

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 22 OF 1990
I.A. No.

DATE OF DECISION 28-2-1991

Bhaskar _____ Applicant (s)

Mr M Girijavallabhan _____ Advocate for the Applicant (s)

Versus

The Flag Officer Commanding-in-Chief, Southern Naval Command, Cochin-682 004 & 2 others Respondent (s)

Mr NN Sugunapalan, SCGSC _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *NO*
2. To be referred to the Reporter or not? *NO*
3. Whether their Lordships wish to see the fair copy of the Judgement? *NO*
4. To be circulated to all Benches of the Tribunal? *NO*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The applicant working as M.T.Driver Grade-II in INS Garuda, Cochin has challenged the legality, propriety and correctness of the order dated 23.6.1989 at Annexure-C of the second respondent imposing on him a penalty of withholding of increment for a period of 3 years and the appellate order dated 25.10.1989 at Annexure-D of the first respondent confirming the penalty imposed under Annexure-C order and directing a fresh charge sheet to be issued under Rule 14 of the CCS(CCA) Rules against the applicant. The facts of the case can be briefly stated as follows.

2. The applicant, a person retired from the Military Service having 22 years of service and re-employed in the

Civil Service is working as M.T.Driver under the third respondent. He was charged with the Annexure-A memorandum of charges dated 27.4.1989 alleging that he committed the following acts of misconduct:

- "(a) Did drive a service vehicle in a rash and negligent manner in total disregard of the safety of passengers and the vehicle, and in contravention of the speed limit.
- (b) Did disobey the order of his superior officer, Lt.RM Thodi(885858), Assistant Base Supply Officer.
- (c) Did leave duty place viz., Seematti Cloth Shop without prior permission of his superior officer Lt. RM Thodi(885858) in that he left the officer and K Balakrishnan, MSCPO stranted at Seematti, Ernakulam.
- (d) Did remain absent from duty unauthorisedly from 1330 hours to 1700 hours fully knowing that his leave had not been granted."

The applicant submitted the Annexure-B written representation denying the charges and requesting that he may be given an opportunity of hearing. The second respondent without conducting an inquiry and not giving him an opportunity of hearing passed the impugned order at Annexure-C imposing on the applicant a penalty of withholding of increments for 3 years. Against this order, the applicant filed an appeal to the first respondent who by the order at Annexure-D did not only confirm the punishment but also directed that a charge sheet be issued to the applicant for allegedly making false, baseless and serious allegations against his superior officer. Aggrieved by these orders, the applicant has filed this application under Section 19 of the Administrative Tribunals Act. It has been averred in the application that the Annexure-G order is vitiated since it has been passed without conducting an inquiry and in flagrant violation of the principles of natural justice.

It has also been averred that the orders Annexures-C & D were passed without jurisdiction and are unsustainable in law as the officers who passed them were biased against the applicant. According to the applicant the impugned orders have been passed only to wreak vengeance on the applicant.

3. In the reply statement it has been contended that the officers who passed the impugned orders are competent to pass the orders, that the second respondent was on the basis of the statements of Left. Thodi, Mr. Balakrishnan and also Mr. George and considering the same in the light of the representation submitted by the applicant convinced that it was not necessary to hold an inquiry and that being satisfied that the applicant has committed the misconduct he was charged with has awarded to him, the punishment which he actually deserved. Regarding the appellate order, Annexure-D, it has been contended that the Appellate Authority has carefully considered the grounds raised in the appeal and that the appellate order also is sound in law.

4. We have heard the learned counsel on either side and have also perused the documents produced. Alongwith the memorandum of charges issued to the applicant, the statement of imputations of misconduct were also attached. The relevant portion of the statement of imputations is extracted as follows:

"1. At 1135 hrs. on 15 Mar.89 Shri Bhaskar, MT Driver Grade II Base Supply Office, Cochin was detailed with mini bus to convey LT RM Thodi (88585-B), Assistant Base Supply Officer and K Balakrishnan, MSCPO, 091713-N to Ernakulam for local purchase.

2. On the way to Ernakulam, Shri Bhaskar, MT Driver Grade II was driving the vehicle fast and was about to meet with an accident with a cyclist. When cautioned by Lt.RM Thodi(88585-8) to drive slowly, Shri Bhaskar did not listen. At about 1300 hrs whilst Lt RM Thodi, Assistant Base Supply Officer and K Balakrishnan, MSCPO were inside a shop making purchase, Shri Bhaskar left the place with the vehicle without informing the officer and brought back the vehicle to Base Supply Office. After local purchase Lt RM Thodi and K Balakrishnan, MSCPO had to hire a civil vehicle to transport the items purchase.

3. Shri Bhaskar left Base Supply Office unauthorisedly for his personal work and did not turn up for the afternoon duty. Though Shri Bhaskar had submitted an application for $\frac{1}{2}$ day casual leave on 15 Mar 89, the leave was not granted due to exigencies of service and this fact was conveyed by the Office Superintendent Shri PE George to Shri Bhaskar. True copy of statements submitted by Lt Thodi(88585-8), K Balakrishnan, MSCPO and Shri PE George, Office Superintendent Grade-II are enclosed."

Annexure-B is a copy of the representation submitted by the applicant in response to the Annexure-A memorandum of charges.

In this explanation, the applicant has stated that he took the vehicle from the front of Oberoi Hotel and Bar where Lt.Thodi and Mr Balakrishnan had gone for taking drinks and food at 1325 hours because he was assured of leave that afternoon and also because he did not expect them to come out from the Hotel and Bar immediately and that as between 1300 hrs. and 1330 hrs.

he was entitled to have lunch, ^{break} his action in taking the vehicle from where it was parked at 1325 hrs. was perfectly justified.

He has stated that though he was invited to the hotel and bar to accept by Lt.Thodi to have hot drinks and lunch, he declined the offer.

Regarding the allegation that he drove the vehicle in a rash and negligent manner and did not obey the orders of Lt.Thodi to drive slowly, the stand taken in the representation is that no accident had taken place and that he never had any occasion

to disobey his superiors. It has been alleged in the representation that Lt.Thodi had made a false complaint against the applicant to wreak vengeance on him for not doing some private duties for him in picking up and dropping his relatives from different places in the service vehicle and not doing such duties out of office hours. Regarding the averment that the vehicle driven by the applicant on the day in question was about to meet with an accident and that the applicant did not pay heed to the advice of Lt.Thodi to drive slowly, the applicant has not stated anything in the representation specifically denying the same. Along with the memorandum of charges/ statement of Lt.Thodi copy of which was marked as Annexure-R1 and that of Mr Balakrishnan and Mr PE George, Office Superintendent, copies of which were marked as Annexure-R1 to R3 were also enclosed. Since in the representation submitted by the applicant, the applicant had admitted that he left Lt.Thodi and Mr Balakrishnan in the Hotel and took away the vehicle without the permission of Mr.Thodi and that formal communication of sanctioning of leave was not received by him, ~~and was not received~~ on the basis of the statements given by Lt.Thodi, Mr Balakrishnan and Mr. George and also in the light of the applicant's statement in the representation, the Disciplinary Authority felt that it was not necessary to hold an inquiry or to have a further hearing; and finding that the applicant was guilty of the charges, the impugned order at Annexure-C/^{was} passed awarding him the punishment of withholding of 3 increments. The contention

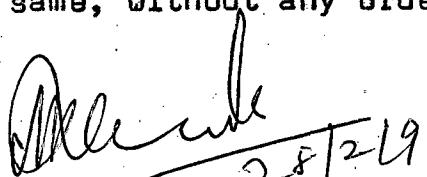
of the applicant that the impugned order at Annexure-C is violative of Article 311 of the Constitution as an inquiry has not been held before imposing the punishment has no substance because the punishment awarded to the applicant does not come within the clause of punishments mentioned in Article 311 of the Constitution. The punishment awarded is only a minor penalty and the procedure for imposition of minor penalty is contained in Rule 16 of the CCS(CCA)Rules. According to this rule, it is not mandatory to conduct an inquiry and if the delinquent requests for holding inquiry the Disciplinary Authority has to decide whether it is necessary or not necessary to hold such an inquiry and record the reasons for not holding it the inquiry if decided not to hold an inquiry. In this case, the applicant has not requested for an inquiry but has only requested for a hearing. Considering the written representation and the statements of Mr Thodi, Mr Balakrishnan and Mr Georges, the Disciplinary Authority concluded that it was not necessary to have a personal hearing and he was convinced that the applicant had committed the misconduct. Having gone through the records of the case especially the representation submitted by the applicant to the Disciplinary Authority, we are convinced that the action of the Disciplinary Authority is perfectly justified. The applicant in the representation has admitted that he has taken the vehicel and left at 1325 hrs. while the officers whom he was expected to transport were according to him setting in a bar Hotel while according to them, they were making purchase at Seematti. Whether they were in

the Hotel or they were in the Textile Shop, the applicant as the Driver of the vehicle intended for their transport could not have without the permission of Lt.Thodi left the place.

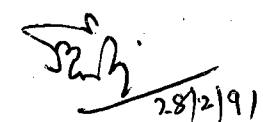
The case of the applicant that it was at 1325 PM that he took the vehicle from M.G.Road and left for his office does not seem to be true in the face of the statement given by Mr.George the Office Superintendent who has seen the applicant at 1315 hrs. at the office on receipt of a phone call from Lt.Thodi. Since orders granting leave for the afternoon was not communicated to him by the leave sanctioning authority as is evident from his representation, the action of the applicant in taking for granted that the leave ~~had~~ been granted is also not becoming of a Government servant. His service as an Army personnel for 22 years should have taught him that it was improper to leave his superior officer ~~standed~~ by the applicant in the midway. There is no specific denial of the allegation that Lt.Thodi had complained about the reckless speed and that he did not pay any attention to his advice not to drive at that high speed. In these circumstances, we are convinced that the Disciplinary Authority has rightly decided not to hold an inquiry. We are also convinced that the punishment awarded to him is fully justified. The Appellate Authority has in the order at Annexure-D considered the grounds raised by the applicant in the appeal memorandum, and he has rightly upheld the punishment order. We do not find any flaw in the appellate order either. The contention of the applicant that the Disciplinary Authority has no jurisdiction to pass the

punishment order has no merit in view of the fact that the Disciplinary Authority has been empowered by Annexure-R.5 to take disciplinary action against Group 'D' employee and to award punishment. The learned counsel for the applicant argued that the direction in the appellate order to issue a charge sheet for making allegations against the superior officers would show that the appellate authority was biased. But that does not affect the reason^{ing} of the appellate order. If a charge sheet is issued pursuant to the appellate order, the applicant is at liberty to defend the same.

5. In the conspectus of facts and circumstances, we find no merit in the application and therefore we dismiss the same, without any order as to costs.


28/2/91
(AV HARIDASAN)

JUDICIAL MEMBER


28/2/91
(SP MUKERJI)

VICE-CHAIRMAN

28-2-1991

trs