

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No.260 of 1997.

Thursday this the 24th day of April, 1997.

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

P.P.Surendran, Peon
Directorate of Cashewnut Development,
(Ministry of Agriculture)
Kochi-16
residing at Puthuvelil House,
Cherai Post,
Ernakulam District. .. Applicant

(By Advocate Mr. T.C.Govindaswamy)

Vs.

1. Union of India through the
Secretary to the Government,
of India, Ministry of Agriculture,
New Delhi.
2. The Director,
Directorate of Cashewnut Development,
(Ministry of Agriculture)
Kochi.16.
3. Shri P.P.Balasubramanian,
Director,
Directorate of Cashewnut Development,
Kochi.16.
4. Shri Vijayakumar,
Office of the Directorate of
Cashewnut Development, Kochi.16. .. Respondents

(By Advocate Mr. T.P.M. Ibrahim Khan SCGSC for R.1&2)

The application having been heard on 24.4.1997, the Tribunal
on the same day delivered the following:

O R D E R

HON"BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

In this application the applicant a Peon under the
Directorate of Cashewnut Development, Kochi has assailed the
order dated 10.8.96 (A-1) by which he was placed under
suspension by the second respondent as a disciplinary
proceedings against him was under contemplation, the order
dated 3.9.96 (A3) by which a memorandum of charges has been

served on the applicant, the order dated 4.11.96 (A9) by which the subsistence allowance originally granted was reduced and the order dated 9.1.97 (A-11) by which Shri Balakrishna Kurup, Accounts Officer, Central Administrative Tribunal has been appointed as Enquiry Officer by the second respondent.

2. The facts in a nutshell can be stated thus. The second respondent is the ex-officio Chairman of the Directorate of Cashewnut Development Employees Benefit Fund. The applicant is a member of the said body. A meeting of the said body met on 10.8.96. As a result of certain occurrence on that date during the meeting of the body in the office premises the second respondent felt that the behaviour of the applicant was unbecoming of a Government servant and he felt it necessary to hold a departmental enquiry into the alleged misconduct. It was under these circumstances as a prelude to the contemplated disciplinary proceedings that the applicant was placed under suspension by the impugned order at A.1. The Memorandum of charges dated 3.9.96 followed next. The applicant was by order dated 16.8.96 granted subsistence allowance at the rate 50 per cent of his basis pay and other allowances. On receipt of the memorandum of charges, the applicant by his letter dated 11.9.96 sought certain clarifications as to which of the service rules he has violated and had also stated that the allegations did not spell out any misconduct. A reply to this letter was given by the Administrative Officer on 30.9.96 which according to the applicant did not answer the queries made by him. The applicant followed it up with another representation dated 3.10.96 which was replied to on 22.10.96 stating that the applicant if he wishes to file a reply to the memorandum of

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charges would do so within ten days. Thereafter the applicant on 6.11.96 submitted his reply to the memorandum of charges. In the meanwhile the impugned order A9 dated 4.11.96 was passed by the second respondent reducing the subsistence allowance by fifty percent and by the order dated 9.1.97 an Enquiry Officer was appointed. The applicant's case is that the impugned orders of suspension, issuance of memorandum of charges, reduction of subsistence allowance on review are vitiated by malafides as the second respondent is biased and prejudiced against him and the sole basis of the disciplinary proceedings is a feeling of the second respondent that the applicant has misbehaved towards him. The proceedings therefore being vitiated the applicant states that they are liable to be struck down. Since the second respondent is directly interested in the matter and is likely to be the principal witness in the enquiry to be held, he is not competent to act as the disciplinary authority, contends the applicant. As no reason is stated as to why the subsistence allowance was reduced to 50% the impugned order A-9 is liable to be set aside, according to the applicant. It is with these allegations that the applicant has filed this application seeking to have the impugned orders quashed.

3. The respondents seek to justify the impugned orders on the ground that the disciplinary proceedings have to be initiated against the applicant for his misconduct of insubordination and misbehaviour towards his superior officer. Regarding the allegation that the memorandum of charges is illegal and inoperative since the annexures thereto have not been signed by the second respondent, the respondents contend that the omission to sign the annexures do not vitiate the memorandum of charges. Regarding the reduction of the subsistence allowance by 50% by A-9 order

the respondents contend that on account of the dilatory practice adopted by the applicant the delay in culmination of the departmental proceedings is attributable only to him and therefore the reduction of subsistence allowance on review was perfectly in order.

4. As the matter is of such a nature that it needs expeditious disposal and as the pleadings are complete, the learned counsel on either side agreed that the application may be heard and finally disposed of at the admission stage itself. Accordingly we have perused the materials on record and have heard the learned counsel appearing on either side.

5. We will take up the question of competence of the second respondent to issue the charge sheet as also to function thereafter as the disciplinary authority. It is a fact beyond dispute and which cannot be disputed that the second respondent is personally interested in the matter and that he is likely to be a principal witness in the enquiry to be held against the applicant as the allegation is that the applicant misbehaved with the second respondent. Adverting to this factual situation learned counsel of the applicant states that the second respondent is unable to function as the disciplinary authority on the ground of his personal interest in the matter and that therefore he should not have initiated disciplinary proceedings against the applicant by issuing the charge sheet. Learned counsel invited our attention to Rule 12 of the CCS (CCA) Rules and as also DG P&T's Memo No.6/64/64-Dis. dated the 27th January, 1965 which reads as follows:-

(ii) When the competent authority is unable to function as the disciplinary authority:- In a case where the prescribed appointing or disciplinary authority is unable to function as the disciplinary authority in

respect of an official, on account of his being personally concerned with the charges or being a material witness in support of the charges, the proper course for that authority is to refer such a case to Government in the normal manner for nomination of an adhoc disciplinary authority by a Presidential Order under the provisions of Rule 12(2) of CCS(CCA) Rules, 1965.

The issuance of the charge sheet itself being a function of the disciplinary authority Shri Swamy argued that the Memorandum of Charges itself is vitiated on account of the personal interest of the second respondent and that it is liable to be quashed. We are unable to agree with this argument. As the second respondent is personally concerned with the alleged misconduct and he would be the principal witness it will not be possible for him to act as disciplinary authority dispassionately and objectively. It would not be fair on his part to be a judge of his own cause. Therefore steps have to be taken for getting an adhoc disciplinary authority appointed by the President in accordance with the provision of Rule 12 of the CCS(CCA) Rules. The very necessity of getting an adhoc disciplinary authority appointed is for the purpose of holding an enquiry. If no charge sheet is issued there is no need to hold an enquiry. Therefore we are of the considered view that the disability to function as disciplinary authority on account of personal interest in the matter does not extent to issuance of memorandum of charges.

6. Having said so we have now to consider whether the second respondent in this case can continue to function as disciplinary authority in this case beyond the issuance of

the Memorandum of Charges. Our answer to this is in the negative. As the fact that the second respondent is personally interested in the matter and that he is likely to be a principal witness in support of the charges cannot be disputed, the second respondent is under a disability to function as a disciplinary authority beyond the issuance of the charges as it is well established principle of law that one cannot function as a prosecutor as well as a judge. The proceedings after the issuance of the charge sheet and receipt of the reply to the charges have to be held only by an adhoc disciplinary authority to be appointed on the report of the second respondent. Therefore, the order at A-11 appointing an enquiry officer and further orders issued appointing another enquiry officer by the second respondent are of no legal consequence and are invalid.

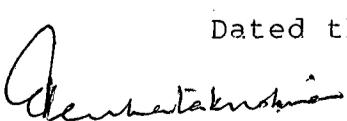
7. By the impugned order at A-9 the second respondent has reduced the subsistence allowance of the applicant by 50%. No reason has been stated as to why the subsistence allowance has been reduced by 50% in the impugned order at A-9. When the action is challenged in this application, the respondents have stated in their reply that it was so done on account of the dilatory tactics adopted by the applicant. If on review the subsistence allowance is to be reduced the disciplinary authority has to record the reason for doing so. That has not been done in A-9. The fact that the applicant had sought clarification to the memorandum of charges as to which service and conduct rules he had violated cannot be said to be a dilatory tactic because there is substance in the contention of the applicant that the conduct rules alleged to have been violated by the applicant have not been specifically and properly stated. Hence the seeking of

clarification by the applicant or his approaching the Tribunal cannot be considered as a dilatory tactic either. Therefore, there is no justification for issuing the impugned order A-9 reducing the subsistence allowance. The said order has to be struck down.

8. What emerges from the above discussion are as follows: The impugned order of suspension at A-1 is unexceptionable as it was issued as a disciplinary proceedings against the applicant was under contemplation. The memorandum of charges at A-3 is also valid as the issuance of the charge sheet is only initiation of the disciplinary proceedings. The fact that the annexures to the Memorandum of Charges have not been signed by the second respondent does not vitiate the charge sheet. The impugned orders at A-9 and A-11 have to be set aside and the disciplinary proceedings against the applicant initiated by A-3 order has to be continued only after the appointment of an adhoc disciplinary authority as provided for in Rule 12 of the CCS(CCA) Rules.

9. In the result the application is allowed in part. The impugned orders A9 and A-11 are set aside. The second respondent is directed to take appropriate steps to have an adhoc disciplinary authority appointed and the respondents are also allowed to continue the disciplinary proceedings in accordance with law afer getting an adhoc disciplinary authority appointed. As a result of the quashing of A-9 order the respondents are directed to pay to applicant subsistence allowance at the rate granted by A-2 order and also to review the suspension and quantum of subsistence allowance and to pass approriate orders in regard to the quantum of subsistence allowance. The arrears of subsistence allowance resulting from the above direction shall also be made available to the applicant within one month from the date of receipt of a copy of this order. Parties will suffer their costs.

Dated the 24th day of April, 1997.


P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure A1: Order of suspension bearing No.ERA/DAC/2/96-E2 dated 10.8.96 issued by the second/third respondent.
2. Annexure A-2: A true copy of the order No.ERA/DAC/2/96-E2 dated 16.8.96 issued by the second/third respondent.
3. Annexure A-3: A true copy of the Memorandum No.ERA/DAC/2/96-E2 dated 3.9.96 issued by the second/third respondent.
4. Annexure A-9: A true copy of the Order No.ERA/DAC/2/96-E2 dated 4/5.11.96 issued by the second/third respondent.
5. Annexure A-11: Order No.ERA/DAC/2/96-E2 dated 9.1.97 issued by the second/third respondent.

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