

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.247/2004

Friday, this the 11th day of August 2006.

CORAM:

HON'BLE MR. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR. N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

P.M.Syed Muhammed, Upper Division Clerk,
Sub Regional Provident Fund Commissioner Office,
Kottayam. Applicant

(By Advocate Mr.Vellayani Sundararaju)

Vs.

1. Union of India represented by Secretary to Government,
Ministry of Labour, New Delhi.
2. Regional Provident Fund Commissioner-1,
Bhavishya Nidhi Bhavan, Pattom, Trivandrum.
3. The Additional Central Provident Fund Commissioner
and Appellate Authority,
Employees' Provident Fund Organisation
(South Zone) Regional Office, 3-4-763, Barkatpura,
Hyderabad, Andhra Pradesh. Respondents

(By Advocate Shri Saidu Muhammed (R1)

(By Advocate Shri George Joseph, ACGSC(R.2&3)

The application having been heard on 25.7.06, this
Tribunal on 11-8-06 delivered the following:

ORDER

HON'BLE MR. K.B.S.RAJAN, JUDICIAL MEMBER

The applicant was issued with a Memorandum of Charge on 11.1.2000 and
the same reads as follows:

"That SHRI SYED MOHAMMED (SR), UDC, while
working as UDC at Regional Office, Thiruvananthapuram involved
in the incident of throwing of garbage on the road in front of
Quarters No.1 to 5 of the EPF Staff Quarters, Pattom,
Thiruvananthapuram in the night of 23.11.1998.

By the above act, the said SHRI SYED MOHAMMED (SR),

UDC behaved in a manner unbecoming of an employee of the Central Board and thus violated Rule 3(1)(iii) of C.C.S.(Conduct) Rules, 1964 which are mutatis mutandis applicable to the employees of E.P.D. Organisation by virtue of Regulation 27 of E.P.F.(Staff and Conditions of Service) Regulations, 1962."

2. On denying the charge, an inquiry was conducted. The Inquiry Officer rendered his findings on 24.1.2003 and the same is as under:

"The incident of spreading garbage on the premises in front of Qr. No.1 to 5 has not been disputed altogether by the defense also but if at all happened the responsibility for such action has been attempted to put elsewhere probably even by mob but not necessarily involving the charged official. PW-I's statement alone pin point the the participation of the Charged Official among other members of the mob. The preponderance can be drawn in this situation that probably he is not expected to remember the name of all members of the mob that too during night and as such I hold that the charge against the official is proved only partly."

3. The applicant submitted his representation wherein he has contended that the inquiry authority failed to analyze the evidence adduced before him and he had ignored the office note exhibited as D(1) to D(6) and also the findings of the Inquiry Officer were not conclusively holding that charge remained proved. The words " PW statement does not pin point the participation of the charged official among other members of the mob", is the finding by the Inquiry Officer, which cannot be said to be sufficient to hold the charge as proved.

4. The Disciplinary Authority concurred in with the Inquiry Officer's findings and imposed the penalty of withholding of one increment for one year without cumulative effect.

5. The applicant had preferred a comprehensive appeal and brought any deficiencies in holding the inquiries and also legal infirmities in the order passed

by the Disciplinary Authority. The appellate authority invoking the provisions of Rule 23(2) of the EPF (Classification Control and Appeal) Rules 1971 enhanced the penalty by reduction to the grade of LDC until the applicant is found fit after a period of 3 years from the date of this order to restore to the higher post of UDC.

6. According to the applicant this order of enhancement of penalty is vitiated on account of non-following of the principles of natural justice and also on account of the Appellate Authority having taken into consideration extraneous matter.

7. The respondents contested the OA and their stand is as under:-

(a) The Inquiry Officer has properly analysed and appreciated the evidences brought out during the inquiry proceedings. The prosecution side has introduced the documents during the course of regular inquiry proceedings and the applicant has not objected to the same at any stage of the inquiry proceedings. The Annexure A-4 order was issued by the 2nd respondent based on the findings in Annexure A-2. Even though the applicant deserves a more severe punishment, the respondent 2 took a very lenient view while imposing penalty on the applicant by Annexure A-4."

(b) The Appellate Authority has taken into consideration the entire facts of the case, report of the Inquiry officer, Order of the Disciplinary Authority and the grounds urged by the applicant. The Appellate Authority on careful application of his mind to the facts and issues involved has passed reasoned and speaking order justifying the imposition of the penalty imposed. The contention of the applicant that the Appellate Authority has enhanced the penalty without offering him an opportunity to explain/ Show Cause is devoid of any merit being contrary to the legal provision contained in Rule 23(2) (c) (i) of the Employees' Provident Fund Classification, Control and Appeal Rules, 1971, the Rules which are

applicable to the applicant. For ready reference the rule is quoted below:

- (i) "confirming, enhancing, reducing or setting aside, the penalty."

8. Arguments have been heard and documents perused. The Appellate Authority has invoked the provisions of Rule 23(2) of the EPF (CCA) Rule, 1971 and the same reads as under:

23(2). In the case of an appeal against an order imposing any of the penalties specified in Rule 7 or enhancing any penalty imposed under the said Rule, the appellate authority shall consider:-

- (a) whether the procedure laid down in these Rules has been complied with, and if not, whether such non-compliance has resulted in the failure of justice;
- (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
- (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass order--

- (i) confirming enhancing, reducing or setting aside, the penalty; or
- (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

provided that:-

- (i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rules 7 and an inquiry under rule 10 has not already been held in the case, the Appellate Authority shall subject to the provisions of Rules 15, itself held such inquiry or direct that such inquiry be held in accordance with the provisions of rule 10 and thereafter, on a consideration of the proceedings or such inquiry and make such orders as it may deem fit;



- (ii) If the enhanced penalty which the appellate authority proposed to impose is one of the penalties specified in clause (v) to (ix) of rule 7 and an inquiry under rule 10 has already been held in the case, the appellate authority shall make such orders as it may deem fit; and
- (iii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity as far as may be in accordance with the provisions of Rule 12, of making a representation against such enhanced penalty."

9. Counsel for the applicant argued that proviso(iii) of Rule 23(2) clearly provides for a reasonable opportunity to be given to the applicant which is conspicuously missing in this case. Again the counsel for the applicant had taken us through the appellate authority's order with particular reference to the following portion:

"Now, on examining the penalty order in relation to the gravity of misconduct vis-a-vis penalty imposed, I am of the firm opinion that the penalty imposed is disproportionate to the misconduct committed. The appellant in the guise of office bearer of EPF Staff Association (Recognised) has himself narrated in the appeal certain grievances pending redressal with the authority. The circumstantial evidence of the case also leads me to the **intention of the appellant** as declared before Regional Commissioner, Administration of **instigating staff members** for throwing the garbage in front of the residence of Regional Commissioner in-charge of Kerala State. The unfortunate part in today's context is that the office bearer of the union considers himself to be above law and not amenable to any discipline. The appellant has taken law in his own hands, adopted undemocratic method for redressal of the grievances with an intention to put pressure on the in-charge Commissioner to succumb to his so alleged grievances. I feel that the appellant in his capacity as union leader was required to act and behave in a manner setting an example of discipline for his followers rather than instigating to do unlawful acts with ulterior motive. (Emphasis added)

I feel therefore, that I will fail in my duty even if I uphold the punishment imposed upon the appellant, as it is too lenient in comparison to the misconduct committed. I am obliged on the one hand to ensure discipline among the employees and on the other hand to see that the moral of other employees is kept up. That it is also incumbent upon me while deciding such cases of gross

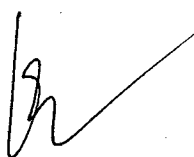
indiscipline wrong signal should not be sent that any unruly behaviour will be dealt with leniently. I have to go back to the time span, during which incident occurred, during its continuation the atmosphere that was created in the office and the residential colony to properly appreciate the gravity of indiscipline and misconduct committed. With regard to the overall question of imposing discipline, keeping up moral and maintaining of work atmosphere, it is quite clear that the behaviour of the appellant was detrimental to it. I am of the opinion that the appellant was required to keep himself within the bounds of administration which goes by the name of civilized administration."

10. In addition to his contention as regards the findings of the Inquiry Officer, the applicant contended that the defence documents D(1) to D(6) have been ignored and the finding is also not conclusive.

11. Per contra, counsel for the respondents submitted that the case of the applicant falls under provision (ii) of Rule 23(2) and not (iii) and as regards other contentions, counsel for the respondents submitted that there is no legal flaw either in the observations made by the Appellate Authority (as extracted above) or for that matter, in the procedure adopted by the Inquiry Authority.

12. Rule 23(2) of EPF (CCA) Rules 1971 is pari materia with the provisions of Rule 27(2) of the CCS (CCA) Rule 1965. The said rule is also in pari materia with the provisions of Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules 1968. While considering this provision in the Railway Rules, the Apex Court has in the case of Ram Chander v. Union of India, (1986) 3 SCC 103 held as under:-


"It is a fundamental rule of law that **no decision** must be taken which will affect the rights of any person **without first giving him an opportunity** of putting forward his case. Both the Privy Council as well as this Court have in a series of cases required strict adherence to the rules of natural justice where a public authority or body has to deal with rights. (Emphasis supplied)"



When such is the rule and legal position, when the disciplinary authority imposes only a minor penalty against which the charged officer prefers an appeal, a reasonable opportunity before enhancement of the punishment is certainly warranted.

13. In so far as the extraneous matters having been taken into account by the appellate authority, as contended by the applicant, is concerned, the reasoning and the basis arrived at by appellate authority as extracted above will go to show that the same were in the nature of a definite charge especially **intentions of instigating staff members** for throwing garbage. As such, unless the applicant is given an opportunity to meet such a charge the appellate authority cannot take into consideration the same. Thus, both the contentions of the applicant pointing out the legal infirmity in passing the order of enhancement of penalty by the appellate authority are to be upheld. Thus appellate authority's order dated 9.3.04 (A6) is vitiated and has to be quashed and set aside.

14. As regards the legal infirmity in the inquiry conducted, a perusal of the records shows that the procedure has, by and large, followed by the inquiry authority. The ultimate finding by the inquiry authority is that the charge is partly proved. What has been proved is the participation of the charged official among other members of the mob. Though the inquiry authority has on the basis of preponderance come to the conclusion that PW-I is not expected to remember the names of all members of the mob, he has not discussed about the actual charge viz., the incident of throwing garbage and the involvement of the applicant therein. The disciplinary authority seems to have attempted to improve the findings. This is evident by the elaborate discussion as contained in the penalty order and the findings recorded. "I have therefore, no hesitation to come to the



conclusion that the alleged incident of throwing garbage by a group of persons was entirely true and the incident had in fact taken place." However, the disciplinary authority had taken into account the ground reality as stated in the penultimate paragraph of the impugned order of penalty and levied only a minor penalty. Thus, the ultimate conclusion goes in tandem with the Inquiry Authority's findings. Hence, the legal flaw as contended by the applicant does not subsist upto the level of passing of the order by the disciplinary authority.

15. In view of the above, while the order of penalty passed by the disciplinary authority (A4) is upheld, that of the appellate authority, viz., enhancement of the penalty (Annexure A-6) is quashed and set aside. If the applicant has already suffered the penalty imposed by the disciplinary authority no further action is necessary in this case. Instead, if the penalty has not so far been suffered, the respondents shall take action by operating the order of penalty passed by the Disciplinary Authority, now.

16. The O.A. is thus allowed partly. Under these circumstances, there shall be no order as to costs.

Dated the11th.....August, 2006.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.B.S.RAJAN
JUDICIAL MEMBER