

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O.A. No. 314 of 1990  
T.A. No.

DATE OF DECISION 28-2-1991

K Sivankutty Applicant (s)

M/s GP Mohanachandran &  
M Jayachandran Advocate for the Applicant (s)

Versus

Construction Engineer, Civil Respondent (s)  
Engineering Division, VSSC, Trivandrum & 2 others

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

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

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

Yes  
Yes  
Yes

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant working as Tradesman 'B' in Civil Engineering Division, Department of Space, VSSC, Trivandrum has prayed that the order dated 30.4.1987 issued by the first respondent placing him under suspension at Annexure-A1, the penalty order dated 6.3.1989 at Annexure-A4 and the appellate order at Annexure-A9 dated 8/12.2.1990 issued by the second respondent rejecting his appeal against the Annexure-A4 order may be quashed and that the respondents may be directed to pay him full pay and allowances during the period of suspension and also to consider him for promotion to the higher grade of Tradesman 'D' with effect from the date

on which his juniors were so promoted with all consequential benefits including arrears of pay and allowances. The facts of the case as averred in the application can be briefly stated as follows.

2. The applicant while working as Tradesman 'B' in the Civil Engineering Division, VSSC, Trivandrum was placed under suspension vide Annexure-A1 order dated 30.4.1987 on the ground that a criminal case was under investigation and also as ~~#~~ disciplinary proceedings <sup>were</sup> contemplated against him. Thereafter he was served with the charge sheet dated 6.7.1987 alleging that he while functioning as Tradesman 'B', CED, Thumba entered quarter No.VIII/61, VSSC Housing Colony on 7.4.1987 after 1215 hrs. for official work of taking measurement, molested Smt. Kamalesh, wife of Constable Shri Balwan Singh, CISF and snatched away a gold chain belonging to her and weighing one thola and that by the above said act of moral turpitude he had acted in a manner unbecoming of a Government servant in violation of Rule 3(i)(ii)(iii) of CCS (Conduct) Rules, 1964. The applicant in his written statement of defence denied the charge and requested that the departmental inquiry contemplated should be deferred until the disposal of the criminal case by the Judicial Magistrate of Second Class, Trivandrum. However, the first respondent, <sup>that is</sup> the Disciplinary Authority ordered an enquiry. During the pendency of the enquiry the applicant was acquitted by the Judicial Magistrate of second class Trivandrum in CC 390/87. Though the applicant <sup>departmental</sup> filed an appeal praying for revocation of suspension after that judgement in the Criminal Case, the second respondent did not consider that. The Inquiry Authority submitted his report

holding the charge against the applicant as proved. The Disciplinary Authority concurred with the finding of the Inquiry Authority and imposed on the applicant a penalty of reduction of pay by two stages in the time scale of pay Rs. 1150-25-1500 for a period of two years with effect from the date on which the applicant assumed charge with a further direction that he would not earn increment of pay during the period of reduction. The Disciplinary Authority took a decision regarding the guilt of the applicant without supplying him a copy of the Inquiry Report. In the punishment order, Annexure-A4 itself, the first respondent had revoked the suspension of the applicant and proposed, to pay him only subsistence allowance during the period of suspension and that this period would not be treated as duty. The applicant was given an opportunity to make representation against the said proposal. Aggrieved by the Annexure-A4 order, the applicant preferred an appeal on 19.4.1989 before the second respondent. He had contended in the appeal memorandum that the findings of the Inquiry Authority accepted by the Disciplinary Authority was absolutely perverse and unwarranted by the evidence on record and that his suspension was wholly unjustifiable. The Appellate Authority has dismissed the appeal and confirmed the punishment by the impugned order, Annexure-A9. The grievance of the applicant is that the finding of the Inquiry Authority that he is guilty, is unsustainable, that the Disciplinary Authority has accepted this perverse finding without any application of mind to the evidence on record, that the Appellate Authority also has failed to consider the grounds raised by him in appeal and that the order to treat the period of suspension as non-duty is against law. It has been further averred that by reason of the suspension and

the unmerited punishment, he has been overlooked in the matter of promotion to the cadre of Tradesman 'D' and that this has caused great injustice to him. The applicant prays that the impugned orders may be set aside and the respondents may be directed to pay him full pay and allowances for the period of suspension and to consider him for promotion on the date on which his junior was promoted to the grade of Tradesman 'D'.

3. The impugned orders have been sought to be justified by the respondents in their reply statement on the ground that the Disciplinary Authority depending upon the evidence available has found the charge proved and that the appeal has been disposed of by the Appellate Authority advertizing to the grounds raised therein and that therefore the impugned orders are quite in order.

4. We have heard the arguments of the learned counsel on either side and have also perused the documents produced and also the file relating to the inquiry made available for our perusal by the learned counsel for the respondents. The disciplinary proceedings against the applicant was commenced after a preliminary inquiry by the Disciplinary Authority on

"I Mrs.Kamalesh, wife of CISF Constable Balwan Singh Qr.No.8/61 of VSSC Housing Colony today on 7.4.87 was alone in my quarter. At that time by about 12-15 Hrs one employee from VSSC, CEO came to my quarter saying that he wants to take the measurement. Accordingly he took the measurement of bathroom kitchen and latrin and within 2-4 minutes went out. After five minutes the same person came back and said that he has to take the measurement again as the quarter number confused. He went inside the bathroom. At that time I was cooking food. He asked me to hold the tape and help him in measuring. When I took the tape and bend down he teased me and put his hands on my cheeks. I went running outside to be away from him and he also went outside and tried to escape. I followed him upto Mr.PRC Pillai's quarter and at that time he went away running. When I went back to my quarter the gold chain which was putting in my neck found missing. I went with Mrs.Balan, Qr.No.8/41 and complained about the incident.

I can recognise him on seeing.

I fully agree with the above facts.

Sd/-  
Kamalesh  
W/o Balwan Singh  
Qr.No.8/61"

Dated: 7.4.'87

Along with the charge sheet Annexure-A2, the letter issued by the Commandant, CISF along with the complaint of Smt Kamalesh was also annexed. In his explanation submitted to the charge sheet, the applicant had stated that on 7.4.1987 at about 12 noon he had gone to the Quarter No.8/61 for taking measurement as was required officially, that the inhabitant told something to him which he did not understand, that he did not do anything as alleged in the complaint and that he is innocent



of the charges levelled against him. Names of 7 witnesses namely, 1. Smt Kamalesh, 2. Shri VV Thamby, 3. Shri K Babu, 4. Smt Balan, 5. Shri Jose Maria, 6. Shri Arumugam and 7. Shri Nirmaldas were also shown as Annexure-IV charge sheet. From the file relating to the inquiry it is seen that Smt. Kamalesh and Shri VV Thamby were not examined and the other 5 witnesses were examined. The evidence of the first three witnesses examined before the Inquiry Officer namely, Shri Jose Maria, Shri Arugumugam and Shri Nirmaldas only show that the applicant was assigned the work of taking measurement in quarters and that in the noon of 17.4.1987 he was in the vicinity of quarter No.8/61 in the VSSC Housing Colony. This aspect of the charge is not disputed by the applicant. He has admitted that he had as officially required gone to the quarter No.8/61 for taking measurements. But the evidence of these three witnesses does not implicate the applicant with the alleged occurrence at all. The other two witnesses examined are Mrs Balan and Mr Babu. PW-4 Mrs Balan has sworn that on 7.4.1987 Mrs Kamalesh staying in Quarter No.8/61 in the Housing Colony went to her house at noon and said that he wanted to make a phone call to her husband; that as she did not understand Hindi and was not able to follow what Mrs Kamalesh said, she took Mrs Kamalesh to Mr Babu, the PW-5 and that she did not note any abnormality in the behaviour of Mrs Kamalesh. She has also stated that she did not say anything to Mr Babu in this connection. PW-5 Mr Babu has in chief examination stated



that on 7.4.1987 at noon Mrs Kamalesh along with Mrs Balan came to his quarters and Mrs Balan told him that a person who went to take measurement in quarters of Mrs Kamalesh behaved towards her in an indecent manner, and that on inquiry he came to know that it was a person known as Sivankutty of the CEO who went to take measurement in the quarters of Mrs Kamalesh. He has also sworn that he passed on this message to the duty officer. In cross-examination he has sworn that he came to know that Mrs Kamalesh had made a complaint to the Police stating that Sivankutty had snatched her chain and that he could not believe that her complaint was true. To a pointed question as to to Mr. Babu, what Mrs. Balan told him, the PW-5, Mr. Babu has sworn that she told him that, the person came to take measurement, caught hold of Mrs. Kamalesh, and that when Kamalesh resisted he run away. This is all the evidence. The complaint alleged to have been made by Kamalesh has not been marked as evidence in the enquiry, since ~~the complainant~~ the complainant was not examined. The person who forwarded the complaint namely, Mr. VV Thambi was also not examined. Regarding the non-examination of Mrs. Kamalesh, the Enquiry Officer in his report stated that, in cases where the complainant is an outsider, it is not necessary that the complainant should be examined in a departmental enquiry, and that the non-examination of the complainant would not make the enquiry invalid. Reliance was placed by the Enquiry Officer to support this view on the decision of East India Hotels Vs. Workmen and others, reported in 1974 All India Service Law Journal-175. The non-examination

of Shri V.V.Thambi who forwarded the complaint alleged to have been lodged by Smt.Kamalesh has also been considered by the Enquiry Officer to be of no consequence, as according to the Enquiry Officer, Shri Thambi was not a material witness as he had only forwarded the complaint. The complaint alleged to have been lodged by Kamalesh was also not marked as exhibit in the enquiry because this document was not proved by any witness. Even according to the Enquiry Officer ~~anyxxpageaxRxxixxxapxxk~~ out of the 5 witnesses examined in support of the charge, the deposition of 3 witnesses other than Mrs. Balan and Mr.Babu did not throw any light in order to prove the charge as they were not witnesses to the incident reported upon. Relying on the testimonies of Mrs. Balan and Mr.Babu, the Enquiry Officer has come to the conclusion that the charge, that the applicant while functioning as Tradesman B, in CEO Thumba, entered quarter No.VIII/61, after 1215 hrs. on 7.4.1987 for official work of taking measurement, molested Smt.Kamalesh, wife of Shri Balwan Singh stood proved. In the penultimate report the Enquiry Officer has stated as follows:

"There are no direct witnesses in this inquiry. The oral evidences adduced by the PWs, if laid one after the other, present a clear picture of the probability that the charged official had committed the moral turpitude charged upon while he was on duty on 7.4.1987."

The learned counsel for the applicant vehemently argued that this conclusion of the Enquiry Officer is absolutely perverse and unwarranted from the evidence and that the Disciplinary Authority had gone wrong in accepting this

finding without appreciating the evidences on record and applying his mind to it for reaching a just and reasonable conclusion. The Enquiry Officer has very eloquently dealt with the standard of proof required in a disciplinary proceedings and has also stated as a preface that what is more important is the quality of evidence and not quantity of evidence, and that a charge can be established by preponderance of probabilities. But going through the evidences recorded in the enquiry with great care, we find that there is not even an iota of legal evidence which would enable a reasonable person to reach the conclusion that the charge against the applicant has been established. We are not in a position to understand what preponderance of probabilities is there which enabled the Enquiry Officer to reach the conclusion which he did. An inference can be drawn on the basis of probabilities and human conduct, only if the basic facts are established. The foundation for the charge against the applicant is the complaint alleged to have been made by Smt. Kamalesh. This complaint was not marked in evidence at the enquiry because neither the person who made the complaint nor the person who received the <sup>l</sup> complaint has been examined in this case. There is no proper explanation for non-examination of these two witnesses. The fact that Mrs. Kamalesh has left Kerala on transfer of her husband is not a reason why she should not be examined before the Enquiry Authority. There is

absolutely no reason for the non-examination of Shri V.V. Thambi. In East India Hotel Vs. Workmen, 1974-SLJ-175 the Supreme Court held that the non-examination of the complainant was not fatal because there was other evidence to establish the guilt of the delinquent involved in that case. Therefore, it was felt that it was not necessary to examine the complainant in that case. The conclusion of the Enquiry Officer that the facts of the case in the enquiry before him <sup>www</sup> was similar to that those of the East India Hotel case is unreasonable and meaningless. Even if the entire testimonies of Mrs.Balan and Mr.Babu are believed, there is absolutely no evidence to connect the complainant with the alleged misconduct. Mrs.Balan has only deposed that Mrs.Kamalesh came to her quarter, ~~she~~ wanted to make a phone call to her husband, and that she took Mrs.Kamalesh to Mr.Babu's house and nothing else. Mr.Babu on the other hand <sup>had</sup> deposed that, in the noon of <sup>M</sup> 7.4.87 Mrs.Balan and Mrs.Kamalesh went to his house and Mrs.Balan told him that a person who went to take measurement in the house of Mrs.Kamalesh misbehaved towards her, and that, the person caught hold of her. ~~Mr.Babu~~ <sup>has</sup> however sworn that, on further enquiry, he came to know that the person who was deputed to take measurement from the quarters in the area where the quarters of Mrs. Kamalesh is situated is one Mr.Sivan Kutty who is belonging to CEO, Thumba. It is not possible to reach ~~to~~ a conclusion

that the applicant had molested Mrs. Kamalesh from the above mentioned testimonies of Mrs. Balan and Mr. Babu. Further, the testimonies of Mrs. Balan and Mr. Babu contradict each other. Mrs. Balan has said that she did not tell Mr. Babu anything in connection with the case, whereas Mr. Babu has said that it was Mrs. Balan who told him that one person who came to take measurement, misbehaved and caught hold of Mrs. Kamalesh. This being the sort of evidence on record, we are unable to hold that it is possible for any reasonable person to come to a finding that the applicant has committed the misconduct alleged. The finding of the Enquiry Officer is based on no evidence at all and the same is in the most modest terms perverse. This finding of the Enquiry Officer has been readily accepted by the Disciplinary Authority.

Annexure-A5 is a copy of the proceedings of the Disciplinary Authority in connection with the Departmental Enquiry against the applicant. After giving a short background of the case, the Disciplinary Authority has proceeded to decide the question whether the applicant was guilty of the charge or not. It is worthwhile to extract the relevant portion of Annexure-A5, which runs as follows:

"I have gone through the report of the Inquiry Officer carefully. I find that sufficient opportunity was given to Shri Sivankutty to defend his case and that the relevant procedures were followed in the enquiry. The Inquiry Officer has come to the conclusion that Shri Sivankutty is guilty of the charges levelled against him for reasons mentioned in his report.

On going through the report and relevant documents, it is noted that the portion of the charge viz. "snatched away Smt. Kamalesh's gold chain said to be one thola" is not dealt by the Presenting Officer. In view of the statement

of the Prosecution Witness that there is no possibility of snatching the chain, I agree with the Inquiry Officer in not pursuing the same further.

I agree with the findings of the Inquiry Officer that the charged official entered Quarter VIII/61, VSSC Housing Colony on 7.4.87 after 1215 hrs for official work of taking measurement.

There is no direct witness in this enquiry and the complainant also did not turn up to throw more light on the matter. Inquiry Officer has relied on PW 4 and PW 5 and written complaint by Smt. Kamalesh in the absence of direct evidence. On careful analysis of the aspects of the case in totality I agree with the findings of the Inquiry Officer that Shri Sivankutty is guilty of the charges levelled against him "That the said Shri Sivankutty, SC No. 91906, while functioning as Tradesman 'B' in CEO, Thumba, entered Quarter No. VIII/61 VSSC. Housing Colony on 7.4.87 after 1215 hrs for official work of taking measurement, molested Smt. Kamalesh, wife of Constable Balwan Singh, CISF".

By the above act of moral turpitude Shri Sivankutty had acted in a manner unbecoming of a Government Servant in violation of Rule 3(i), (ii) & (iii) of CCS (Conduct) Rules 1964."

The above extract clearly shows that the Disciplinary Authority has not carefully analysed the evidences and reached an independent conclusion. Had he taken care to analyse the evidences, we are sure that it would not have been possible to reach the conclusion that was arrived at on the basis of the evidence record. The Appellate order, Annexure-A9 also is devoid of application of mind. It is worthwhile to extract the relevant portion of the above order.

"The evidence of Shri Thambi or the lack of it is of little consequence. He has only forwarded the complaint of Smt. Kamalesh. Smt. Kamalesh has set forth in detail the incident she complains of. As regards the question of connecting Shri Sivankutty with the alleged incident, he himself has admitted that he has visited the Quarters under reference and taken the measurements, etc.,

generally as also brought out by Smt.Kamalesh in her complaint. It is clear that Shri Sivankutty is the person against whom the complaint is meant. I have noticed that there are certain inconsistencies in the evidence tendered by some of the witnesses viz., Smt. Balan and Smt.Babu. However, these are not material. In the result I hold that the conclusion of the Inquiry Authority were warranted."

In all of the evidence on record, there is no satisfactory proof of the fact that Smt.Kamalesh has made the complaint. Apart from the fact that Mr.Babu has said that Smt.Kamalesh & Smt.Balan came to him, and that Mrs.Balan told him that somebody who came to take measurement in the quarters of Smt.Kamalesh caught hold of Smt.Kamalesh, and that he on enquiry came to know that the person who was deputed to take measurement was one Shri Sivankutty, Tradesman'B', CED, there is nothing to show that Smt.Kamalesh had made a complaint, which was forwarded by Mr.Thambi. The author of the alleged complaint namely, Smt.Kamalesh has not been examined to prove that she has made such a complaint at least. The person who had allegedly taken the complaint on record and forwarded the same namely, Mr.Thambi also have not been examined. Not even with the handwriting and signature of Smt.Kamalesh a person who is familiar ~~was~~ examined to prove that the complaint was written and signed by her. The complaint itself was not admitted in evidence at the enquiry. So, apart from the fact that the complaint alleged to have been made by Smt. Kamalesh is made available to the Enquiry Officer alongwith the charge sheet, there is no proof to show that the above complaint was in fact made by Smt.Kamalesh. Further, none of the witnesses examined in support of charge has sworn that the applicant has committed the misconduct alleged.

The entire finding of the Enquiry Officer which is accepted by the Appellate Authority is based on mere suspicion and conjecture. Even the testimonies of Mrs. Balan and Mr. Babu are mutually inconsistent. While Mr. Babu has sworn that Mrs. Balan told him that a person who entered the house of Mrs. Kamlesh misbehaved and caught hold of her. Mrs. Balan has denied to have stated so. So even the suspicion entertained by the Enquiry Officer that it must be the applicant who committed the misconduct is not based on strong ground.

5. In Union of India Vs. H.C. Goel, AIR 1964 SC 364, a Constitution Bench of the Supreme Court has held that, suspicion should not be allowed to take the place of proof even in domestic enquiries. In M/s Barailly Electricity Supply Co. Ltd Vs. The Workmen and others, 1971(2)-SCC-617, the Supreme Court has observed as follows:

"No materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are not subjected to cross-examination by the party against whom they are sought to be used."

In Central Bank of India Vs-PC Jain, AIR 1969-SC 983, the Supreme Court has held:

"Statements made behind the back of the persons charged are not to be treated as substantive evidence. is one of the basic principles which cannot be ignored on the mere ground that domestic Tribunals are not bound by the technical rules of procedure contained in the evidence Act."

In State of Assam Vs. Mohan Chand Kalita and another, AIR-1972-SC-2535, it was held that a charge cannot be upheld on mere <sup>con</sup> conjecture in the absence of evidences.

In the instant case we find that the Enquiry Authority has held that the charge against the applicant was proved merely basing on suspicion and <sup>con</sup> ~~tenure~~ depending on the averment made in a complaint, the other of which or the person who has forwarded the same has not been examined ever to prove that such a complaint was ~~made~~ on the basis of the authorities mentioned above, we are of the view that the finding of the Enquiry Authority and that of the Disciplinary Authority which has been upheld by the Appellate Authority, that the applicant is guilty of the misconduct is absolutely perverse.

6. Since the charge against the applicant has not been established, the impugned order Annexure-A4 and Annexure-A9 are to be quashed. It has been averred in the application that by reason of the suspicion and the punishment awarded to the applicant, he has been superseded in the matter of promotion to the next higher grade, and the applicant has prayed that the respondents may be directed to consider the applicant for promotion to the higher grade of Tradesman 'O' with effect from <sup>the date on which</sup> ~~his~~ Juniors were so promoted, with all consequential benefits including the arrears of pay and allowances. With reference to this case of the applicant, the respondents in paragraph 13 of the reply statement have contended as follows:

"Further the contention of the applicant that he was denied opportunities for eligible promotion on the due date was also not correct as he was called for test and

interview for promotion to higher grade whenever due and was considered in accordance with the extent orders on Career Opportunities for Scientific/Technical Personnel of DOS/ISRO. The concept of seniority also does not arise in the promotion of such personnel as they are considered on merit."

It is not clear from the pleadings whether the case of the applicant that promotion was denied to him on account of the suspension and the punishment awarded is true or not. If the applicant was otherwise eligible for promotion and if he had been denied promotion in due course by reason of the impugned punishment and suspension, we are of the view that the respondents have to be directed to consider him for promotion with effect from the date when his junior was promoted, subject to his suitability.

7. Since the Criminal Case mentioned in the Annexure-A1 suspension order has ended in acquittal of the accused and since we have held that the charge against the applicant has not been established, and that the punishment order is vitiated, we find that the applicant is entitled to full pay and allowances during the period under suspension.

8. In the result, the application is allowed. The impugned orders, Annexure-A4 and A9 are quashed. The respondents are directed to pay to the applicant full salary and allowances during the period of suspension less the subsistence allowance paid, to treat this period as duty to give him the increments which were withheld to restore his pay and pay him the

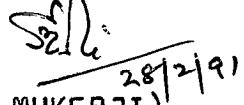
arrears of pay and allowances due by reason of reduced payments by reason of the impugned order at Annexure-A4, and to consider him for promotion to the post of Tradesman 'D' with effect from the date when his junior was so promoted, subject to his suitability and eligibility.

There is no order as to costs.

  
(A.V.HARIDASAN)

JUDICIAL MEMBER

28/2/91

  
(S.P.MUKERJI)

VICE CHAIRMAN

28.2.1991.