

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 242/
~~XXXXXX~~

1990

DATE OF DECISION 19.12.1990

M. Yohannan Applicant (s)

M. Girijavallabhan Advocate for the Applicant (s)

Versus

The Union of India rep. by Respondent (s)
Secretary of Ministry of Defence, New Delhi
and 2 others

V. Krishna Kumar, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji, Vice Chairman

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? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

N. Dharmadan, Judicial Member

The issue involved in this case is covered by the decisions rendered by this Tribunal in earlier cases. Hence, we do not propose to go into the matter in detail.

2. The applicant is working as Unskilled Casual Labourer in the Naval Store Department, Kochy. Pursuant to a disciplinary proceeding taken against him, a penalty of withholding of increment for a period of one year was imposed on him as per Annexure_C order of the Coomodore, Chief Staff Officer(P&A). The appeal filed against the said order of punishment was rejected as evidenced by Anexure-D dated 3-11-89. The applicant is challenging both the aforesaid orders mainly on the ground that the Disciplinary Authority

disagreed with the findings of the enquiry authority who imposed punishment in question without affording a reasonable opportunity to show cause against the proposed penalty.

3. On these facts as indicated above, the only question to be considered is whether the punishment order and the appellate order can be sustained ?

Admittedly, no notice was given to the applicant by the Disciplinary Authority before imposing the punishment in the case.

4. The following are the charges against applicant.
- "..(a) Entered into unnecessary arguments in rude and violent manner at about 2010 hours on 14 Jul 88 in that he questioned the authority of Shri PK Achari, ANSO for entering and checking the cloak room.
 - (b) Insulted a superior officer at about 2010 hours on 14-Jul 88 in that he shouted at Shri PK Achari, ANSO and disturbed peace at the place at the place of duty.
 - (c) Misbehaved in a riotuous and disorderly manner and threatened a superiod officer.."

The findings of the enquiry authority read as follows:

"...To sum up, Shri M Yohanan was loud in his tone. Rudness and violence have not been established. Disturbance to peace is

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carrying it a bit too far. Interference did not take place. The halt of work was temporary and was not pronounced. Riotous behaviour has not been established....."

5. The Disciplinary Authority as stated in the Annexure-C order, imposing punishment stated that 'all the aforesaid charges except disturbance to peace and halt of work alleged in the charge at Article-II, have been conclusively proved on the basis of evidence adduced during the enquiry'. Admittedly, there is disagreement by the Disciplinary Authority and failure to issue notice to the delinquent employee before the punishment was imposed. The appellate order also indicates that there is a disagreement by the Disciplinary Authority with the findings of the enquiry authority. The relevant portion of the appellate order is extracted below:

"..(K) The Disciplinary Authority had considered the evidence in the Departmental Inquiry and come to the conclusion that the appellant is guilty of the charges at Articles I and III framed against him. Accordingly, the penalty was awarded. The disagreement with the findings of the Inquiry Officer has been clearly explained in the punishment order. The penalty ordered is legal and not arbitrary..." (emphasis ours)

6. The learned counsel for the respondents has no answer to the contention of the applicant that the punishment was imposed in this case without giving a fair opportunity of being heard. Under the circumstances,

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the contention of the applicant is to be accepted and upheld especially in the light of the judgments rendered by this Bench of the Tribunal in earlier occasions. In T.K. Gopinathan V. Union of India and 4 others, DA K 259/88, ^{the} same Bench held as follows:

".....By taking a unilateral decision behind the back of the applicant who was found to be not guilty on the first and third elements of the charge, the Disciplinary Authority has violated the elementary principles of natural justice and the principle of reasonable opportunity enshrined under Article 311(2) of the Constitution of India. It was held by the Supreme Court in Narayan Misra V. State of Orissa, 1969 S.L.R. 657 that if the Enquiry Officer exonerates the charged officer but the Disciplinary Authority disagrees, the charged officer must be given a notice before the Disciplinary Authority comes to a conclusion against him. The following observations made by the Supreme Court in that case will be pertinent to be quoted:

'Now if the Conservator of Forests intended taking the charges on which he was acquitted into account, it was necessary that the attention of the appellant ought to have been drawn to this fact and his explanation, if any, called for. This does not appear to have been done. In other words, the Conservator of Forests used against him the charges of which he was acquitted without warning him that he was going to use them. This is against all principles of fair play and natural justice. If the Conservator of Forests wanted to use them, he should have appraised him of his own attitude and given him an adequate opportunity. Since that opportunity was not given, the order of the Conservator of Forests ~~xxx~~ modified by the State Government cannot be upheld. We accordingly, set aside the order and remit the case to the Conservator of Forests for dealing with it in accordance with law. If the Conservator of Forests wants to take into account, the other 2 charges, he shall give proper notice to the appellant intimating to him that those charges would also be considered

and afford him an opportunity of explaining them' (emphasis added) (in the above quotation the term 'acquitted' was with reference to the acquittal by the enquiry officer and not by any Court)....." (judgment by Shri SP Mukerji, Vice Chairman).


Similarly in M.D. Mathew V. Union of India and 2 others, OA 478/89, this Bench in which one of us (Shri N. Dharmadan) was a party considered an identical question and held as follows:

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".....Legal position on this subject is well settled that when there is disagreement between the enquiry authority and the Disciplinary Authority with regard to the findings and conclusions to the disadvantage of the delinquent, before the imposition of punishment on the delinquent, he should be given an opportunity of being heard. Fairness requires such an opportunity to be given by the Disciplinary Authority. This Tribunal/consistently taking the view that such an opportunity has to be given to the delinquent Government employee in the interest of justice before the imposition of the punishment or passing adverse orders in that behalf....."

6. In the light of these decisions, this application deserves to be allowed ^{by 2} and set ² aside the impugned orders. Accordingly, we set aside the impugned orders and allow the Original Application.

We make no order as to costs.


(N. Dharmadan)
Judicial Member

19.12.90


(S.P. Mukerji)
Vice Chairman

19.12.90