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CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. No. 199/97

Wednesday, this the 27th day of October, 1999.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER  
HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

E.B. Madan, S/o Shri Bhaskaran Nair,  
Technical Investigator,  
Power Loom Service Centre,  
Trichur.

...Applicant

By Mr. M.R. Rajendran Nair, Advocate.

Vs

1. The Additional Textile Commissioner,  
New CGO Building, New Marine Lines,  
Bombay Pin: 400 020.
2. The Textile Commissioner,  
New CGO Building, New Marine Lines,  
Bombay Pin:400 020.
3. The Union of India through  
the Secretary to the Govt. of India,  
Ministry of Textiles,  
Udyog Bhavan, New Delhi.

...Respondents

By Mr Govindh K. Bharathan, Advocate (Sr.CGSSC).

The application having been heard on 27.9.99,  
the Tribunal delivered the following on 27.10.99.

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER


Applicant seeks to quash A1 and A2 and to direct the respondents to restore the monetary benefits denied to him on account of A1 and A2.

2. Applicant is aggrieved by A1 and A2 orders whereby he was awarded the penalty of reduction of pay by five stages in the scale of Rs.1640-2900 for a period of five years with effect from 1.4.95 with further direction that he would not earn increments of pay during the

period of reduction of pay and that on the expiry of the said period the reduction would have the effect of postponing his future increments of pay.


3. Applicant was proceeded against under Rule 14 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 [CCS(CCA) Rules, 1965, for short] on seven charges. A3 is the copy of the memorandum of charges. He says that he submitted a written statement of defence denying the charges levelled against him as per A4. Notice of inquiry was given to him. He did not take part in the inquiry. The Inquiry Officer found him guilty of charges III, V, VI and VII as per A5. Copy of the inquiry report was furnished to him and he submitted a reply to the same. The Disciplinary Authority came to the conclusion that only charges V, VI and VII were proved against him. On the basis of the same, A1 order was issued. He preferred an appeal (A7) against A1 order. As per A2, the appeal was rejected.

4. Respondents resist the O.A. contending that while the applicant was working at Burhanpur he proceeded on leave submitting earned application on 15.5.92 for 5 days with effect from 18.5.92 to 22.5.92 without permission for leaving the Headquarters and without the leave applied for got sanctioned by the competent authority. Subsequently, he sent an application for 30 days medical leave with effect from 23.5.92 from Mumbai. He continued sending leave applications from Mumbai on medical grounds by enclosing medical certificate issued by a Private Medical Practitioner




indicating different diseases in the medical certificates. The Officer-in-charge at Burhanpur referred the applicant to the Medical Board of J.J. Group of Hospitals, Mumbai, for his medical examination as per letter dated 24.11.92 [R1(A)]. The long absence of the applicant badly affected the functioning of the Powerloom Service Centre, Burhanpur and that caused a lot of inconvenience. As per order dated 19.3.93 [R1(B)], the applicant was transferred from Burhanpur to Srinagar and as per order dated 30.4.93 [R1(C)], he was relieved of his duties at Burhanpur. The J.J. Group of Hospitals asked the applicant to appear before the Medical Board on 12.4.93. He did not appear. He was again asked by the J.J. Group of Hospitals to appear before the Medical Board on 26.4.93 as per letter dated 15.4.93. The J.J. Group of Hospitals on 28.4.93 informed that the applicant did not appear before the Medical Board on 26.4.93. The applicant did not submit his written statement of defence against the charge-sheet issued to him as per A3. He did not attend the inquiry. The Superintendent of J.J. Group of Hospitals as per letter dated 14.12.94 confirmed that the letters sent to the applicant directing him to attend the Medical Board for medical examination were sent by post and those letters were not returned to the Hospital as undelivered by the Postal authorities. Copies of the said letters have been received by the respondents from J.J. Group of Hospitals. Disciplinary proceedings were conducted following all the formalities prescribed under Rule 14 of the CCS(CCA) Rules, 1965.

5. It is the admitted case of the applicant that he did not take part in the inquiry.




6. In A1, copy of the order imposing punishment on the applicant, it is clearly stated that the applicant did not submit his written statement to the charge-sheet issued to him. In A5, the report of inquiry copy also it is clearly stated that the charged officer has not submitted his written statement of defence to the charge-sheet issued to him. In A2, copy of the order of the Appellate Authority also it is clearly mentioned that the applicant did not submit written statement of his defence before the inquiry authority. Though the applicant says in para-3 of the O.A. that he submitted a detailed written statement of defence denying the charges levelled against him, there is no whisper anywhere in the O.A. to the effect that the version contained in A1, A2 and A5 that he did not submit his written statement is not correct. If the applicant had really submitted his written statement of defence as alleged by him, he could have very well denied the categorical statement in A1, A2 and A5 that he did not submit his written statement of defence. A mere allegation that he submitted written statement of defence is not sufficient.

7. One of the grounds raised in the O.A. is that he has not received any communication from the J.J. Group of Hospitals requesting him to appear before the Medical Board. According to him, there is no indication whether communications were sent by registered post or by ordinary post and there is nothing on record to show that these letters were sent by J.J. Group of Hospitals. It is also stated by him that no document was produced to show that from J.J. Group of Hospitals two letters



were sent to him. In A1 it is stated that the Superintendent of J.J. Group of Hospitals confirmed that letters were sent by the Hospital to the applicant by post directing him to attend the Medical Board for medical examination and copies of those letters were made available to the respondents by post by the J.J. Group of Hospitals and those letters have been received by the respondents. In the reply statement also it is stated that the Superintendent of J.J. Group of Hospitals as per letter dated 14.12.94 has confirmed that letters were sent to the applicant by post directing him to attend the Medical Board for medical examination and copies of the said letters have been received by the respondents. There is no rejoinder filed denying this averment in the reply statement. That being the position, the contention of the applicant that there is no document to prove that from J.J. Group of Hospitals two letters were sent to him cannot be accepted.

8. With regard to the case of the applicant that he has not received the two letters addressed to him by the J.J. Group of Hospitals, it is to be remembered that there is a presumption that common course of business has been followed. Many presumptions are drawn from the usual course of business in public offices. If a letter is put into a post box, that is prima facie proof, until the contrary appears, that the party to whom it is addressed received it in due course. Non proving of acknowledgement due does not affect the presumption of the service. A bare statement of the applicant is not sufficient to rebut the presumption of service.



9. In Ram Kishan Vs. Smt. Shanti Devi [1986 (1) ARC 315] it has been held thus:

"The clear intendment of these observations is that as a matter of law it is not always necessary that where the defendant denies the fact of having refused the notice tendered to him by the postal authorities, the postman should necessarily be examined to rebut that denial of the defendant"

Applying the same analogy the applicant cannot be heard to say that in the absence of examining anybody from J.J. Group of Hospitals, presumption cannot be relied on.

10. The findings of the Disciplinary Authority and of the Appellate Authority cannot be successfully challenged in this O.A. unless it is shown that reliance has been placed on misreading of evidence or there is no evidence and yet findings have been recorded. We do not find any case of misreading of evidence by the authorities or want of evidence in this case.

11. In the absence of anything indicating that the letters were not posted, a presumption comes into play. So, this is a case based on presumption. In the absence of rebuttal it is only to be held that letters were sent to the applicant by the J.J. Group of Hospitals requesting him to appear before the Medical Board for medical examination.

12. It is also pertinent to note that the applicant has not filed any written statement of defence. If he had not received letters from the J.J. Group of Hospitals

as contended by him, he should have raised it at the earliest opportunity by filing written statement of defence to the charge memorandum issued to him. So, the position is that he has not availed of the earliest opportunity to raise this particular contention. Hence, this plea cannot be accepted.

13. Another ground raised is with regard to the charge under Article -VI to the effect that the applicant has not complied with the order transferring him from Burhanpur to Srinagar. He says that he has pointed out in his defence statement that he was put under suspension before he was given the relieving order from Burhanpur. First of all, he has not filed the defence statement. Secondly, his plea that he was put under suspension before he was given relieving order and therefore he could not comply with the order of transfer cannot be accepted for the reason that as per R1(B) dated 19th of March, 1993, he was transferred from Berhanpur to Srinagar. It is also seen from R1(B) that copy of the order was issued to the applicant. The applicant pretends total ignorance of R1(B). There is no mention any where in the O.A that he has not received R1(B) order of transfer. He has deliberately and wilfully suppressed the receipt of R1(B) order. According to him, he was served with the order of suspension on 30.4.93 before he was served with the relieving order R1(C) on the same date. Since from R1(B) he was very well aware that he has been transferred from Berhanpur to Srinagar, his version that he could not comply with it cannot be easily accepted. When he was served with R1(B) order dated 19th of March, 93, and R1(C) relieving order dated 30.4.93 and by the time he received R1(C) relieving order



he was served with the suspension order, he could have very well sought clarification from his superior officer as to what is to be done. Admittedly, he has not done it. So, this ground also cannot be accepted.

14. Another ground stated is with regard to charge No.VII. Rule 15(2) of the Central Civil Services (Conduct Rules), [CCS(Conduct Rules, for short] has no application here because the Committee in question is not at all a Co-operative Society and Veer Ranji himself has withdrawn the complaint against him. Charge No.VII does not say anywhere that the applicant was functioning as a General Secretary of any Co-operative Society. It says that he has been functioning as General Secretary of the Committee for Legal Assistance to Public Servants (CLAPS for short), the activity of which includes construction of housing complex for its members and the applicant had not reported to the government about his taking part in the registration, promotion or management of the said CLAPS as required under Rule 15(2) of CCS (Conduct) Rules. It is the admitted case of the applicant that the CLAPS is not at all a Co-operative Society. Rule 15(2) of CCS(Conduct) Rules, 1964 reads thus:


"15. Private trade or employment.

xxx    xxx    xxx    xxx

(2) A Government servant may, without the previous sanction of the Government,-

(a) undertake honorary work of a social or charitable nature, or

(b) undertake occasional work of a literary, artistic or scientific character, or





(c) take part in the registration, promotion or management (not involving the holding of an elective office) of a literary, scientific or charitable society or of a club or similar organisation, the aims or objects of which relate to promotion of sports, cultural or recreational activities, registered under the Societies Registration Act, 1860 (21 of 1860), or any other law for the time being in force, or


(e) take part in the registration, promotion or management (not involving the holding of elective office) of a co-operative society substantially for the benefit of Government servants, registered under the Co-operative Societies Act, 1912 (2 of 1912), or any other law for the time being in force:

Provided that-

(i) he shall discontinue taking part in such activities, if so directed by the Government; and


(ii) in a case falling under clause (d) or clause (e) of this sub-rule, his official duties shall not suffer thereby and he shall, within a period of one month of his taking part in such activity, report to the Government giving details of the nature of his participation."

15. Rule 15(2) of CCS (Conduct) Rules 1964 permits a government servant to take part in the registration, promotion or management (not involving the holding of an elective office) of a Co-operative Society substantially for the benefit of Government servants registered under the Co-operative Societies Act 1912 or any other law for the time being in force.



16. Rule 15(2) of the CCS (Connduct) Rules squarely applies here since the admitted case of the applicant is that CLAPS is not a Co-operative society at all. The definite stand of the respondents that the applicant was the General Secretary of CLAPS is not denied. According to applicant, CLAPS is only an Association set up for rendering legal assistance to public servants. In Charge No.VII it is clearly stated that the applicant was working as General Secretary of CLAPS activity of which includes construction of housing complex for its members, that he had not reported to the government about his taking part in the registration, promotion or management of the CLAPS. In the statement of imputation under Charge No.VII it is stated that D.S. Veer Ranji of New Bombay vide his letter dated 22.12.92 complained to the Textile Commissioner that the applicant, an employee of the Textile Commissioner's Organisation, who is also the General Secretary of the Committee for Legal Assistance to Public Servants was trying to cheat him as much as an amount of Rs. 27,000/- paid by him and his wife Mrs. Padma A. Ranji towards the incidental expenses and part payment of the cost of the flat booked in his wife's name with the CLAPS not paid back to them in spite of his wife informing the committee, that she does not want to continue as a member of the proposed housing scheme and refund the amount already paid to the CLAPS, and that the complainant has further stated that the post dated cheques issued by the applicant in favour of the complainant and his wife were bounced.


17. There is nothing sated in the O.A. to the effect that the CLAPS activities do not include construction of housing complex for its members, and the applicant



received an amount of Rs.27,000/- from D.S Veer Ranji and his wife towards the incidental expenses and part payment of the flat, that when the amount was sought back from the applicant, since Veer Ranji's wife wanted not to continue as Member of the Housing Scheme, the cheques issued to Veer Ranji and his wife were bounced.

18. As per proviso 2(ii) to Rule 15(2) of CCS (Conduct) Rules, a government servant shall report within one month of his taking part in such activity, report to the government giving details of the nature of his participation in respect of his taking part in registration, promotion, or management (not involving the holding of an elective office) of a literary, scientific or charitable society or of a club or similar organisation, the aims or objects of which relate to promotion of sports, cultural or recreational activities, registered under the Societies Registration Act or any other law for the time being in force or taking part in the registration, promotion or management (not involving the holding of elective office) of a Co-operative Society substantially for the benefit of government servants, registered under the Co-operative Societies Act or any other law for the time being in force.

19. As per Rule 15(1) of the CCS (Conduct) Rules, no Government servant shall, except with the previous sanction of the Government engage directly or indirectly in any trade or business or hold an elective office or canvass for a candidate or candidates for an elective office, in any body, whether incorporated or not or take part in the discharge of his official duties, in the




registration, promotion or management of any bank or other company registered or required to be registered, under the Companies Act or any other law for the time being in force, or of any Co-operative Society for commercial purpose.

20. Here, it is the case of the applicant having worked as General Secretary of the CLAPS engaged in the trade or business of construction of housing complex for its members.

21. According to applicant, Veer Ranji himself has withdrawn the complaint and as such there is no basis for this charge. From A6(13) dated 25.1.93 it is clearly seen that the complaint was withdrawn only on account of the fact that since the money invested by the complainant has been returned by the applicant. So, it is not that the complainant has withdrawn the complaint against the applicant solely based on misunderstanding but on the specific ground that the money invested has been returned. Applicant's own document says that the money invested by the complainant has been returned by him to the complainant. The money advanced by the complainant to the applicant was for the purpose of purchase of a flat in the housing complex and the same is not denied or disputed by the applicant. That being so, he has violated the Rule 15 of the CCS (Conduct) Rules, 1964.


22. Another ground raised that ex-parte inquiry was not held properly. In the appeal preferred by the applicant against A1 order whereby on the basis of the inquiry the applicant was found guilty and punishment

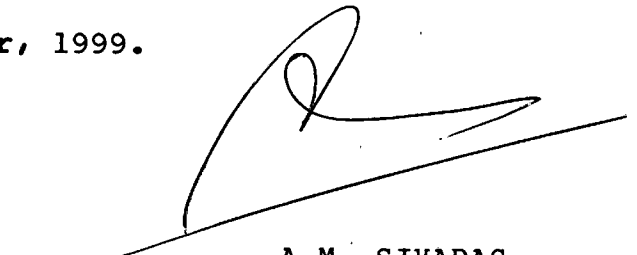


was imposed on him. He has not raised the ground that the ex-parte inquiry was not properly held. If the ex-parte inquiry was not held properly, the applicant could have and should have raised this ground in the appeal. Without having raised in the appeal, he cannot raise it in the O.A.

23. We do not find any ground to interfere. Accordingly, the Original Application is dismissed. No costs.

Dated the 27th of October, 1999.

  
27/10/99  
G. RAMAKRISHNAN  
ADMINISTRATIVE MEMBER

  
A.M. SIVADAS  
JUDICIAL MEMBER

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List of Annexures referred to in the order

A-1, True copy of the Order No.4/45/93-Vig/237 dt. 20.3.95 issued by 1st respondent.

A-2, True copy of the Order No.4/45/93-Vig/Vol.II/38 dt.15.4.96 issued by the 2nd respondent.

A-3, True copy of the Memorandum of Charges No.4/45/93-Vig/539 dt.8.6.93 issued by the Addl.Textile Commr., Office of the 2nd respondent to the applicant.

A-4, True copy of the Written statement of Defence dt.17.6.93 submitted by the applicant to the Addl.Textile Commissioner.

A-5, True copy of the letter No.4/45/93-Vig/877 dt. 21.9.94 together with Inquiry Report dt. 13.9.94 issued by the Director (Vig.), Office of the 2nd respondent and Inquiry Officer respectively.

A-6(13), Copy of letter dated 25.1.93 from Smt.Padma.A. Ranji addressed to the Textile Commissioner, New CGO Building, Konkan Bhavan, New Bombay.

(Contd..p/14)