority had imposed major penalty after due appreciation of facts and evidence available on record and after duly considering the nature of misconduct committed by the applicant.

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Therefore, the orders passed against the applicant are legally tenable and the O.A deserves to be dismissed.

3. The applicant has filed a rejoinder reiterating the contention made in the OA and further adding that the appellate order A/12 is *prima facie* illegal as the order was signed and communicated by an authority lower in rank to the appellate authority, which is contrary to the instruction given by the first respondent. Since the order of disciplinary authority has merged with the order of the appellate authority and since the appellate order is *prima facie* illegal, both Annexures A/10 and A/12 orders are bad in law and are liable to be set aside.

4. Mr. Joshi N. Thomas, learned counsel appeared for the applicant and Shri P.S. Biju, ACGSC, appeared for the respondents.

5. When the matter came up for hearing, the learned counsel for applicant submitted that the appellate order was passed by an authority, who was not competent to pass such an order. It was urged that the appellate order was signed and communicated to the applicant by a lower authority in rank which is not permissible under the Rules. According to the instruction contained in Government of

India, Department of Personnel and Training O.M. No. 134/12/85/AVDI dated 5.11.1985, it is essential that the decision taken by such authorities are communicated by the competent authority under their own signature, whereas the appellate order has been considered, passed and signed by the Deputy Secretary to the Government of India, which is not in conformity with the Rules. The learned counsel for the respondents on the other hand, submitted that though the A/12 appellate order was signed by a lower authority not contemplated under the provisions, it has got the sanction of the Appellate Authority.

6. We have given due consideration to arguments advanced by the counsel for the parties. Learned counsel for the applicant argued that without considering the enquiry report and without stating the reasons for disagreement with the enquiry report imposing major penalty on the applicant by the disciplinary authority is contrary to the mandatory provision as contained in sub Rule (2) of Rule 15 of the CCS (CCA) Rules, 1965. It was further argued that the appellate order has been passed by an incompetent authority without any sanction or approval of the appellate authority. Learned counsel for the applicant has also brought to our notice the decision reported in AIR 1970 SC 1302, M/s. Mahabir Prasad Santhosh Kumar vs. State

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of U.P and Others, in which Hon'ble Supreme Court held that "recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy". According to the applicant, the said judgement is squarely applicable in this case since A/2 order has been passed, signed and communicated by an incompetent authority.

7. We have gone through the A/12 appellate order and we find that the said order has been passed by the Deputy Secretary to the Government of India under his signature. From the material placed on record, we did not find any sanction/approval of the appropriate authority regarding passing of such order by an authority lower in rank. Under the Rules in force, the correct authority who should have passed the appellate order is the Revenue Secretary and in this case, instead of passing the appellate order by him, his subordinate officer had issued an order. Therefore, we are of the view that the A/12 order will not stand in its legs since it has been passed by an incompetent authority the same is liable to be quashed and set aside. Regarding the contention of the applicant that the order of the disciplinary authority has merged with the order of appellate authority cannot not be



accepted since both the orders of disciplinary authority and the appellate authority are different from each other applying their mind independently. As there is some procedural lapse in the present case, we are of the view that the case has to be remanded back for a fresh decision by the appellate authority.

8. In the conspectus of the facts and circumstances, we quash and set aside the appellate order A/12 dated 3.12.2002 and remand back the matter to the 2nd respondent directing him to consider the A/12 appeal of the applicant and dispose of the same afresh untrammelled by the observations made in the A/12 order and giving a reasonable opportunity of hearing to the applicant within a period of three months from the date of receipt of a copy of this order.

9. The O.A is disposed of as above. In the circumstances, no order as to costs.

(Dated, the 20th October, 2005)

N.R.K.

N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


K.V. SACHIDANANDAN
JUDICIAL MEMBER

CVR.