

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 125 of 2002

Tuesday, this the 27th day of May, 2003

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HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. C.F. William Luiz,
Ex-Turner (SK), Naval Air Craft Yard, Kochi
Residing at Cherupurathil House,
Pushpak Road, Vaduthala PO, Kochi.Applicant

[By Advocate Mr. K.A. Abraham]

Versus

1. Union of India represented by the
Chief of Personnel, Naval Head Quarters,
New Delhi.

2. The Flag Officer Commanding in Chief,
Southern Naval Command, Kochi.

3. Chief Staff Officer (P&A), Head Quarters,
Southern Naval Command, Kochi.Respondents

[By Advocate Mr. C. Rajendran, SCGSC]

The application having been heard on 27-5-2003, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

In this application filed under Section 19 of the
Administrative Tribunals Act, 1985, the applicant, C.F.William
Luiz, Ex-Turner, Naval Air Craft Yard, Kochi, has challenged
the legality, propriety and correctness of Annexure A-7 order
dated 8-8-2000 of the 3rd respondent imposing on the applicant
a penalty of compulsory retirement from service, Annexure A-9
order dated 3-10-2000 of the 2nd respondent and Annexure A-11

order dated 24-7-2001 of the 1st respondent refusing to interfere in revision. Factual matrix can be briefly stated thus.

2. The applicant, who was employed as a Turner, was served with a memorandum of charges dated 22-7-1995 (Annexure A-3). There were three articles of charges, which read as follows:-

"Article I

That the said Shri C.F.William Luiz while employed as Turner(SK) in Naval Aircraft Yard, Kochi-4 did remain unauthorisedly absent from duty w.e.f. 16 August 94 till to date. The said act of Shri C.F.William Luiz is in violation of Rule 3(1)(iii) of Central Civil Services (Conduct) Rules 1964.

Article II

That the said Shri C.F.William Luiz did produce Medical Certificate for misleading the administration in support of his unauthorised absence stating that he is a bedridden patient suffering from Lumbago w.e.f. 16 August 94. The said act of Shri C.F.William Luiz is in contravention of Rule 3(1)(i) of Central Civil Services (Conduct) Rules 1964.

Article III

That the said Shri C.F.William Luiz left India to a Foreign Country viz. Sultanate of Oman and secured employment at Arabian Industries, P.B.No.51, Postal Code-142, Sultanate of Oman without obtaining permission of the competent authority. The said act of Shri C.F.William Luiz is in violation of Rule 15(1) and 3(1)(iii) of Central Civil Services (Conduct) rules 1964."

The applicant denied the charges. An enquiry was held and on consideration of the enquiry report the impugned order Annexure A-7 was issued by the 3rd respondent holding the applicant guilty of all the charges and imposing on him a penalty of compulsory retirement from service. Alleging that the enquiry was held in violation of the principles of natural justice, in total violation of the rules and procedure and denying the applicant a reasonable opportunity of knowing the names of, witnesses and effectively putting forth his defence and was not

given an opportunity to adduce defence evidences and to make a statement, the applicant submitted an appeal. The appellate authority, however, by Annexure A-9 order did not find any infirmity in the procedure nor did not find any merit in the appeal and therefore rejected the appeal. The revisional authority also followed the same. It is aggrieved by this that the applicant has filed this application.

3. It has been alleged in the application that the enquiry was held in total violation of the rules prescribed under CCS (CCA) Rules, that the names of witnesses were not mentioned in the annexure to the memorandum of charges, that witnesses whose names were not included were brought in as witnesses all of a sudden thereby denying the applicant a reasonable opportunity to effectively cross-examine the witnesses, that after the closure of all the evidences in support of the charges as required under Rules 14(16) of the CCS (CCA) Rules the applicant was not called upon to state his defence either orally or in writing, that he was not required in terms of Rules 14(17) to enter upon his defence, that the applicant was not questioned generally on the evidences appearing against him and that the enquiry, therefore, was vitiated by violation of the principles of natural justice and the resultant order is vitiated by violation of guarantees under Article 311(2) of the Constitution of India.

4. Respondents in their reply statement seek to justify the impugned orders on the ground that the applicant has been given ample opportunities to put forth his defence. Regarding the averment in the application that the applicant was not called upon to state his defence and was not given an

opportunity to adduce evidences, it has been contended by the respondents that by Question No.124 the enquiry officer has after the closure of the evidences asked the applicant whether he wanted to state anything' to which he replied that he had nothing to state. It is not a case of denial of the opportunity, but a case of not availing of the opportunity, contend the respondents. Respondents contend that the application is totally bereft of merit and is required to be dismissed.

5. We have gone through the pleadings in this case and also the file relating to the enquiry made available for our perusal by the learned counsel for respondents. We find that the argument of the learned counsel of the applicant that the applicant has not been given an opportunity either to state his defence as required under sub-rule 16 of Rule 14 or to adduce evidences on his part as required under sub-rule 17 of Rule 14 or to explain the evidences appearing against him as required under sub-rule 18 of Rule 14 of the CCS (CCA) Rules is unexceptionable and true. A perusal of the enquiry report itself is sufficient to substantiate this argument of the learned counsel of the applicant. It is worthwhile to extract paragraphs 4, 5 and 6 of the enquiry report (Annexure A-6):-

"4. Brief statement of procedure: In accordance with Headquarters, Southern Naval Command order 6003/43/54 dated 01 Aug 97, preliminary hearing of the inquiry held on 02 Mar 98. Subsequent hearings on 25 Mar 98, 07 Apr, 06 May, 25 June, 25 Jul, 24 Mar 99, 23 Apr 99, 25 Jul 99 and 11 May 99. The Delinquent Government Servant was informed of each hearing vide my VRS/INQ/01 dated 17 Feb 98, 05 Mar 98 and NSC/VRS/INQ/1/98 dated 26 Mar, 13 Apr, 17 Jun, 03 Aug, 09 Aug 98 and 05 Apr and 29 Apr 99. He had appeared for all the sittings consecutively. Before the preliminary proceedings of the inquiry, he was afforded opportunity to engage his Defence Assistant vide my VRS/INQ/01 dated 17 Feb 98. Accordingly he has engaged

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Shri Mahadevan Pillai, SK, Naval Aircraft Yard, Kochi as his Defence assistant. During the examination, three of the Prosecution witnesses and two additional witnesses were examined. [Emphasis supplied]

5. On completion of examination of the witnesses on 11 May 99 the Presenting Officer was directed to submit her written brief who has submitted the same on 06 Aug 99. The deposition of witnesses along with copy of written statement of Presenting Officer was forwarded to Delinquent Government Servant/Defence Assistant on 10 Aug 99. The reply from the Defence Assistant was received on 28 Sep 99 wherein he has raised various contentions.

6. Points for determination: Points for determination in respect of articles of charges framed against Shri CF William Luiz, Turner (SK) vide Naval Aircraft Yard, Kochi memorandum 272/6/573 (discip) dated 22 Jul 95 are drawn out as under:-

- (a) Did he remain unauthorisedly absent from duty w.e.f. 16 Aug 94 to 22 Jul 95.
- (b) Did he mislead the administrative authority in support of his unauthorised absence stating that he is bed ridden patient suffering from "Lumbago".
- (c) Did he left India to secure an employment at Arabian Countries without obtaining permission of the Competent Authority."

6. It is evident from what is quoted above that on conclusion of the examination of witnesses on the side of the Presenting Officer, the Enquiry Officer directed the Presenting Officer to submit the written brief and the applicant to submit a reply brief and ^{or} thereafter there was no examination of the applicant nor his witnesses, nor was any opportunity given to the applicant to state his defence either orally or in writing. We have considered the case of the respondents that Question No.124 put by the Enquiry Officer to the applicant on 28th September, 1999 is sufficient compliance with the requirements of sub-rules 16, 17 and 18. The only question put to the applicant is 'whether he wanted to state anything' and the answer given is 'nothing to state'. The Enquiry Officer has not required the applicant to state either orally or in writing

his defence, nor was the applicant called upon to enter on his defence and adduce defence evidences. The applicant was also not questioned as required under sub-rule 18 of Rule 14 of the CCS (CCA) Rules, which is absolutely necessary when the applicant was not examined as a witness. The Enquiry Officer, it appears, considered it sufficient to record evidences produced by the Presenting Officer only and ask the applicant whether he wanted to say something. However, that alone does not satisfy the mandates of sub-rules 16, 17 and 18 of Rule 14 of the CCS (CCA) Rules. Stating the defence, adducing evidences in defence, explaining evidences appearing against him ⁱⁿ and the statements of witnesses examined in support of the charges are the most important aspects of opportunity to defend. We find that in this case these opportunities have been completely denied to the applicant. The enquiry having been held violating the safeguards contained in the rules and also the principles of natural justice is vitiated and the resultant order Annexure A-7 is unsustainable.

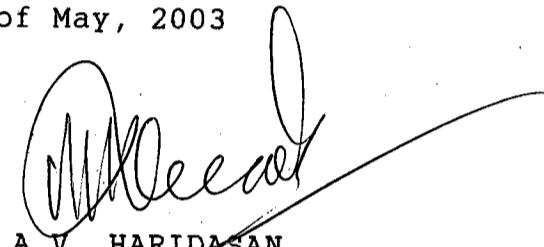
7. In the light of what is stated above, we find that the impugned order Annexure A-7 is liable to be set aside. The appellate and revisional orders (Annexure A-9 and A-11) also suffer from lack of application of mind to the valid grounds raised by the applicant and these orders are also liable to be set aside.

8. In the result, the Original Application is allowed in part. The impugned orders Annexure A-7, A-9 and A-11 are set aside. Respondents are directed to reinstate the applicant forthwith and to pay him the backwages in accordance with law within a period of two months from the date of receipt of a

copy of this order. We make it clear that this order will not preclude the respondents from recommencing the proceedings against the applicant from the stage of closure of evidences in support of the charges and to pass appropriate orders after completing the enquiry in accordance with law. If the respondents decide to recommence, hold and complete the enquiry, it shall be commenced within a period of two months from the date of receipt of a copy of this order. No order as to costs.

Tuesday, this the 27th day of May, 2003


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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