

Central Administrative Tribunal,
MADRAS BENCH.
Camp at: Ernakulam.

Monday the ninth day of November, One thousand
nine hundred and eighty seven.

PRESENT:

The Hon'ble Secy. Shri C. Venkataraman, Admn. Member

and

The Hon'ble Shri G. Sreedharan Nair, Judl. Member.

T.A.No.K.257 of 1987 and O.A.133 of 1986.

T.A.No.K.257/87

Sri V.V.Sankaran Kutty, Permanent
Auditer, No.8300948(On leave)

Kalyani Sadan, Pattiayam, Kettayadi,
Pathayankunnu Post, Tellicherry,
Cannanore Dt.Kerala State.

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Applicant.

vs.

1. The Controller General of Defence
Accounts, West Block, Ramakrishnapuram,
New Delhi - 110 066.

2. The Controller of Defence Accounts (ORs)
South, Teynampet, Madras-18.

3. Sri R.M.S.Liberhan, Inquiry Officer,
Joint Controller of Defence Accounts I/c
P.A.O. (ORs) A.S.C.(MT), Pune-14.

4. The Accounts Officer I/c P.A.O.(ORs)
D.S.C. Cannanore-13. ...

Respondents.

O.A.133 of 1986:

1. V.V.Sankarankutty ... Applicant.

vs.

1. The Controller General of
Defence Accounts, West Block,
Ramakrishnapuram, New Delhi-66.

2. The Controller of Defence Accounts (ORs)
South Teynampet, Madras-18.

3. The Union of India, Ministry of
Defence, (Finance Division) New Delhi.

...

Respondents.

S.Sri M.K.Damodaran, P.V.Mohanan
and V.K.Mohanan ... Advocate for applicants
in both cases.

Sri K.Narayana Kurup, ACGSC ... Advocate for respondents
in both cases.

(Order pronounced by Hon'ble Sri G.Sreedharan Nair,
Judicial Member)

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The applicant in these two cases was a permanent Auditor in the Pay Accounts Office, (ORs) DSC, Cannanore.

He was proceeded against under the CCS (CCA) Rules for

the alleged failure to maintain devotion to duty, thereby contravening the provisions of clause (ii) of Sub-rule (1)

of Rule 3 of the CCS (Conduct) Rules, 1964. The charge

against him was that while he was serving at Cannanore

he was relieved of his duties on 10-10-1980 on his transfer

to PAO (ORs) BEG Kirkee, Pune, but did not report for

duty and absented himself with effect from 11-10-1980

without sanction of leave and that he did not make any

arrangement for the receipt of the official communications

sent to him by registered post while so remaining absent.

The disciplinary authority appointed an Enquiry Officer

to conduct the enquiry ~~ex parte~~, as the applicant did not

participate. According to the applicant, he had sent

representations to the Enquiry Officer pointing out that

on account of ill-health as well as on account of financial

stringency, he is not in a position to take part in the enquiry that was being conducted at Pune. However, these representations were not accepted and the Enquiry Officer conducted the enquiry and came to the conclusion that the applicant is guilty of the charge. The disciplinary authority accepted the findings of the Enquiry Officer and imposed on him the penalty of removal from service with effect from 16-5-1983, by the order dated 2-5-1983. The applicant filed O.P.No.4471 of 1983 before the High Court of Kerala challenging the said order. It is that O.P. which stands transferred to this Tribunal and has been numbered as T.A.K.257 of 1987.

From the order of the disciplinary authority, the applicant preferred an appeal before the appellate authority. The appeal was dismissed by ~~an~~ order dated 6-11-1985. In O.A.133 of 1986, the applicant has challenged the said order and has prayed for a direction to the respondents to reinstate him in service.

In the reply that has been filed by the respondents, it is stated that as it was felt that the continuance of the applicant at Cannanore would be detrimental to the discipline and smooth functioning of the office, he was transferred from Cannanore to Kirkee, Pune, on 23-2-1980. The applicant challenged the said order of transfer by filing a writ petition before the High Court of Kerala and there was an interim stay. However, it was vacated on 19-9-1980. From 22-9-1980 to 10-10-1980, the applicant was on leave. He was directed to report at Kirkee on 10-10-1980, but neither did he report there, nor send any application for leave for the period from 11-10-1980 to 14-3-1981. The communications sent to his house address directing him to report for duty were also returned undelivered with the endorsement that the addressee was not found. It was in these circumstances, that the memorandum of charges was issued on 13-3-1981. Since the place of duty of the applicant was Kirkee, the enquiry

was fixed there. The enquiry was adjourned on several

occasions so as to enable the applicant to participate.

However, the applicant requested for an adjournment on

medical ground producing a medical certificate from an

Ayurvedic physician. The Enquiry Officer intimated the

applicant that he should report before the Civil Surgeon,

but the applicant did not do so. Since the applicant

failed to co-operate with the enquiry proceedings, it had

to be conducted ex parte. It was done only in accordance

with the Rules and adhering to the principles of

natural justice. There is no ground to quash the order

passed by the disciplinary authority or by the appellate

authority.

It is clear from the facts stated above that the

foundation for the charge of unauthorised absence emanated

from the order transferring the applicant from Cannanore

to Kirkee. Instead of taking charge at the new station,

the applicant challenged the order by filing a writ

petition before the High Court of Kerala. There was an order of interim stay by the High Court on account of which the applicant continued here itself. But when the interim stay was vacated, the applicant was directed to report for duty at Kirkee on 10-10-1980. Admittedly, the applicant was on leave with effect from 22-9-1980 to 10-10-1980, after the order of stay was vacated by the High Court on 19-9-1980. The case of the applicant is that he had made a further application on 8-10-1980 for the extension of leave for 57 days with effect from 11-10-1980. It is also stated in the application in T.A.K.257 of 1987 that thereafter on 5-12-1980, 3-1-1981, 1-2-1981 and on 20-2-1981 also he had made applications for extension of leave, supported by medical certificates. He has produced copies of these applications as well as the copies of the medical certificates. It is alleged that the applications had been sent under certificates of posting, and copies of the same have also been produced. Though there is no

specific denial of these in the reply filed in T.A.K.257

of 1982, in the reply in O.A.133 of 1986 the respondents

would clearly state that after the direction to report at

Kirkee on 10-10-1980 was given, the applicant had not sent

any application for leave for the period from 11-10-1980

to 14-3-1981.

The enquiry was conducted at Pune. It is on record

that when the applicant came to know about the same, he

sent representations pointing out his physical ailment.

at Connanore. However, as Pune was the station to which

the applicant stood posted the enquiry was proceeded with

there itself. It is not disputed that it was not

mandatory to hold the enquiry there. According to the

respondents, they rejected the request of the applicant as

he had failed to co-operate with the enquiry. The Enquiry

Officer proceeded ex parte and found the applicant guilty.

Counsel of the applicant submitted that in the circumstances

proceeding with the enquiry ex parte at Pune was violative

of the necessity to afford a reasonable opportunity to the applicant to defend himself. We are persuaded to

agree. True, there was an order transferring the applicant from Cannanore to Kirkee. However, admittedly the applicant had not joined duty there. According to him,

he was not in a position to do so on account of ill-health

and that he had sent in applications for leave with

medical certificates. When the respondents dispute the

same, it behoved them to establish that aspect. Evidently,

he wanted to take part in the enquiry and it was on

that account that he put in repeated representations for

shifting the venue to Cannanore. He had urged both

physical ailment as well as financial difficulty in

support of the said request. In the circumstances of the

case, we are of the view that this request should have been

allowed, instead of turning it down and proceeding with

the enquiry ~~ex parte~~. The action of the Enquiry Officer

amounts to denial of reasonable opportunity for the

applicant to defend himself. It is settled that in

departmental enquiries, a real and effective opportunity

is to be afforded to the delinquent employee so as to

establish his innocence, failing which it will amount to

denial of reasonable opportunity and will be violative of

the principles of natural justice.

It is pertinent to note at this juncture that the

challenge against the order of transfer itself has since

been upheld by this Tribunal and the said order has been

quashed.

In the circumstances, we hold that the impugned

orders of the disciplinary authority and the appellate

authority holding the applicant guilty of the charge and

imposing the penalty of removal from service cannot be

sustained and hence they are hereby quashed. The result is

that the applicant has to be reinstated in service

forthwith. We direct the respondents to do so. We make

it clear that it is open to the respondents to conduct

the enquiry against the applicant, in case they so desire,

on the very same charge after affording him a reasonable

opportunity of defending himself in accordance with law.

If the respondents propose to proceed with the enquiry,

the question of treating the period from the date on which

the applicant was removed from service till the date of

reinstatement in accordance with this order and the payment

of consequential benefits shall be determined by the

respondents depending upon the result of the enquiry

Proceedings. In case, the respondents do not propose to

proceed further with the enquiry, the applicant shall be

Paid the back wages from the date of removal from service

till reinstatement.

These applications are allowed as above.

C Venkataran
9/11/87

(C. VENKATARAMAN)
MEMBER (A)
9-11-1987

G. Sreedharan Nair
9-11-1987

(G. SREEDHARAN NAIR)
MEMBER (J)
9-11-1987.

Index: Yes/~~No~~

S.V.