

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
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1991

DATE OF DECISION 23.9.91

N.K. Unnithan _____ Applicant (s)

Mr. M.R. Rajendran Nair _____ Advocate for the Applicant (s)

Versus

The Director, Enforcement _____ Respondent (s)
Directorate, New Delhi &
2 others.

Mr. K. Prabhakaran, ACGSC _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V. Krishnan, Administrative Member

The Hon'ble Mr. N. Dharmadhan, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

N.V. Krishnan, Admve. Member

The applicant was an Enforcement Officer in the Bombay Zonal Office of the Enforcement Directorate. He has been compulsorily retired by the Annexure-I impugned order dated 14.12.89 passed by the Deputy Director, Enforcement Directorate, Bombay, the second respondent. the first respondent i.e. The appeal filed by him has been dismissed by the Director, Enforcement Directorate, Foreign Exchange Regulation Act, Government of India, New Delhi, by the impugned Annexure-II order.

2. The applicant has, therefore, impugned both these orders on many grounds. One ground is that the second respondent is not the appointing authority of the applicant

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and therefore, he could not have imposed the punishment of compulsory retirement, because the appointing authority of the applicant is the first respondent. The ground A taken in this regard reads as follows:

"The orders Annexure-I and Annexure-II are without jurisdiction. The Deputy Director is not the appointing authority and therefore the order of compulsory retirement is in violation of Article 311(1) of the Constitution of India which provides that no person who is a member of Civil Service shall be dismissed or removed by an authority subordinate to that by which he was appointed. Here the applicant was initially appointed as a member of Civil Service by the Director and Deputy Director who is subordinate to that authority has passed the order of compulsory retirement which has the effect of removal from service."

As this issue goes to the root of the matter, we found it necessary to decide it. However, when this issue was taken up for consideration, the learned counsel for the applicants submitted that the other grounds raised by him are such as to make him confident of getting relief without obtaining any decision on the disputed question as to who is the appointing authority which may or may not be in his favour. Though the applicant has raised this issue as Ground 'A' in his application, it was submitted that it is not necessary in the circumstances of the case to render a decision thereon. He, therefore, prayed that this matter may not be decided and instead, the application be disposed of after considering other grounds. In the special circumstances of the case we have acceded to this request and we have not considered the issue as to who is the appointing authority of the applicant.

3. The other important grounds taken by the applicant to impugn the Annexure-I and Annexure-II are as follows:

(a) The memorandum of charges dated 23.8.88 (Annexure-IV)

was issued by the Director acting as the disciplinary authority and he also appointed the Inquiry Officer and the Presenting Officer. However, at the final stage, the Deputy Director, who is a subordinate authority, stepped in and passed the final order.

(b) The applicant was not given an opportunity to make a representation against the Enquiry Officer's report before he was found guilty of the charges by the Annexure-I order.

(c) The photocopy of the impugned Annexure-I order shows that, strangely enough, after writing out the order, the second respondent submitted it to the first respondent with a request that the latter may kindly approve the action that he was taking. This approval was given by the Director on 29.11.89.

(d) The applicant submitted an appeal to the Secretary to Government of India, but this was disposed of by the first respondent, the Director, who had issued the memo of charges.

The learned counsel of the applicant submitted that all these fundamental irregularities are fatal to these proceedings and he prayed that the impugned orders be quashed and he be reinstated with full pay and allowances.

4. We have heard the learned counsel of the respondents and also perused the records.

5. In the view that we are taking in the matter, we have found it unnecessary either to go into the merits of the case or even to determine as to who is

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the disciplinary authority of the applicant. For the reasons being given, we are of the view that the other irregularities pointed out above would be sufficient to justify quashing these proceedings.

6. The facts narrated above are not denied. The Anna Xure-I order does not indicate as to how the second respondent came to be seized of the proceedings, when they were initiated by the first respondent as a disciplinary authority. An explanation is given only in para 24 of the counter affidavit. It states that the work of the Vigilance Section was looked after by the Special Director of Enforcement and hence the charge-sheet was issued by the Director. However, when the final order was to be passed in the disciplinary proceedings, this work was entrusted with the Deputy Director, who is the appointing authority upto the rank of Enforcement Officers.

7. Even if this claim is accepted for argument's sake, these proceedings are in contravention of the provisions of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (Rules, for short). We refer to Swamy's Compilation, 1988 edition.

8. Rule 12 contains provisions about the disciplinary authorities and their powers. Rule 12(1) empowers the President to impose any of the penalties specified in Rule 11 on any government servant irrespective of whether he is the appointing authority. Needless to say, the President of India is the highest authority in such matters. In some cases he himself is the Appointing Authority. In all other cases, the appointing authorities are subordinate to him. This is the only

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instance where an authority higher than the appointing authority has been declared as a disciplinary authority and hence vested with powers to impose all penalties referred to in Rule 11 on any government servant.

9. Rule 12(2)(a) is relevant for our purposes. It provides that the appointing authority or the authorities specified in the Schedule in this behalf or any other authority empowered in this behalf by a general or a special order of the President may impose any of the penalties specified in Rule 11. is subject to sub rule (4) which However, this rule states that the penalties specified in clauses (v) to (ix) of Rule 11 shall not be imposed by any authority subordinate to the Appointing Authority.

10. We have looked into the Schedule to the Rules. We have considered the provisions of Part II thereof which apply to Group B posts merely by way of illustration. Column 3 thereof specifies the appointing authority. The authority competent to impose penalties and the penalties referred to in Rule 11, which it may impose, are specified in Columns 4 and 5. In the entries upto S.No.4 the President is the appointing authority. In the subsequent entries, others like the Secretary to Government of India are the appointing authorities. A perusal of Columns 4 and 5 shows that invariably, it is specified that the appointing authority shall be competent to impose all the penalties mentioned in Rule 11, while others, who are the subordinates of the appointing authorities, have been authorised to impose only the minor penalties specified in clause (i) to (iv) of Rule 11.

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11. It, therefore, logically follows that the power to impose the punishment of compulsory retirement could not vest simultaneously in both the Director, i.e. the first respondent, and the Deputy Director, i.e. the second respondent, the latter, admittedly, being a subordinate of the former. If the second respondent alone is the appointing authority (as is stated by the respondents), then, the first respondent cannot be considered to be the appropriate disciplinary authority. This is due to the fact that under Rule 2(g), 'disciplinary authority' means the authority who can impose any of the penalties referred to in Rule 111. No doubt, the Director under clause (a) of Rule 121 can be empowered in this behalf by a general or special order. However, no such plea has been raised.

12. Another conclusion follows from this which is that if he is not the disciplinary authority, the Director could not have initiated the disciplinary proceedings by Annexure-IV memorandum, because Rule 14 vests such power only in the disciplinary authority. There is no plea that the proceedings have been initiated under Rule 13(1)(a) by virtue of being empowered by the President.

13. If, however, the Director, i.e. the first respondent, is the appointing authority, as contended by the applicant, then, he is, no doubt, the disciplinary authority. In that event, the impugned Annexure-I order is patently illegal because, by that order, the second respondent, who is admittedly an authority subordinate to the first respondent, has imposed the major punishment of compulsory retirement which is contrary to the provisions of Rule 12(4)(a).

14. That apart, we are of the view that the following irregularities are fatal to the disciplinary proceedings:

(a) Except in the circumstance mentioned in Rule 13(2), the authority which commenced the disciplinary proceedings under Rule 14 has necessarily to pass the final orders. It cannot allow the final orders to be passed by another authority subordinate to it.

(b) Even if it is held that the second respondent was competent to pass the impugned Annexure-I order, it was highly improper on his part to have sought the prior approval of the Director, the first respondent, of the order he intended to be passed. This amounts to abdication of one's judgement, which will render the order liable to be quashed. The only provision in the Rules for such consultation is in Rule 12(4)(b) in the special circumstances mentioned therein. The consultation done in this case is not sought to be justified under this provision.

(c) The applicant has been denied reasonable opportunity to defend himself by not being given a copy of the enquiry officer's report to enable him to make his representation thereon to the disciplinary authority before that authority found him guilty of the charges. (AIR 1991 SC 471).

15. The appellate order also suffers from one serious infirmity. The authority which framed the memorandum of charges at Annexure-IV is the Director, i.e. the first respondent. That being the case, neither the officer who signed the memorandum of charges nor any of his successors in office can hear the appeal filed by the applicant because, the appellate authority is ordinarily an authority to whom the disciplinary authority is subordinate. A reference to the Schedule substantiates this position. Therefore, the first respondent who is only a Director was not competent to hear the appeal in a case where his predecessor in office had issued the

(l) ^{acting} memorandum of charges as the disciplinary authority.

16. For the aforesaid reasons, the impugned orders are liable to be quashed. In the circumstances, we have not considered any other issue on merit.

17. However, in view what has been stated by us in paras 6 to 13 supra, we are of the view that in the circumstances of the case, the proceedings commencing from the issue of the memorandum of charges dated 23.3.88 (Annexure-IV) have to be quashed.

Accordingly, we quash the Annexure-IV memorandum dated 23.8.88 by which the memorandum of charges was communicated to the applicant and all subsequent proceedings in the disciplinary proceedings including the impugned Annexure-I order dated 14.12.89 of the Disciplinary Authority and the Annexure-II order of the Appellate Authority. We make it clear that this judgment will not stand in the way of the competent authority from commencing fresh proceedings against the applicant, if so advised. The applicant shall be reinstated within a period of one month from the date of receipt of the judgment and he will be entitled to all consequential benefits in accordance with the provisions of law.

18. There will be no order as to costs.


23.10.91.
(N. Dharmadan)
Judicial Member


23/10/91
(N.V. Krishnan)
Administrative Member