

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 108 of 1998

Monday, this the 28th day of August, 2000

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. A. Nizarudeen,
Lower Division Clerk,
N.C.C. Directorate, Kerala (K&L),
Cotton Hill Bunglow,
Thiruvananthapuram-10 ...Applicant

By Advocate Mr. G. Sasidharan Chempazhanthiyil

Versus

1. Commanding Officer,
INS Garuda, Kochi-4
2. Flag Officer Commanding-in-Chief,
Headquarters, Southern Naval Command,
Kochi-4
3. Officer-in-charge,
Naval Armament Inspectorate,
Karakulam, Trivandrum. Respondents

By Advocate Mr. Govindh K. Bharathan, SCGSC (rep.)

The application having been heard on 28th August, 2000,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A3 and A5.

2. The applicant is working as Lower Division Clerk under the respondents. He was issued with a charge sheet under Rule 16 of CCS (CCA) Rules, 1965. He says that he denied the charge and gave a reply on 23-11-1996. He was found guilty by the disciplinary authority and was awarded the penalty of withholding of two increments without cumulative effect for a period of two years. His appeal was dismissed by the appellate authority confirming the penalty imposed by the disciplinary authority. He says that A1, A3 and A5, the

imputation of misconduct and statement of charges, order of the disciplinary authority and of the appellate authority respectively, are malafide and unjustified. He also says that there is no evidence to substantiate the charges.

3. One of the grounds raised is that A1, A3 and A5 are vitiated by malafides. There is absolutely no pleading to the effect that A1, A3 and A5 are vitiated by malafides. Apart from the word 'malafide' in ground 'A', there is absolutely no mention of any malafide in the OA. There is none in the party array of respondents by name. Malafides if alleged, the person against whom the malafide is alleged should be brought in the party array by name. That is not done. It can only be said that if there is malafide it is on the part of the applicant in saying that these orders are vitiated by malafides.

4. A1 contains two charges that the applicant made a false statement in his representation dated 10th of April, 1996 and that he is a habitual absentee from duty. As per A3, the disciplinary authority found both the charges as proved and imposed the penalty of withholding of two increments without cumulative effect for a couple of years. The same was confirmed in appeal, as per A5, by the appellate authority.

5. A6 is the representation submitted by the applicant referred to in A1 as per which the applicant has made a false statement. In A6, the applicant has stated thus:

"Whereas without initiating any disciplinary action against me my salary was held since May 95."

A6 is dated the 10th of April, 1996. The applicant filed his explanation to A1 charge memo, as per A2. In A2, he has clearly stated thus:

"Under these excruciating circumstances, I might have written the salary and benefits for 11 months instead of 8 months i.e. less 3 months for which I have received the salary and other related monetary benefits. It is a mistake and I repent for the error. It was not written with the intention to falsify facts or to tar the good reputation of then Commanding Officer. . . ."

So, it is quite clear that the applicant has admitted that he has made a statement in his representation which is not true and correct.

6. In the OA, it is stated thus:

"He made several representation to the 1st respondent all in vain. Thereafter he sent a petition to the next higher authority who is the 2nd respondent. A copy of that representation dated 10.4.96 is produced to be marked as Annexure A6. Only thereafter the salary for the month of May 1995 and onwards was paid to him by the 1st respondent."

So, as per the pleading in the OA, the stand of the applicant is that only after 10-4-1996 his pay for the months from May 1995 onwards was paid. This is contrary to the admission in A2 submitted by him.

7. In the OA, it is also stated thus:

"His leave salary pay starting from the month of May 1995 except for 8/95 to 10/95 was not paid to him till April 1996."

We asked the learned counsel appearing for the applicant, whether the applicant was on leave during the said period. It was submitted that he was not on leave. That being so, the said averment in the OA is false to the

knowledge of the applicant. It is needless to say that a party who approaches the Tribunal should come forward with clean hands. He who suppresses material facts well within his knowledge and thereby attempts to mislead the Tribunal should face and suffer the consequence. The consequence is nothing short of dismissal of the Original Application. The applicant herein has deliberately suppressed material facts well within his knowledge with the ulterior motive of misleading the Tribunal and on that ground alone this Original Application is liable to be dismissed.

8. The other ground raised is that this is a case of no evidence. It can never be said to be a case of no evidence when the applicant himself in his explanation to the charge has admitted that he has made a statement in A6 which is not true and correct. So, here is an admission as far as the first charge is concerned.

9. As far as the second charge is concerned, the learned counsel appearing for the applicant submitted that the applicant was on medical leave and at no point of time his leave was refused. The charge is not that he was on unauthorised absence. The second charge is that he is a habitual absentee. Absence can be authorised or unauthorised. In A3, the order of the disciplinary authority, it is clearly stated how the applicant manages to be absent by resorting to certain methods. The disciplinary authority has considered the matter. There is no question of re-appreciating the evidence by this Tribunal.

10. The learned counsel for the applicant advanced certain new pleas across the Bar. A plea which is not raised in the OA cannot be considered. That being so, we are not adverting to the new pleas advanced by the learned counsel for the applicant across the Bar.

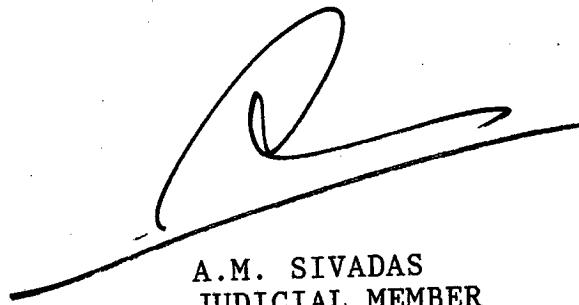
11. We do not find any ground to quash A3 and A5.

12. Accordingly, the Original Application is dismissed.
No costs.

Monday, this the 28th day of August, 2000



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexures referred to in this Order:

1. A1 True copy of the Charge sheet No. 260/56/2/AN dated 11-11-96 issued by the 1st respondent.
2. A2 True copy of the reply dated 23-11-96 issued to the 1st respondent by the applicant.
3. A3 True copy of the order No. 269/56/2/AN dated 7-1-97 issued by the 1st respondent.
4. A5 True copy of the order No. CS/6006/43/104 dated 30-11-97 issued by the 2nd respondent.
5. A6 True copy of the representation dated 10-4-96 submitted by the applicant to the 2nd respondent.