

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 19/99

Thursday the 7th day of January 1999.

CORAM

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

N.P.Kuttan
Peon, INHS Sanjivani
Naval Base, Kochi-4

...Applicant

(By advocate Mr P.K.Muhammed)

Versus

1. The Flag Officer Commanding-in-Chief
Southern Naval Command
Naval Base, Kochi-4.

2. Smt. K.Manikutty
Upper Division Clerk
Presenting Officer, INHS Sanjivani
Naval Base, Kochi-4.

3. M.M. Varghese, Inquiring Authority
A.N.S. Base Victualling Yard
Naval Base, Kochi.

...Respondents

(By advocate Mr Govind K. Bharathan, SCGSC)

The application having been heard on 7th January 1999,
the Tribunal on the same day delivered the following:

O R D E R

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

The applicant working as Peon in I.N.H.S., Sanjivani,
Naval Base, Kochi has filed this application seeking to have
impugned orders at Annexures A-5, A-6, A-9, A-10 and A-11
set aside. The applicant was proceeded against departmentally
on the basis of memo of charges dated 17.7.96. As there
was some defect in the memo, Annexure A-9 order proposing
to cancel the memo and to issue a fresh memo of charges
(Annexure A-10) was issued by the Disciplinary Authority.
On the basis of Annexure A-10 memo of charges, the enquiry
proceeded. The grievance of the applicant is that the
Enquiry Authority has decided to permit the Presenting Officer
to introduce additional witnesses whose names did not figure
in the original list of witnesses appended to the memo of

charges. To the notice issued by the Enquiry Authority informing the applicant that additional witnesses would be examined, the applicant submitted a reply (Annexure A-2) wherein he has stated that the matter should be referred to the Disciplinary Authority. Over-ruling the objections raised, the Enquiry Authority intimated to the applicant that the witnesses would be permitted to be examined. The Enquiry Authority in his letter dated 4th Nov. '98 (Annexure A-3) indicated that under Sub Rule 15 of Rule 15 of CCS(CCA) Rules, 1965, the Enquiry Authority may permit the Presenting Officer to examine witnesses whose names are not included in the original list of witnesses and that there was nothing illegal or irregular in examining additional witnesses. The applicant again objected to the decision of the Enquiry Authority in allowing additional witnesses to be examined. The Enquiry Officer has, by letter dated 11th (A-5) Nov. '98 informed the applicant of the date of examination of witnesses and requested him to participate in the enquiry. It is under these circumstances the applicant has filed this application for the following reliefs:

- (i) to call for the records relating to the case and after hearing the parties, this Hon'ble Tribunal may be pleased to quash Annexures A-5, A-6, A-9, A-10 and A-11.
- (ii) direct the 3rd respondent not to proceed with the enquiry scheduled on 8.1.99 pending disposal of the OA.

2. Learned counsel of the applicant submitted that the applicant is not pressing his prayer for setting aside Annexures A-9 & A-10 orders but would confine his claim to a direction to the respondents not to examine additional new witnesses.

3. Going through the pleadings in the OA and the objections raised by the applicant to the decision of the Enquiry Authority to permit examination of additional new witnesses

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(Annexure A-4(p.2), I am not convinced that the applicant has even a *prima facie* case. There is no allegation in the application that the purpose of examination of additional witnesses is to fill up a gap or lacuna and not for curing an inherent lacuna or a defect in the evidence as permitted under Sub Rule 15 of Rule 15 of CCS (CCA) Rules. The only object of the applicant appears to be to shut out evidences against him which is not sustainable. On the order of the Enquiry Authority granting permission to the Presenting Officer to examine additional witnesses and on the notice to the applicant to participate in the proceedings, I am of the considered view that the applicant does not derive any legitimate cause of action. If the applicant has got a case that the enquiry is being held in an irregular manner, it is upto him to participate in the enquiry under protest and if the manner in which the enquiry has been held has resulted in any substantial prejudice to him, to challenge the order passed in the enquiry on that ground also before the appropriate forum.

4. In the light of what is stated above, the application is rejected under Section 19 (3) of the Tribunal's Act, 1985. There is no order as to costs.

Dated 7th January 1999.



(A.V. HARIDASAN)
VICE CHAIRMAN

aa.

LIST OF ANNEXURES

1. Annexure A2: True copy of the objection filed by the applicant before the 3rd respondent dated 3.11.1998.
2. Annexure A3: True copy of the order passed by the 3rd respondent dated 4.11.98 rejecting the objection filed by the applicant.
3. Annexure A5: True copy of the order passed by the 3rd respondent dated 11.11.1998.
4. Annexure A6: True copy of the order passed by the 3rd respondent proposing to examine additional new witnesses dated 28.10.1998.
5. Annexure A9: True copy of the order No.269/3/4 passed by the Surgeon Captain, Commanding Officer, dated 24.2.1997 cancelling the earlier charge and issuing fresh memorandum of charges.
7. Annexure A10: True copy of the memorandum No.269/3/7 dated 26.2.97 appended to Annexure A9.
8. Annexure A11: True copy of the statement of Articles of charges framed against the applicant dated, Nil.

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