

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.277/2001

Tuesday, this the 17th day of June, 2003.

CORAM;

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

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

K.T.Sreekumar,
Kunnatheri Thekke Madam,
Panthaloor, Nellai,
Trichur District. - Applicant

By Advocate Mr VB Harinarayanan

Vs

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

By Advocate Mr C.Rajendran, SCGSC

The application having been heard on 17.6.2003, the Tribunal
on the same day delivered the following:

O R D E R

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

The applicant, an Assistant Store Keeper, Naval Stores
Depot, Cochin, has filed this application questioning the
legality, propriety and correctness of the order dated
1.5.2000(A-4) by which a penalty of compulsory retirement

fixing his pension and gratuity at 2/3rd of entitled pension and gratuity subject to minimum pension prescribed in Rule 14(3) of the CCS(Pension) Rules, 1972, issued by the 3rd respondent, and the order dated 25.9.2000(A-6) of the 2nd respondent rejecting his appeal.

2. The facts are as follows: The applicant served with the following memorandum of charge containing three articles of charges:

"ARTICLE-I

That the said Shri KT Sreekumar, while functioning as Assistant Storekeeper in Naval Store Depot, Kochi during the period from 24 Sep 92, did remain absent from duty unauthorisedly as indicated below and thereby failed to maintain devotion to duty and conducted in a manner unbecoming of a government servant within the meaning of Rule 3(i)(ii) & (iii) of the Central Civil Services(Conduct) Rules, 1964:


- (a) 24 Apr 95 to 16 Aug 95.
- (b) 28 Aug 95 to 31 Aug 95
- (c) 09 Sep 95 to 30 Sept 95
- (d) 09 Oct 95 to 11 Oct 95
- (e) 16 Oct 95 to 17 Oct 95
- (f) 09 Nov 95 to 21 Nov 95

ARTICLE-II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri KT Sreekumar, Assistant Storekeeper did disobey the orders of his superior officer and thereby committed a misconduct unbecoming of a government servant within the meaning of Rule 3(i) (iii) of Central Civil Services(Conduct) Rules, 1964.


ARTICLE-III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri KT Sreekumar, Assistant Storekeeper did resort to habitual absenteeism and thereby failed to maintain devotion to duty and conducted in a manner unbecoming of a government servant within the meaning of Rule 3(i), (ii) & (iii) of the Central Civil Services(Conduct) Rules, 1964."



The applicant denied the guilt. An inquiry was held. The enquiry authority held the applicant guilty. The applicant submitted his representation to the disciplinary authority not to accept the finding. However, the 3rd respondent accepted the findings of the Inquiry Officer, found that the articles of charges have been established and imposed on the applicant a penalty of compulsory retirement by the impugned order A-4. Alleging that the person who issued the charge memo is not competent to issue such memorandum of charge, that the inquiry has not been held in conformity with the rules, that the findings were not supported by evidence and that the penalty imposed on the applicant was disproportionate, the applicant filed an appeal which has been rejected by A-6 order. It is alleged in the application that the applicant applied for leave every time and had submitted two certificates also and thus the decision taken by the disciplinary authority is unsustainable. The appellate order also is bad for nonapplication of mind, contend the applicant.

3. We have gone through the pleadings and all the material placed on record. That the applicant was unauthorisedly absent for the period for which he has been proceeded against as per Article-I of the charge is not in dispute. The case of the applicant is that the applicant has been sending leave applications and on reporting for duty after the leave, he has been submitting medical certificates/fitness certificates and therefore, it cannot be held that the applicant was unauthorisedly absent. Learned counsel for the applicant argued that on some of the occasions



the applicant had applied for leave along with medical certificates while on many occasions, submitted medical certificate/fitness certificates at the time of rejoining duty and therefore the finding that the applicant was unauthorisedly absent cannot be supported. Learned counsel for the respondents on the other hand, argued that in accordance with the rules regarding leave, leave applications on medical grounds had to be supported by medical certificates which has to be verified and accepted by the competent authority. He further argued that the applicant himself availed leave, remained absent and ultimately at the time of joining duty applied for grant of leave. This was not in accordance with the procedure which the applicant as an Assistant Store Keeper should have been aware of argues the learned counsel. The action on the part of the applicant disclosed severe lack of devotion to duty, argued the counsel. The learned counsel for respondents further argued that the applicant admittedly had been punished for unauthorised absence earlier and this conduct has been made one of the charges. He further argued that the fact that the applicant was called upon to report for duty which he did not comply with as is borne out from the evidence at the inquiry. A perusal of the enquiry report reveals that there is acceptable evidence to the effect that the applicant remained unauthorisedly absent though had been punished for unauthorised absence in the past. There is also evidence to find that the applicant has neglected the direction of the competent authority to report for duty without lawful excuse. Thus, we find that the argument of the learned counsel for the

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applicant that finding the applicant is guilty is perverse for want of evidence, has no force at all.

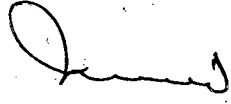
4. Learned counsel for the applicant argued that the Controller of Stores who has been only put on additional charge was not competent to issue the memorandum of charges to the applicant. We find little force in the argument because Controller of Stores so appointed on 21.6.95 was fully competent to issue the memorandum of charge. The next argument of the applicant's counsel is that the penalty imposed on the applicant is shockingly disproportionate to the misconduct. The applicant was employed in the Military organisation wherefor service discipline is a sine qua non. The charge three against the applicant was that he has been a habitual absentee and that he he has been awarded penalty earlier. This charge has been proved at the enquiry. Under these circumstances, we do not satisfy that the penalty of compulsory retirement reducing his pension is shockingly disproportionate calling for judicial intervention. The last limb of the argument of the learned counsel for the applicant is that although the penalty of compulsory retirement awarded to the applicant, the decision of the disciplinary authority to reduce the pension to 2/3rd of the normal interest subject to the minimum of pension is not in accordance with the procedure laid down, as no consultation was made with the UPSC before the said reduction was made. We find no force in this argument as consultation with the UPSC is required in a case where the President passes an order awarding a pension is less

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than the due compensation pension. When the disciplinary authority awards penalty of compulsory retirement in the case of a Group 'C' employee, according to Rule 40 of the CCS(Pension) Rules no consultation with UPSC is prescribed.

5. In the light of what is stated above, we find little merit in this O.A. and therefore, dismiss the same, without any order as to costs.

Dated, the 17th. June, 2003.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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