

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 233/92
XXXXXX

x190

DATE OF DECISION 4-11-1992.

N.K.Arjunan

Applicant (s)

Mr.T.G.Rajendran

Advocate for the Applicant (s)

Versus

Divisional Engineer (Admn.), Respondent (s)
O/o. the Telecom District Manager,
Kozhikode & 3 others.

Mr.V.Krishnakumar, ACGSC

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.S.Habeeb Mohammed, Administrative Member

The Hon'ble Mr. N. Dharmadan, Judicial Member

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

JUDGEMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

The question involved in this case comes under Clause (ii) of Rule 19 of CCS (CCA) Rules, 1965. The said rule is extracted below:-

"Notwithstanding anything contained in Rule 14 to Rule 18 -

xxx xxx xxx

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

xxx xxx xxx

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i):

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule."

2. The scope and application of the above sub-clause can be better understood if we read DG P&T letter No.4-22/PT-72/INV dated 4.7.1972. The relevant portion of the letter reads as follows:-

"2. After careful consideration it has been decided that in such cases the competent disciplinary authorities may take the following actions:-

- (a) A certificate should be obtained from the local police authorities to the effect that the whereabouts of the officials concerned are not known. This certificate should be placed on record in the concerned file.
- (b) A brief statement of allegations and charges should be prepared and kept on the file.
- (c) The disciplinary authority should himself record on the file the fact that the whereabouts of the officials concerned are not known and that the police authorities have also certified to that effect and therefore, it is not reasonably practicable to hold the inquiry contemplated under Rule 14 of the CCS (CCA) Rules, 1965. The disciplinary authority can then take recourse to Rule 19(ii) of CCS (CCA) Rules, 1965 wherein enquiry has to be dispensed with. Reasons for not holding enquiry should then be recorded in writing and the disciplinary authority should issue orders imposing such penalty as it deems fit. The allegations and charges have to be briefly discussed in the punishment order. Normally in such cases the punishment that could be meted out would be either removal or dismissal from service.

3. Clause (ii) of Rule 19 of CCS (CCA) rule contemplates the procedure to be adopted by the disciplinary authority for imposing penalty on a delinquent employee who evades service of notice or whose whereabouts are not known. It is not practicable for anybody to serve notices and communications in connection with the said enquiry on such delinquent employee. After a careful consideration of the entire facts the disciplinary authority should satisfy himself that in spite of his best efforts it is not reasonably practicable to hold an enquiry under the provisions of the CCS (CCA) Rules satisfying all the procedural formalities. He is also obliged to record the reasons in writing thereof. In making

the record complete he must state in detail about the steps he has taken for contacting the delinquent employee and serving notice on him and how it became impracticable on his part to satisfy the requirement of service of notice. In cases of employees who are absconding or not available for service of notice it is better to have a certificate to be obtained from the local police authority to the effect that the whereabouts of the employee concerned are not known. He must also keep in file the charges including the statement of allegations sought to be served on the delinquent employee with the detailed record of the fact that the whereabouts of the officer are not known and therefore it is not reasonably practicable to conduct the enquiry in the manner contemplated in the rules of CCS (CCA). The Supreme Court considered the question in *Satyavir Singh & others vs. Union of India and others*, AIR 1986 SC 555 :-

"(57) It is not a total or absolute impracticability which is required by Cl.(b) of the second proviso. What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation.

(58) The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority and must be judged in the light of the circumstances then prevailing. The disciplinary authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of the prevailing situation that Cl.(3) of Art. 311 makes the decision of the disciplinary authority on this question final.

(59) It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry.....

(60) The disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the civil servant is weak and must fail."

4. Now it would be better to examine the facts ~~of~~ this case and the legality of the orders passed against the applicant, in ~~the~~ light of ⁴ the above principles and provisions of the CCS (CCA) rules, 1965.

5. The facts are not in dispute. Applicant joined as Telecom Office Assistant under the 2nd respondent in Kozhikode on 26.8.1975. On the basis of the ~~request~~ the applicant was granted leave from 14.8.1987 to 1.10.87. The applicant ~~did~~ not join duty on the expiry of leave on 2.10.87 because of some mental problem. He also did not submit any application for extension of leave. So the 1st respondent sent a telegram on 16.10.87 to his permanent residential address directing him to report for duty. It was received by the applicant's mother and she started enquiry about the applicant's whereabouts for she was under the impression that the applicant was attending the office regularly. She also sent Annexure-A1 letter to the Divisional Engineer (Admn.), O/o the District Manager (Telephones) informing that the whereabouts of the applicant is not known and she is also making search ⁵ in this behalf. On 20.9.88 the applicant was traced from Maharashtra on the basis of a complaint to the Police Station, Kozhikode regarding the missing of the applicant. Annexure-AII certificate dated 29.3.89 shows that the applicant was treated for Psychotic Episode from 22.9.88. The applicant's brother sent a letter to the 2nd respondent on 30.9.88 stating that the applicant is mentally unsound to give a written explanation ~~about~~ his absence and he was admitted in the hospital for treatment. On recovery from illness the applicant submitted Annexure-V representation dated 12.4.89 to the 1st respondent requesting him to

consider the case of the applicant sympathetically and allow him to resume duty. He also requested to provide him with copies of the charge memo, enquiry report, if any, and the order of removal from service. He also produced Annexure-VI fitness certificate. In the mean time the applicant received Annexure-VII communication, stating that he has been removed from service as per Annexure-VIII order dated 10.8.88, from the 1st respondent with a copy of the said order passed under Clause (ii) of Rule 19 of CCS (CCA) Rules. Aggrieved by the penalty order he filed appeal which was dismissed as per Annexure-IX order dated 13.12.89. Further review petition submitted by the applicant was also rejected as per Annexure-XII order dated 25.11.91. Applicant is challenging the order at Annexure-VIII and prays for a direction to reinstate him in service.

6. The learned counsel for the applicant Shri Rajendran submitted that the penalty order is vitiated and violative of principles of natural justice. No notice was served on the applicant before imposing the penalty and the applicant was mentally unsound at the time when the enquiry in this case was conducted and the decision was taken to remove him from service. This is denied by the respondents.

7. This is a case in which the applicant was removed from service invoking Clause (ii) of Rule 19 of CCS (CCA) Rules. Admittedly the applicant did not report for duty. According to the applicant he was not in station and the disciplinary authority either contacted him or served notices on him in connection with the disciplinary enquiry.

8. It is obligatory under the CCS (Pension) Rules, 1972 that a Government employee, while applying for leave, should furnish the address of the place where he is available during the period of leave. Applicant has no case that in the leave application submitted by him on

14.8.87 ~~xxx~~ he has furnished the correct address for contacting him during the period of his leave. However, the department sent a telegram to his permanent residential address directing him to report/duty. This was responded to by his mother by stating that the applicant is absconding and he has some mental problem and she is also making search for him. A case of man missing has also been registered in the Kozhikode Police Station.

9. According to the brother of the applicant the applicant could be traced only on 20.9.88 and he was mentally not well to explain the reasons for his overstaying after the sanctioned ~~xxx~~ leave. Hence it is contended that the applicant is not liable to be proceeded against for the alleged overstaying after the sanctioned leave in 1987 and the impugned order was passed without serving notice on the applicant. The enquiry files reveal that registered letters addressed to the permanent resident of the applicant were returned with the remark "Not known, return to sender", "Addressee left, present address not known", "

10. The department also contacted the Superintendent of Police, Cannanore and Commissioner of Police, Calicut City for ascertaining the whereabouts of the applicant and details of the case registered in connection with the absence of the applicant (man missing). The replies received are extracted below:-

"Please refer to the letter cited. Confidential enquiry revealed that the absentee Sri.N.K. Arjunan had left his village for Calicut on 28.8.1987 evening informing inmates that he was going to rejoin duty. After that his whereabouts are not known to the inmates of his house. He is learnt to be a member of one of the well to do families in Pattiam. He is reported to be an addict to 'ganja' and 'charas'. It is further learnt that the absentee had not gone abroad or employed in any other firms.

Yours faithfully,

Sd/-

for Supdt. of Police,
Cannanore."

"Please refer to the letter cited. Enquiries were made about Sri. N.K.Arjunan but the missing man could not be traced so far. In this connection a case is still pending in Kasaba Police Station as Crime No.265/87 u/c Man missing. The case is under investigation.

Yours faithfully,

Sd/-

for Commr. of Police,
Calicut City."

These letters, Annexure-R(b) and R(c), are dated 29.3.88 and 25.2.88 respectively. According to his brother, the applicant was traced on 20.9.88 from Maharashtra. So, it is clear from the above letters and statement that the applicant is an addict to 'Ganja' and 'Charas' and was not in station during the time of enquiry. The medical certificate, Annexure-II, produced from the Chief Medical Officer, Secret Heart Hospital, Thodupuzha dated 29.3.89 states that he was admitted to the hospital only on 22.9.88 for treatment of Psychotic Episode.

11. The disciplinary authority issued notices and communication in connection with the enquiry and obtained Annexures-R(b) and R(c) from the local police and passed the order of penalty vide Annexure-VIII dated 10.8.88 only when it is found that it is not practicable to serve notices on the applicant. Hence, he invoked Clause (ii) of Rule 19 of CCS (CCA) Rules. As indicated above, all communications and notices issued during the period between 6.11.87 and 10.8.1988 were returned with the endorsement "Addressee left and present address not known". Even though a case was set up on behalf of the applicant that he could not be traced from 1.10.87 till 20.9.88 no records are produced to satisfy the disciplinary authority that the claim is genuine and the applicant was not

available in Kerala during the relevant time when the enquiry was conducted except a statement of his brother that the applicant was traced on 20.9.88 from Maharashtra. However, he was undergoing treatment and became fit for duty on 29.3.89 as indicated in Annexure-II fitness certificate. Under the circumstances stated in Annexures R(b) and R(c) the applicant was an addict to 'Charas' and 'Ganja' and he might have been wandering here and there. He was not having any mental ailment and the disciplinary authority cannot be faulted. From these facts it is to be concluded that the disciplinary authority had taken all possible steps to conduct an enquiry under Rule 14, but he failed. Hence, under the circumstances, he had justifiably invoked Clause (ii) of Rule 19 and denied the applicant the right to join duty when he became fit enough to join duty.

12. The applicant filed the appeal after he was certified fit for joining duty. The Medical Officer certified that the applicant was treated in the hospital for his mental disorder, he was cured by the beginning of 1989 and he is fit for doing official duties. In fact there was no practical difficulty in conducting the enquiry against the applicant at the time when he filed the appeal following the procedural formalities provided under the Rule 14 of CCS (CCA) rules. Nobody has a case that during the pendency of the appeal applicant is either suffering from any mental ailment or he is not available in the station for cooperating with the enquiry proceedings, if the same is initiated against him. In the appeal memorandum the applicant has stated that the grave penalty of dismissal from service was imposed by the disciplinary authority without conducting any enquiry and that the penalty order is violative of

principles of natural justice and it does not commensurate with the gravity of the offence. Considering the grounds in the appeal memorandum the appellate authority should have verified and found whether it was reasonably practicable to conduct an enquiry against the applicant during the period when the appeal was pending. In fact the appellate authority has a duty in the interest of justice to satisfy himself whether it is reasonably practicable to hold an enquiry at that stage against the applicant following the procedure of Rule 14 of CCS (CCA) Rules 1965 before the dismissal of the appeal. The appellate authority failed in that duty. He affirmed the findings and conclusions of the disciplinary authority without even advert[ing] the facts that the applicant is fit and is available in the state for serving notices and other communications for conducting the enquiry within a period of one year from the date of expiry of his leave.

13. The Full Bench of the Central Administrative Tribunal in D.N.Singh & Ors. vs. Union of India & Ors. (Full Bench Judgments of CAT (1989-1991), Vol.II, Page 1) considered more or less similar issue when an argument was raised in that case "that in any case it was reasonably practicable to hold the enquiry at the time of hearing of the appeal, and, therefore, the appellate authority was in error in not directing an enquiry". The Full Bench after advert[ing] the law laid down by the Supreme Court in Satyavir Singh v. Union of India, AIR 1986 SC 555 and Union of India vs. Tulsiram Patel, AIR 1985 SC 1416 held as follows:-

"30. The conclusion is, therefore, inescapable that the Appellate Authority is bound to consider whether it was reasonably practicable to hold an inquiry at the time of hearing the appeal and if reasonably practicable, it should set aside the order of the Disciplinary Authority and hold an

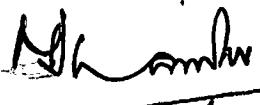
inquiry or direct an inquiry by the Disciplinary authority. If at that time also it was not still reasonably practicable to hold an enquiry, it should postpone the final disposal of the appeal for a reasonable period of time and then once again consider the question whether at that later point of time it was reasonably practicable to hold an enquiry. In dismissing the appeals preferred by the applicants herein, the Appellate Authority has totally ignored these aspects of the matter. The orders of the Appellate Authority are, therefore, wholly unsustainable and must be quashed. The matter must be remitted to the Appellate Authority to reconsider the appeals in the light of this judgment."

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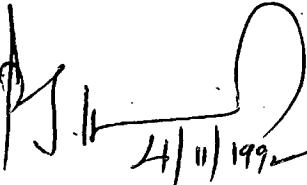
"32. Whether it is reasonably practicable to hold an inquiry or not is a question of fact. When we are remitting the matter to the Appellate Authority for consideration of this case as well as the further question whether the hearing of appeal should be adjourned within a reasonable period, it may not be appropriate for this Tribunal to conclude from the submissions and written statement itself that it is now reasonably practicable to hold an inquiry. That is a matter that should be left to the Appellate Authority."

14. In the result we are of the view that the appellate authority erred in dismissing the appeal and confirming the order of penalty imposed by the disciplinary authority without discharging the duty cast upon him for doing justice for we are of the view that the decision of the Full Bench in the aforesaid case squarely applies to the facts of this case and hence the orders passed by the appellate authority and revising authority are liable to be quashed. Accordingly, we set aside these orders and remit the case to the appellate authority for a fresh disposal of the appeal in accordance with the law laid down by the Supreme Court and Full Bench of this Tribunal.

15. The original application is accordingly allowed. There will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER

4/11/92


(P.S.HABEEB MOHAMMED)
ADMINISTRATIVE MEMBER