

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 27/2000

MONDAY, THIS THE 25th DAY OF FEBRUARY, 2002.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

E.P. Joy
Mechanic H.S.-II
Naval Air Craft Yard
Cochin-4.

Applicant

By Advocate Mr. M. Rajagopalan

Vs

1. The Chief Staff Officer (P&A)
HQ Southern Naval Command
Cochin-4
2. The Flag Officer Commanding-In-Chief,
Southern Naval Command,
Cochin-4
3. Union of India represented by the
Secretary, Ministry of Defence
New Delhi..

Respondents

By Advocate Mr. C. Rajendran, SCGSC

The Application having been heard on 31.1.2002 the Tribunal delivered the following on 25.2.2002.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

This Original Application has been filed by the applicant aggrieved by A-2 order dated 20.4.98 of the first respondent imposing upon him the penalty of withholding of one increment without cumulative effect for six months and A-4 order dated 29.12.98 of the second respondent as Appellate authority rejecting his appeal and confirming the penalty imposed on him. He sought the following reliefs through this O.A.:

- (a) Call for the records leading upto Annexure A-4 and quash Annexures A-2 and A-4



(b) declare that the applicant is not guilty of charges II and V shown in Annexure A-1

(c) Direct the respondents to give promotion to the applicant to HS-I notionally w.e.f. 6.4.1995, with all consequential benefits.

(d) to grant such other reliefs deem fit to this Hon'ble Tribunal

2. The applicant was a Mechanic Highly Skilled-II in the Naval Air Craft Yard (NAY for short) under the respondents. He was one of the Joint Consultative Machinery (JCM) IV Level member of HQ. Southern Naval Command. During 1994 he was the Secretary of the NAY Unit Works Committee. He claimed that Works Committee was similar to the Trade Unions in other establishments. According to the applicant on 5.8.94 there was some agitation by the workmen. The applicant rushed to the spot for pacifying the agitated workmen as he was the Secretary of the Works Committee. Due to the sincere efforts of the applicant the agitating workers could be pacified. By letter dated 31.10.94 the Commodore Superintendent of NAY informed the applicant that it was proposed to hold an inquiry against him on 5 charges of misconduct or misbehaviour stated in the Annexure attached with the above letter. He submitted a statement on 24.11.94 denying the above charges and requested to drop all further proceedings. A departmental inquiry was ordered against the applicant by order dated 31.3.95. The first respondent as Disciplinary Authority passed the order exonerating the applicant of the charges I, III and IV and finding him guilty of charges II and V. A penalty of withholding of one increment without cumulative effect for a period of six months was imposed on the applicant as per A-2. He filed A-3 appeal dated 15.6.98. By A-4 order dated 29.12.98 the said appeal was rejected.



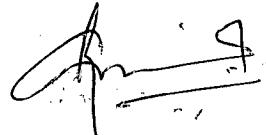
..3..

Claiming that A-2 and A-4 orders were arbitrary and against the true facts the applicant filed this Original Application seeking the above reliefs.

3. Respondents filed reply statement resisting the claim of the applicant.

4. Heard learned counsel for the parties.

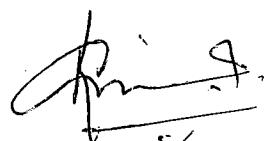
5. The learned counsel for the applicant referring to charges 1 and 2 as stated in A-2 claimed that practically both these charges were one and the same and when Charge I had been found wrong and baseless, how charge-II could be found correct. According to him the evidence in support of both the charges were the same and in view of the clear statement by the CAO that the applicant never obstructed him and he saw the applicant pacifying the agitated crowd, the applicant could have been exonerated from contrary allegations. The charge-V which was found to be true was that he had remained unauthorisedly absent from place of duty between 0845 to 1100 hrs. He submitted that the said charge was an offshoot of the same charge in which the applicant was found not guilty. The applicant being the Committee Secretary rushed to the scene of agitation and tried to pacify the workers. According to him one could not remain in the place of work and pacify the workers at the same time. The applicant could not be expected to seek permission on the spot on such occasions. When the later portion of charge-V that he organised procession and gheraoed the CAO etc. was found wrong, automatically the earlier portion of the same



charge should have been cancelled. The applicant was due for promotion in 1995 and the said promotion order was kept in sealed cover as the enquiry was pending and because of this his basic pay remained at Rs. 1470. The enquiry continued till 1998 and because of the said delay he lost his chance for promotion to HS-I. Due to merger of HS-I and HS-II w.e.f. 1.1.1996 he was kept in the lower scale after the pay revision w.e.f. 1.1.1996. Had he got promotion prior to 1.1.96 he could have received enhanced retirement benefits. Thus, the applicant was punished for no fault and the effect of the punishment was further aggravated by undue delay of the enquiry and the second respondent- the appellate authority failed to consider this aspect while passing the order.

6. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have also perused the documents brought on record.

7. It is now well established principle of law that in disciplinary matters while exercising the powers of judicial review Courts/Tribunals do not act as an appellate authority. They examine whether there had been any violation of the principles of natural justice, whether the concerned employee had a reasonable opportunity to present his case and the statutory rules in such matters had have been followed and whether on the basis of the evidence on record it could be

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reasonably concluded that the charges have been proved or whether the decision arrived at are perverse in that such a conclusion could not have been reasonably be arrived at.

8. The first ground raised by the applicant in this case is that when the charges I, III & IV had been found not proved, the charge II could not be held to be proved and that charge V in its totality could not be treated to have been proved on the basis of the evidence on record. We find from A-2 order of the Disciplinary authority that the five charges levelled against the applicant in A-1 chargesheet are as follows:

- (a) Did incite, lead and participate in Gheraoing the CAO, NAY(K) in his office from about 0850 hrs to the 1100 hrs on 05 Aug 94.
- (b) Did shout slogans and obstruct the CAO of NAY(K) from discharging his official duties on 05 Aug 94 from about 0850 hrs to 1100 hrs in his office by Gheraoing him.
- (c) Did organise and held meeting of civilian employees of NAY(K) in front of Guard room of NAY(K) and thereafter took out a procession shoutings slogans on 05 Aug 94 from 0845 hrs to 0850 hrs.
- (d) Did shout slogans with indecent and intimidating gestures against officiating CS in front of Civilian Admin Officer's office on 05 Aug 94 about 1015 hrs to 1025 hrs.
- (e) Did incite, lead and participate in a Gherao and thereby remain unauthorisedly absent from duty spot from 0845 hrs to 1100 hrs on 05 Aug 94."

From A1 statement of imputation of misconduct or misbehaviour enclosed with the charge memo dated 31.10.94, the imputation of charges I to V have been stated as follows:

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ARTICLE-I

On 05 Aug 94 at about 0845 hrs Shri EP Joy, Mechanic HS-II accompanied by a group of workers organised a gathering of employees in front of Guard Room of Naval Aircraft Yard and incited other workers to join them. Shri EP Joy, Mechanic HS-II not only did so, but also led the gang towards Civilian Establishment Section. During the course of which Shri EP Joy, Mechanic HS-II jointly with the group of workers shouted slogans namely:

Don't frighten by telling the name of Military. If you try to frighten that will be playing with fire. Be careful. Withdraw the pay cut immediately. At the top of their voice. The group of workers led by Shri EP Joy, Mechanic HS-II finally stood before the CAO's office continuing shouting slogans thereby blocking CAO's movement out of his office room. This act is an illegal confinement of his superior officer and is prejudicial to the good order and discipline to be maintained in a Government department and this action is in violation of Rule 7(ii) of Civil Services (Conduct) Rule 1964. The misconduct on the part of Shri EP Joy, Mechanic HS-II had created a total impediment to the flow of administration. Civilian Administrative Officer could not move to either CS office or could discharge his duties of going to Base Logistic Officers Office for collection of cash for disbursement of the same to Industrial Employees towards their wages for the month of July 94.

ARTICLE-II

On 05 Aug 94 at about 0845 hrs Shri EP Joy, Mechanic HS-II accompanied by a group of workers have shouted slogans in front of Civilian Administrative Officers Office and prevented CAO from discharging his official duties like going to Base Logistic Officer's Office for bringing cash for payment of wages for the month of July 94 to Industrial Employees. CAO could not discharge any duties for the period from about 0850 hrs to 1100 hrs because of continuous shouting of slogans and obstruction of his movement by the group of civilian employees led by Shri EP Joy, Mechanic HS-II along with others. The above action of Shri EP Joy, Mechanic HS-II is unbecoming of Government Servant thereby violated Rule 3(1)(iii) of Civil Services (Conduct) Rule 1964.

ARTICLE-III

On 05 Aug 94 at about 0845 hrs Shri EP Joy, Mechanic HS-II accompanied by a group of workers led a procession from Guard Room to Civilian Establishment section via Seaking Hangar by shouting



slogans against the Administration. Shouting slogans, leading/participation in a procession inside office premises is prohibited as per Rule 7 CCS (Conduct) Rule 1964. But Shri EP Joy, Mechanic HS-II has organised procession and led to CAO's office. The above action of Shri EP Joy, Mechanic HS-II is unbecoming of Government Servant thereby violated Rule 3(1)(iii) of Civil Services (Conduct) Rule 1964.

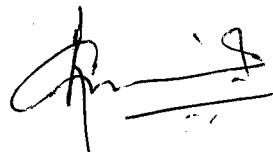
ARTICLE-IV

On 05 Aug 94 at about 0845 hrs Shri EP Joy, Mechanic HS-II accompanied by a group of workers were shouting slogans in front of the Civilian Administrative Officer's office. At about 1015 hrs Commander AK Bhumri along with Senior Labour Officer of HQSNC, NPM, Manager (Admin) and Manager (Planning) reached the CAO's Office, to pacify the workers. On seeking the said Officer who was coming towards the CAO's Office Shri EP Joy, Mechanic HS-II accompanied with other prominent employees namely Shri K.M. Vijayan, Shri KV Mohanan, ER Srinivasan and Shri PW Joseph Kamilius shouted slogans more loudly. They shouted slogans "Commander Bhumni Murdabad" and did pass indecent gestures on the face of Commander AK Bhumri, Offiating Commodore Superintendent. The above act of Shri EP Joy, Mechanic HS-II is unbecoming of Government Servant thereby violated Rule 3(i)(iii) of Civil Services (Conduct) Rule 1964.

ARTICLE-V

On 05 Aug 94 Shri EP Joy, Mechanic HS-II remained unauthorisedly absent from place of duty between about 0845 hrs to 1100 hrs. Every Government servant on reporting to duty should be at work spot and accordingly Shri EP Joy, Mechanic HS-II shall remain at his work spot. Shri EP Joy, Mechanic HS-II inwards the token card at about 0840 hrs on 05 Aug 94. Instead of being available at work spot namely Chetak Hangar Shri EP Joy Mechanic HS-II did organise gathering in front of Guard Room, led procession to CAO's Office and shouted slogans and Gheraoed Shri Ramasundaran, CAO and ultimately dispersed at 1100 hrs on 05 Aug 94. Shri EP Joy, Mechanic HS-II was thus away from his work spot from about 0845 hrs to 1100 hrs. The above act of Shri EP Joy, Mechanic HS-II is unbecoming of Government Servant thereby violated Rule 3(1)(iii) of Civil Services (Conduct) Rule 1964.

The enquiry officer's findings are that the accused employee viz. the applicant herein was not guilty of Article of Charges I, III and IV and that he was guilty of Article of Charges II and V framed against him. In our view this



conclusion would mean that the statement of imputations of Articles I, III and IV of the charges could not be established. From a reading of the statement of imputations as reproduced above, we find, ^{that} the statement of imputations of all the articles pertain to the same incident. If three of the imputations could not be established how the second article of charge could be stated to be established. When such is the case we find considerable force in the applicant's plea that when he was not guilty of charges I, he could not be held guilty of charge-II.

9. From A-2 we find that the disciplinary authority had come to the conclusion that the applicant was guilty of Article V of the charges for the following reason:

(c) It is evident from the representation dated 17 Dec 97 submitted by the said Shri EP Joy against the findings of the Inquiring Authority wherein he himself has admitted that he remained absent from the place of duty on 05 Aug 94 w.e.f. 0850 hrs to 1100 hrs. As per rule, when an employee reports duties after remaining absent from place of duty without approval of the Department concerned, he is liable for disciplinary action. The contention of the DGS that 12 other employees were also remained absent on 05 Aug 94 and they were absolved from the proceedings has no relevance. In case of collective absence, there is no obligation to try and punish all the individuals together for their lapse. They may be proceeded against with departmental action separately for their respective misconduct. Perusal of inquiry report reveals that during the inquiry, the prosecution witnesses 11 and 12 have also corroborated the absence of the DGS on 05 Aug 94 from the place of duty w.e.f. 0850 hrs to 1150 hrs (Q.A. 241, 243 and 244 of the proceedings are relevant). Government of India DOPT OM No. 35014/2/.89-Estt.(A) dated 10.10.90 referred by the DGS envisage that the Government servants who are office bearer of the Staff Association are subject to the provisions of conduct and Disciplinary rules like all other Govt. servants. However, if a Govt. servant feels that he is being penalised for any act done by him which is directly or indirectly connected with his position as



an office bearer of an Association, he can prefer an appeal against such action directly to the President in terms of Rule 24(3) of the CCS (CC&A) Rules 1965 bringing forth the reasons which may establish the nexus between the disciplinary action taken against him and his activities as office bearer of an Association. The said Govt. order is quite clear that no Govt. servant is exempted from Disciplinary action for violation of Govt. Orders/Rules even though they are office bearer of Staff Association/Union. In other words, holding the status of office bearer in any Association/Union is not a bar for initiation of disciplinary proceedings for breaches of Rules/Orders.

From the above we find that the disciplinary authority has arrived at his conclusion on the basis of the representation dated 17th December, 1997 submitted by the applicant whereas the chargesheet was issued to the applicant on 31.10.94. This would indicate that the disciplinary authority's conclusion to hold Article V of the charge as proved was based on a document which was not in existence on the date of issue of the chargesheet.. The obvious conclusion will be that the disciplinary authority had not found any other evidence to hold the charge as proved in the enquiry report.

10. Applicant has raised a number of points in his A-3 appeal dated 15.6.98. From A-4 Appellate authority's order we find that the Appellate authority has recorded the points raised by the applicant, in his order. He had listed the points raised by the applicant in para 8. The contentions listed in sub para (a), (b) and (c) of Para 8 were as follows:

(a) A departmental inquiry was ordered against the appellant vide order CS 5062/43/NAY/EPJ dated 31 March 95 alleging five charges. On completion of the inquiry, the Appointing Authority (CSO (P&A) has come to the conclusion that the appellant guilty has come to the conclusion that the appellant guilty said to

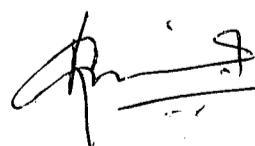
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be victim of Gherao and one vital witness deposed before the board that the appellant did not obstruct him from discharging his official duties. (Q.A.60 and 61). In Q.A. 62, the CAO further deposed that he saw the appellant pacifying the crowd when they were shouting. So the question of Gheraoing the CAO does not bear an iota of truth. When the said to be victim of Gherao himself revealed, how then the CSO(P&A) came to a conclusion as otherwise. It is amply clear that the CSO (P&A) must have not gone through the entire inquiry outcome and his representation dated 17 Dec 97.

(b) Out of the 12 Prosecution Witnesses, who witnessed everything right from 0845 hrs on 05 Aug 94 was the Master-at-Arms of the Yard. In fact he was directed by the Regulating Officer of the Yard to minutely observe and follow the crowd. The said witness deposed before the board that he knew the appellant personally but he did not find him in the crowd. He further deposed that he did not see Shri Joy organising any crowd and moving towards CE Section. How that the CSO(&A) did not see such truth and found the fabricated allegation as correct.

(c) The appellant admit that he was away from his place of duty i.e. Chetak Hanger of NAY Kochi. But he did it in the best of spirit and social sense of duty as the Secretary of Works Committee and to pacify and industrial unrest. 12 others were away from the Chetak Hanger on the same day and time. But he was alone booked. In fact in an industrial Establishment of the Navy such absence of workers is instantly made good by imposing pay cut for the period of such absence, whereas his name was shown as present for the whole day. Absentee reports are invariably forwarded to Admin Section for imposing pay cut for every day after 0930 hrs, but in his case the absentee report was so sent after 3 days along with 12 others. When the Department has not taken any action against 12 others from his section, it is clear that for him being the Works Committee Secretary victimisation was the sole motto behind booking him alone.

The reasons why the contentions raised by the applicant and listed in para 8 (a), (b) and (c) were not tenable was stated by the second respondent in para 9 of A-4 of Appellate order. In sub paras (a), (b) and (c) of Para 9 he gave the following reasons:



(a) A departmental inquiry has been conducted in accordance with the provisions contained in rule 14 of the CCS (CC&A) Rules, 1965 and the appellant has been afforded with all principles of natural justice to defend his case. The Inquiring Authority has submitted his report recording his findings based on the material evidence on record and deposition of witnesses. The appellant was provided with a copy of Inquiry report affording him an opportunity to make his representation/submission if any against the findings of the Inquiring Authority vide letter CS 5062/43/NAY/EPJ dated 28 Nov 97, and the appellant had submitted his representation dated 17 Dec 97 against the findings of the Inquiring Authority raising various contentions. The Disciplinary Authority i.e. the Chief Staff Officer (P&A) having considered the Inquiry report and the representation dated 17 Dec 97 submitted by the appellant is guilty of Charges-II and V framed against him vide NAY, Kochi Memorandum 269/6/10(i) dated 31 Oct 94. Accordingly the Disciplinary Authority has issued a reasoned and speaking order vide CS 5062/43/NAY/EPJ dated 20 Apr 98 imposing the penalty on the appellant. Perusal of inquiry report reveals that during the conduct of inquiry, the witnesses have deposed that the appellant accompanied by a group of employees have shouted slogans in front of the Civilian Admin Officer's office and prevented him from discharging his official duties (Q.A. 26, 32, 37, 190, 199, 202 and 210 of the proceedings are relevant). Apart from that the statement of witnesses have also been accepted and duly signed by the appellant and his Defence Assistant and no objection have been raised by them for the genuineness of these statements. Raising such arguments at this belated stage has no relevance and appears to be an after thought only.

(b) The contention of the appellant is incorrect. Perusal of inquiry report reveals that during the course of inquiry, the Prosecution witnesses NO. 7 and 9 have corroborated that the appellant was seen among the agitating group of employees in front of the civilian Admin Officer's Office. They have further confirmed that the appellant was also participating in shouting slogans in front of Civilian Admin Officer's Office. (Q.A. 183, 184, 190, 219 and 215 of the proceedings are relevant). There is no reason to disbelieve the statements of these witnesses. Based on the evidence on records and deposition of witnesses the Disciplinary Authority i.e. Chief Staff Officer (P&A) arrived at the conclusion that the appellant participated in the Gherao and shouted slogans on 05 Aug 94 as levelled against him.

(c) It is evident from the representation dated 17 Dec 97 submitted by the appellant against the findings of the Inquiring Authority wherein he himself has admitted that he remained absent from



duty on 05 Aug 94 from 0850 hrs to 1100 hrs. As per rule, when an employee reported for duties, he remained absent from place of duty without approval of the department concerned is liable for disciplinary action. The contention of the appellant that 12 other employees were also remained absent on 05 Aug 94 from 0850 hrs to 1100 hrs and they were absolved from action has no relevance. In case of collective absence, there is no obligation to try and punish all the individuals together for their lapse. They can be proceeded with departmental action separately for their respective misconduct. Perusal of inquiry report reveals that during the inquiry, the Witnesses 11 and 12 have also corroborated the absence of the appellant on 05 Aug 94 from the place of duty from 0850 hrs to 1100 hrs. (Q.A. 241, 243, 244 of the proceedings are relevant). Holding the status of office bearer in any Staff Association/Union is not a bar for initiation of disciplinary proceedings for breaches of Government orders/rules.

11. The applicant's specific case was that CAO of NAY(K)-the victim of the Gherao -had stated that the applicant did not obstruct him from discharging his official duty and had seen him specifically pacifying the crowd and such is the evidence given by the victim of Gherao himself and how the Disciplinary authority could come to xxxx a conclusion otherwise. Similarly in (b) the applicant had specifically raised regarding the deposition of the Master-at-Arm who had been directed specifically to observe and follow the crowd. It is clear from a reading of A-4 order of the second respondent as reproduced above that these points had not been specifically dealt with. This leads us to sustain the ground raised by the applicant that A-4 order had been issued without application of mind. Further as regards Article-V second respondent had also relied on the applicant's letter dated 17.12.97, like the disciplinary authority. Moreover, the specific point raised by the applicant that he went to pacify the crowd had not been dealt with at all.

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12. Further, the penalty imposed on the applicant was stoppage of increment for a period of six months without cumulative effect. The second respondent has confirmed this punishment. The applicant has raised the point that the effect of the penalty imposed on him would be much more than what had been intended by the Disciplinary authority. We find that this aspect has not been considered in depth in A-4 Appellate order.

13. In the light of the foregoing, we are of the view that A-2 and A4 orders cannot be sustained and are liable to be set aside and quashed. Accordingly, we set aside and quash A2 and A4 orders and direct the respondents to grant the applicant the consequential benefits within a period of four months from the date of receipt of a copy of this order.

14. The Original Application stands allowed as above with no order as to costs.

Dated the 25th February, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMARKRISHNAN
ADMINISTRATIVE MEMBER

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APPENDIXApplicant's Annexure

A-1 True copy of enclosures to NAY(C) Memorandum 269/6/10 dated 31.10.94 (Charges) issued by the 1st respondent.

A2 True copy of order NO. CS 5062/43/NAY/EPJ dated 20.4.98 of the 1st respondent.

A3 True copy of Appeal Memorandum dated 15.6.98

A4 True copy of the appellate order No. CS 2696/105 dated 29.12.98 of the 2nd respondent.

Respondents' Annexure --Nil--