

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

286 of
O. A. No. 1992.

DATE OF DECISION 26.3.1993

T G Tony _____ Applicant (s)

Mr MR Rajendran Nair _____ Advocate for the Applicant (s)

The Sub Divisional Officer,
Telecommunications, Malapuram Respondent (s)
and others

Mr V Ajit Nayyan, AGS _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N Dharmadan, Judicial Member

and

The Hon'ble Mr. R Rangarajan, Administrative 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? Yes
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

Shri N Dharmadan, J.M

The applicant while working as Junior Telecom Officer Manjeri was served with a memorandum of charges dated 8.9.89 at Annexure-III for unauthorisedly absented himself and deserted from duty w.e.f 3.6.89. The said proceedings has been confirmed ended in punishment which by the Appellate Authority, but in revision the penalty was reduced to withdrawal of one increment for a period of one year with cumulative effect.

2 The only argument advanced by the learned counsel for the applicant is that the Sub Divisional Officer, Telecom who passed the impugned order at Annexure-III did not exercise his option under rule 16(1)(b) of the CCS(CC&A) Rules before deciding,

to impose punishment after considering Annexure-IV explanation submitted by him. The said provision is extracted below:

"16. Procedure for imposing minor penalties.

(1) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of Rule 11 shall be made except after -

xxx xxx xxx

(b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary."

xxx xxx xx

3. According to the aforesaid rule, the Disciplinary Authority has the discretion either to penalise a government employee ~~by to impose~~ a minor penalty without conducting any inquiry in the matter as laid down in sub-rules (3) to (23) of Rule 14. In case the disciplinary authority is satisfied that no inquiry is necessary in a given case, he can impose a minor penalty after considering the case and exercising his discretion validly. But he should exercise his discretion validly and fairly and it should be made clear in the order. While dealing with minor penalty matter, the question whether an inquiry is to be conducted under Rule 14 is a discretionary matter vested with the disciplinary authority. But the discretion should be validly and legally exercised by the disciplinary authority before imposing a punishment against the government employee. Fairness requires that it should be manifested in the order itself.

4. In the instant case the charge against the applicant is that he was unauthorisedly absent himself and deserted duty from 3.6.89 and thereby violated rule 3(1)(i) of the CCS (Conduct) Rules, 1964. Annexure-II is the explanation

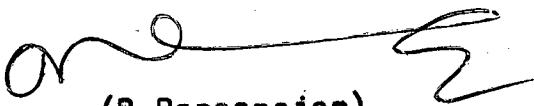
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submitted by the applicant in which he has stated that he had applied for leave well in advance which was recommended by the competent authority. Due to urgency to attend some matter the applicant availed leave from 5.6.89 after personally handing over the charge. It is after considering this representation that the impugned order of penalty at Annexure-III dated 8.9.89 was passed. We have gone through the order. There is no indication in the order passed by the disciplinary authority that the case against the applicant can be proceeded further without conducting any inquiry under Rule 14 of the CCS (CCA) Rules. The satisfaction of the disciplinary authority and the exercise of discretion under Rule 16(1)(2) is mandatory. The disciplinary authority should have indicated his views in this behalf in the Annexure-III order itself stating that he had taken such decision in exercise of his discretion under the above rule. This is a mandatory and statutory duty and obligation on the part of the disciplinary authority. He should indicate in the order itself that he had exercised his discretion in a bonafide and fair manner. Since the disciplinary authority in this case had not indicated his finding in this behalf after taking into account the facts and circumstances of the case, we are of the view that Ann.III order is vitiated. There is no application of mind by the disciplinary authority.

4. Respondents in the reply statement stated that personal hearing provided under Rule 16(1)(b) is only optional and a discretion vested with the disciplinary authority ^{had been exercised by} and the applicant has been given sufficient opportunity but he never made any request for giving him an opportunity of being heard before imposing penalty. Hence the order is legal and valid and no opportunity ^{and no opportunity} _{need be given to the applicant} is

5. As explained above, sub-rule (b) of Rule 16(1) of CCS (CCA) Rules makes it very clear that the disciplinary authority should exercise his discretion whether an enquiry should be conducted or not in a case like this. While taking a decision to impose a punishment against the government employee, even if the delinquent employee does not make any request for conducting any inquiry or for giving an opportunity of being heard, it is obligatory on the part of the disciplinary authority in the interest of fair play and justice to state the reason in the order as to why he has taken such decision not to conduct an inquiry before imposing the punishment. Since such a decision is absent in this case, we are of the view that there is no exercise of discretion of powers by the disciplinary authority in a legal and valid manner and hence, the Annexure-III and all other ~~in~~ orders passed based on the same are liable to be set aside. Accordingly, we set aside those impugned orders and remit the case back to the disciplinary authority for taking a decision in this case, ~~against the applicant~~ afresh in accordance with law, taking into account the above observations.

6. The application is allowed to the extent indicated above. There will be no order as to costs.


 (R. Rangarajan)
 Administrative Member


 (N. Dharmadan)
 Judicial Member
 26.3.93

26.3.93