

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.297/2003

Monday this the 2nd day of June, 2003.

C O R A M

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

M.C.John
Muthedathu House
Thenginthara
Meloor P.O., Adoor
Dist. Pathanamthitta
(Khalasi, now under suspension
pending enquiry,
Central Water Commission
Pune - 411 024.

Applicant

(By advocate Mr Mr.George Cherian)

Versus

1. The Chairman
Central Water Commission
Sewa Bhavan, R.K.Puram,
New Delhi.
2. The Executive Engineer
Upper Krishna Division
Central Water Commission
N.W.A. Complex, P.O.Khadakwasla R.S.
Pune - 411 024.
3. Shri K.Narayan Reddy
Section Officer and Inquiry Officer
Office of the Chief Engineer
Krishna & Godavari Basin
Central Water Commission
Hyderabad.

Respondents.

(By advocate Mr.M.R.Suresh, ACGSC)

The application having been heard on 2nd June, 2003, the Tribunal on the same day delivered the following:

O R D E R

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

This application is directed against A-10 order dated 24.3.2003 of the 3rd respondent denying the applicant's request for shifting of the venue of enquiry against him to Kochi from Pune. A statement in reply has been filed and pleadings are complete. As agreed to by the counsel on either side, we have heard this application for final disposal. A brief sketch of the facts can be drawn thus:



2. On the basis of an ex parte enquiry held against the applicant, an order was issued removing the applicant from service with effect from 2.11.98 by the disciplinary authority. In appeal, the order of removal was converted into one of compulsory retirement. The applicant took the matter in revision and the revisional authority, finding that the enquiry was not held properly, set aside the orders of the disciplinary authority as also of the appellate authority and directed reinstatement of the applicant and holding of a fresh enquiry from the stage of furnishing the charge sheet. Since the applicant was removed from service and which removal was converted into compulsory retirement, he left his place of posting at Anjanari in Maharashtra and came to his native place 'Adoor' in Kerala. After the revisional authority's order setting aside the penalty order and the appellate order, the applicant was served with A-3 order dated 19.7.2002 reinstating him in service and simultaneously placing him under deemed suspension. He was also served with a memo of charges. This order was sent to his Adoor address in Kerala. On receipt of this order, the applicant submitted A-4 representation dated 9.9.2002 requesting that the enquiry be held at any place in Kerala. His request was turned down by A-7 order of the disciplinary authority. He again submitted a representation and in reply to that he was served with the impugned order by the enquiry officer, that too at his native address in Kerala, informing him that normally the enquiry is to be held at the place of occurrence of the alleged misconduct or at the place which the inquiry authority decides and that the enquiry authority has decided to conduct the enquiry in Pune and, therefore, his request for shifting the venue of Pune could not be acceded to. Aggrieved, the applicant has filed

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this application seeking to set aside A-10 and for a direction to the 3rd respondent to conduct the disciplinary proceedings against him at the office of the Central Water Commission at Kochi or any other place in Kerala. It is alleged in the application that as the applicant had been without any work or income from the date of his removal from service, it is not possible for him to raise funds to go to Pune with his defence assistant and participate in the enquiry and that shifting of the venue from Pune to Kochi would not cause any inconvenience to the Administration.

3. A statement has been filed on behalf of the respondents and certain documents have been produced. The respondents have raised the preliminary objection that the applicant not being posted in Kerala but reinstated in Anjanara, he cannot maintain the application before this Bench of the Tribunal. On merits, it is contended that according to rules, the enquiry is to be held at a place where the alleged misconduct has taken place or at a place to be decided by the enquiry authority and, therefore, the request of the applicant for shifting the venue cannot be entertained.

4. The questions that arise for consideration are (i) whether this Bench of the Tribunal has jurisdiction to entertain this application and (ii) whether the interest of justice demands holding the enquiry at Kochi as requested by the applicant. Regarding the question of jurisdiction, normally an application by a serving employee has to be filed before the Bench within whose jurisdiction the applicant is posted for the time being or the cause of action, wholly or in part, has arisen. In the case

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of a person who has ceased to be in service by reason of retirement, dismissal or termination of service, he may file an application before the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application. In this case, although the applicant is technically not a retired person, on his removal from service, he had left his place of posting and had come to live in his native place in Kerala. His removal from service was later converted into compulsory retirement. Even after the revisional authority set aside the order of compulsory retirement and directed reinstatement of the applicant in service by A-3 order, the applicant was not called back to his place of work but was simultaneously placed under deemed suspension and all these orders were communicated to the applicant at his address in Kerala where he has been residing. Therefore, it cannot be seriously contended that no part of the cause of action has arisen in the State of Kerala and that this Bench has no jurisdiction. The contention of the respondents that this Bench has no jurisdiction is without merit and we reject this contention.

5. Now we have to consider the prayer of the applicant for quashing A-10 and for a direction to the 3rd respondent to conduct the enquiry either at the office of the Central Water Commission in Kochi or at any other place in Kerala. Normally the Tribunal would not interfere in an interlocutory order passed by the enquiry or disciplinary authority. However, when gross injustice is caused by non application of mind to the relevant facts, the Tribunal cannot refrain from interfering. Here is a case where the applicant has been out of service for a large

number of years and even while he has been reinstated, he has been placed under suspension. Though he has been paid subsistence allowance, in these days of inflation, when a person is out of job for quite some time, what is paid as subsistence allowance may not stay. In these circumstances, the difficulty pleaded by the applicant to mobilize funds to go to Pune along with his defence assistant and to live in hotel for participating in the enquiry cannot be brushed aside as meritless or minor. It is an indisputable fact that 2 of the witness to be examined in the enquiry are stationed in Kerala, 2 are in Delhi and 2 in Andhra Pradesh. It is admitted in the pleadings that there is no witness in Pune. The enquiry officer also is not stationed in Pune but in Hyderabad. No reason is stated as to why it was convenient for them to hold the enquiry in Pune. On the other hand, the facts and circumstances of the case establish that the applicant is out of job for a number of years and that two witness to be examined are stationed in Kerala. Under these circumstances, we are of the considered view that the enquiry authority has not exercised his discretion in regard to fixing the venue of the enquiry in a judicial manner with due application of mind to the relevant material. We are, therefore, of the view that the impugned order is liable to be set aside and that the respondents have to be directed to hold the enquiry at Kochi or at any other place in Kerala.



6. In the light of what is stated, we set aside A-10 order and dispose of this application directing the 3rd respondent to hold the enquiry in the office of the Central Water Commission, Kochi or any other place in Kerala convenient to them. No order as to costs.

2nd June 2003.



T.N.T.NAYAR
ADMINISTRATIVE MEMBER

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A.V.HARIDASAN
VICE CHAIRMAN