

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 199 of 2011

MONDAY, this the 26th day of November, 2012

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

S.R. Biju, S/o. Sivan,
Ex-Constable,
Central Bureau of Investigation
(Removed from Service),
Residing at "Blessing", Ezhakodu,
Perukavu P.O., Thiruvananthapuram
Pin : 695 573

... Applicant.

(By Advocate Mr. R. Sreeraj)

v e r s u s

1. The Superintendent of Police, CBI, ACB,
Special Police Establishment,
Kerala Branch, Cochin – 17.
2. The Deputy Inspector General of Police,
CBI, ACB, Shastri Bhavan, 3rd Floor,
26, Haddows Road, Chennai : 600 006
3. The Director, CBI, Government of India,
Block No.3, 4th Floor, CGO Complex,
Lodhi Road, New Delhi : 110 003

... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

This application having been heard on 08.11.12, the Tribunal on 26.11.12 delivered the following :

O R D E R

HON'BLE MR. K GEORGE JOSEPH, ADMINISTRATIVE MEMBER

This O.A has been filed for a declaration that Annexure A-7 order imposing the punishment of removal on the applicant, a constable in the CBI, from service and Annexures A-9 dated 22.01.2009 and A-11 dated 06.04.2010 confirming the said penalty are illegal, arbitrary and violative of



Articles 14 and 16 of the Constitution of India and to quash them and to direct the respondents to reinstate him in service with all consequential benefits.

2. The applicant was proceeded against under Rule 8 of Delhi Police Special Establishment (Subordinate Ranks) (Discipline and Appeal) Rules, 1961 on the charges of insubordination, using 'police board' in his private car, non intimation about the criminal case No. 18/2001 against him, furnishing false information to the the effect that he was not holding any earlier employment in BSF for 3 years, engaging himself in private business after joining the CBI by running a cable TV network, failure to intimate the purchase and disposal of vehicle and engaging in political activities. In the enquiry that followed, 6 out of 8 charges were proved. The Disciplinary Authority imposed the penalty of removal from service vide order dated 06.10.2008 at Annexure A-7 which was confirmed by Annexure A-9 appellate order dated 22.01.2009 and Annexure A-11 revisional order dated 06.04.2010.

3. The applicant contended that there was no legal evidence which is relevant and based on which a reasonable man informed in law would find the applicant guilty of the charges levelled against him. The enquiry officer failed to assess the evidence adduced in respect of each of the charges in proper perspective and come to the correct conclusion. The punishment of removal from service is shockingly disproportionate to the gravity of the charges levelled against him and hence violative of Articles 14 and 16 of the Constitution of India. He did not get a fair and reasonable opportunity to point out the contradictions in the statements of witnesses Nos. 4 to 8 and he was not furnished with the copies of their statements thereby violating the

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principles of natural justice. By arriving at a provisional conclusion regarding the guilt of the applicant before furnishing a copy of the enquiry report to him, the Disciplinary Authority acted against the mandate of the ECIL case.¹ The Disciplinary Authority, Appellate Authority and the Revisional Authority failed to discharge their statutory duties.

4. The respondents in their reply statement submitted that the applicant raised no objections at the time of enquiry. The penalty of removal from service was imposed on the applicant after careful consideration of the enquiry report and all the defence pleas taken by him in his written statement of defence and also after considering the oral and documentary evidence adduced during the enquiry. The tendency of the applicant for insubordination and the fact that a criminal case was registered against him leading to his arrest, have been viewed very seriously. The Appellate Authority had gone through the enquiry report on the disciplinary proceedings against the applicant along with the evidences adduced by the witnesses and concluded that the order imposing the penalty of removal from service by the Disciplinary Authority is in consonance with the acts of grave misconduct committed by him. In the review petition dated 12.09.2009, he did not bring any new fact other than what he had mentioned in his appeal. The gravity of the charges against the applicant, who was a member of the disciplined force like CBI, was taken into consideration by the concerned authorities. The enquiry officer after detailed discussion in respect of each charge on the basis of evidence held only those charges proved for which there was overwhelming evidence. Those charges not supported by proper evidence were held not proved against the applicant. The contention of the applicant that he was unaware of



the requirement that he should inform the authority about the purchase and disposal vehicle even if it was second hand cannot be accepted as ignorance of rule is not a defence. He ought to have intimated to the department about the running of the private business in his name immediately after joining the CBI. The articles of charges I to VI framed against the applicant have been proved beyond doubt during the enquiry. The punishment of removal from service imposed on him is not disproportionate to the gravity of the charges and hence did not violate the Articles 14 and 16 of the Constitution. Immediately on request, the presenting officer had supplied the applicant with the copies of statements of the witnesses. He was also given an opportunity to cross examine the witnesses. Thus, there was no denial of natural justice to the applicant. The Disciplinary Authority only conveyed a provisional conclusion justifying the imposition of one of the major penalties offering an opportunity to the applicant to submit his representation. Final order was passed only after receipt of his representation and after considering all the facts and pleas mentioned therein.

5. We have heard Mr. R. Sreeraj, learned counsel for the applicant and Mr. Sunil Jacob Jose, SCGSC, learned counsel appearing for the respondents and perused the records.

6. The enquiry report shows that the enquiry officer had properly assessed the evidence in detail in respect of each charge and held only 6 charges out of 8 as proved based on relevant legal evidence. He held the charges which were not proved beyond reasonable doubt, as not proved. We do not find any bias or irregularity in the enquiry report. The Disciplinary Authority, the

Appellate Authority and the Reviewing Authority had properly considered the material available on record and all the defence pleas of the applicant. The applicant was unable to bring any new fact warranting any change in the penalty order before the Appellate Authority or the Reviewing Authority. He could not substantiate any procedural irregularity on the part of the Disciplinary Authority, the Appellate Authority and the Reviewing Authority. All reasonable opportunities to defend himself was given. He was supplied with the copies of statements of the witnesses when demanded and was also given opportunity to cross examine the witnesses. The provisional conclusion regarding the guilt of the applicant does not show a closed mind on the part of the Disciplinary Authority. It was open to the applicant to represent against the proposed action. The penalty order was passed by the Disciplinary Authority after applying his mind and after considering all facts and pleas in his representation. There was no violation of rules or denial of natural justice to the applicant. Considering the gravity of the proven charges against the applicant who belong to a disciplined organization, the penalty of removal from service is not shockingly disproportionate.

6. In the light of the above discussion, we do not find any justification to interfere with the impugned orders. Devoid of merit, the O.A is dismissed. No order as to costs.

(Dated, the 26th November, 2012)


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

cvr.


(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER