

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 291/1990
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DATE OF DECISION 4.10.1991

M Divakaran Applicant (s)

Mr Pius Kuriakose Advocate for the Applicant (s)

Versus

The Assistant Engineer
External (East) Respondent (s)
Trippunithura and others.

Mr NN Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member
and

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓ *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

Mr NV Krishnan, A.M

The applicant is a Technician (Outdoor) in the Telephone Exchange at Tripunithura working under Respondent-1. The applicant was charge sheeted by Respondent-1 on the allegation that he had abused his superior officer in the presence of others and according to him the charge memo dated 17.7.1989 is at Annexure-I. He has alleged that in the disciplinary proceedings a major penalty of reduction in rank was imposed on him by Respondent-1, though a copy of the order passed by him has not been exhibited. The appeal filed by him has been rejected by the Divisional Engineer (Telephones) Ernakulam, the 2nd respondent vide the order dated 16.3.1990 (Annexure-2) though the penalty of withholding the next increment for one year was modified by him to withholding of the next increment

for a period of six months only with a further direction that this shall not have any cumulative effect.

2 The applicant has challenged the Annexure-2 Appellate Authority order and prayed for the following reliefs:-

(a) The Honourable Tribunal may be pleased to call for the records and set aside the order of the 2nd respondent, the Divisional Engineer, Telephones, Ernakulam Order No.X1-8E Ext1.35/ dated 16.3.1990.

(b) To summon all the concerned parties who have given evidence in favour of the 1st respondent, the Assistant Engineer, Telephones and examine them before this Hon'ble Tribunal.

He has adduced only one ground which states that the Disciplinary Authority has totally gone wrong in appreciating the facts in coming to the conclusion that the applicant has misbehaved with his superior staff. The other grounds are to contend that the penalty is unduly harsh.

3 The respondents have filed a reply denying that any relief is due to the applicant. Their contentions are as follows:-

(i) In the first place, the allegation that a major penalty was imposed is denied as only a minor penalty of withholding of one increment for one year was imposed by the Disciplinary Authority.

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(ii) On merits, it is submitted that the proceedings were initiated on a complaint made by Shri KG Raviappan, JTO (Outdoor) of that office. The Annexure-1 memorandum was only a notice to call for the applicant's explanation in regard to his misbehaviour. The proceedings were actually initiated by a memo issued under Rule 16 on 15.8.1989, though a copy thereof is not produced. It is also submitted that this is not the first occasion when the applicant has misbehaved in this manner. Exbt. R(1) relates to the penalty of censure imposed on him by the order dated 23.11.1984 in regard to a similar incident when the applicant had shouted and abused Shri PK Narayanan, Junior Engineer (Phones) on 24.4.1984. Exbt.R2(a) is a complaint from the JTO(Indoor) Tripunithura alongwith a joint complaint by 15 members of the staff relating to misbehaviour of the applicant. These instances lend credence to the allegation in Annexure-1 notice [that the applicant had misbehaved earlier also.

4 In Appellate Authority's order ^{one of the} the grounds considered] is that the disciplinary authority had included matters not referred in the original chargesheet. The Appellate Authority has agreed in principle that this should not have been done. There is, however, no finding that the Disciplinary Authority's order suffered from this vice. As the applicant has not produced a copy of the Disciplinary

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Authority's order, we are unable to uphold his allegation in this regard.

5 The other ground is that an enquiry as specified in Rule 14 was not held. The implication of this ground was explained by the learned counsel for the applicant. He contended that the withholding of increment for one year will affect adversely the amount of pension payable to the applicant and hence an enquiry under Rule 14 ought to have been held as provided in Sub rule(1-A) in Rule 16 of the Rule. No instruction of the Government of India under Rule 16 has been cited where the scope of Sub rule 1-A of Rule-16 has been explained. Therefore, we have to find out what this Sub rule means. It states as follows.

"(1-A) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty."

6 We are of the view that the minor penalty of withholding of increments can be considered to affect adversely the amount of pension payable to a Government servant only if it relates to withholding of increments due in the last year of the applicant's service. It is only then that pension will be adversely affected

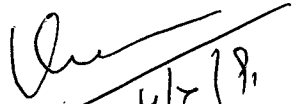
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because the pension is reckoned on the basis of the emoluments drawn in the last 10 months' of service. That is not the position here as admitted by the learned counsel for the applicant. Here, Sub rule 1(A) of Rule 16 is not attracted and hence there is no need for an enquiry under Rule 14 on mandatory basis.

7 We are satisfied that, though neither the Charge memo nor the order of the Disciplinary Authority has been produced before us by the applicant, the order imposing minor penalty was warranted as has been made out in the Appellate Authority's order and in the reply of the respondents. In the circumstances, we find there is no merit in this application and hence it is dismissed.

8 There will be no order as to costs.


(N Dharmadan) 4. 10. 91
Judicial Member


4/10/91
(NV Krishnan)
Administrative Member