

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 163/97

Tuesday, this the 28th day of September, 1999.

CORAM:

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

HON'BLE MR G RAMAKRISHNAN, ADMINISTRATIVE MEMBER

V.U. Hassan,
S/o. Unni,
Vathukkaparambil House,
Malippuram P.O.,
Kochi - 682 511,
Working as Deck Hand,
Integrated Fisheries Project,
Kochi.

...Applicant

By Advocate Mr. A.X. Varghese

Vs.

1. Union of India represented by its Secretary, Ministry of Agriculture, New Delhi.
2. Director, Integrated Fisheries Project, Government of India, Kochi - 682 016.

...Respondents

By Advocate Mr. Govindh K. Bharathan, SCGSC

The application having been heard on 28.9.99, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A-7, A-9 and A-13 and to direct the respondents to release the reduced two stages in the time scale of pay of the applicant with effect from 10.10.1995 and the increments of pay during the period of reduction along with interest @ 12% per annum.

2. The applicant is a Junior Deck Hand under the 2nd respondent. The 2nd respondent issued a memo dated 23.5.95 to the applicant alleging that the applicant had forcibly entered the cabin of the 2nd respondent against the advice of the 2nd respondent's personal staff and misbehaved towards

the 2nd respondent showering abusive language. The applicant submitted an explanation to the said memo. Subsequently, charges were framed against the applicant and the 2nd respondent imposed penalty on the applicant as per A-7. Against A-7, he preferred an appeal and as per A-13, the Appellate authority rejected the appeal and confirmed the penalty imposed on the applicant.

3. According to the applicant, the complainant himself has assumed the role of disciplinary authority in his own cause, that no copy of the enquiry report was furnished to him and that no notice of the enquiry was given to him.

4. Respondents resist the O.A. contending that though the enquiry officer summoned the applicant for a personal hearing, he didnot appear, that he didnot accept the summons and that the disciplinary proceedings were initiated not based on the complaint of the 2nd respondent.

5. It is quite evident from A-3 that the disciplinary proceedings were initiated against the applicant under Central Civil Services (Classification, Control and Appeal) Rules. In this case, only minor penalty has been imposed. Rule 16 of the said rules deals with the procedure for imposing minor penalties. As per Rule 16(b) of the said rules, holding an enquiry in the manner laid down in sub rules (3) to (23) of Rule 14 in every case in which disciplinary authority is of the opinion that such enquiry is necessary. In this case, the disciplinary authority has felt that it is necessary to conduct an enquiry. That being the position, the procedure laid down has to be strictly

complied with. The specific case of the applicant is that he was not given notice of the enquiry. What is stated in the reply statement is that the enquiry officer summoned the applicant for a personal hearing. That alone is not what is contemplated. The delinquent Government Servant should be informed of the date of the enquiry in order to enable him to defend. If the applicant was given a reasonable opportunity of defending his case by giving him notice of the enquiry, there would have no difficulty for the respondents to state that fact specifically.

6. Another ground raised by the applicant is that before imposing punishment, copy of the enquiry report was not served on him. The reply statement is totally silent on this aspect. Then, it is only to be taken that the averment of the applicant that the enquiry report copy was not furnished to him is true.

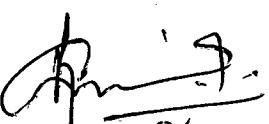
7. A delinquent Government Servant cannot be found guilty and punished without affording him a reasonable opportunity of defending in compliance with the procedure laid down. A-7 is not in compliance with the procedure prescribed. A-13, though says that the Appellate authority has considered all the arguments advanced by the applicant, on going through the same, we are unable to get ourselves convinced that he has considered all the aspects in the proper perspective. The Appellate authority says that the allegation of the applicant that he was not served with a notice is an afterthought to explain the circumstances. How the Appellate authority has come to that conclusion is known to him only. It should reflect in the order itself. The Appellate authority also says that the applicant did not

make himself available before the enquiry officer though summons was issued to him to appear before him for conduct of the enquiry. In the reply statement, it is specifically stated that the applicant was summoned by the enquiry officer only for a personal hearing and the enquiry officer conducted the enquiry after examining the witnesses since the applicant didnot accept the summons for personal hearing. It only shows that the enquiry officer has not complied with the procedure prescribed.

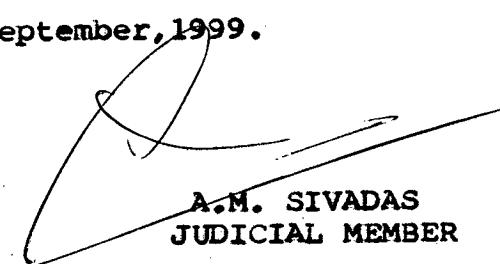
8. Thus, it is very clear that the enquiry has not been conducted in accordance with the prescribed procedure and the Appellate authority has not considered all the aspects properly. That being so, A-13 is liable to be quashed. Since A-13 is liable to be quashed, it is not necessary to quash A-7 since it has merged with A-13.

9. Accordingly, A-13 order of the Appellate authority rejecting the appeal and confirming penalty imposed on the applicant is set aside. It goes without saying that since A-7 has merged with A-13, it is not necessary to quash the same. We make it clear that this will not stand in the way of the respondents to initiate disciplinary proceedings against the applicant in accordance with the procedure prescribed and the rules in force. No costs.

Dated this the 28th day of September, 1999.


G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

nv
28999


A.M. SIVADAS
JUDICIAL MEMBER