

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
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DATE OF DECISION 6.8.1991

D. Prasanna Kumar Applicant (s)

Mr. GP Mohanachandran Advocate for the Applicant (s)

Versus

Head, Personnel & General Respondent (s)
Administration, VSSC, Trivandrum & Another

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

CORAM:

The Hon'ble Mr. S. P. Mukerji - Vice Chairman
and

The Hon'ble Mr. A. V. Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? */s*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

(Mr. A. V. Haridasan, Judicial Member)

In this application filed on 23.4.1990, the applicant, an office clerk in the V.S.S.C, Trivandrum has prayed that the punishment order issued by the first respondent on 7.9.1987 removing him ^{from} service (Annexure-A1) and the appellate order of the second respondent dated 28/29th January, 1990 (Annexure-A8) in which the Appellate Authority accepted the finding of guilt by the 1st respondent, but reduced the punishment to reduction in rank may be set aside.

2. The facts can briefly be stated thus: While the applicant was functioning as office clerk 'B' in

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the VSSC, he was served with a charge sheet dated 25.2.87 issued by the 1st respondent alleging that he absented unauthorisedly from duty with effect from 10.1.87 and thereby showed lack of devotion to duty and behaved in a manner unbecoming of a Government Servant in violation of Rule 3(i)(ii) and (iii) of the CCS (Conduct) Rules, 1964.

The applicant denied the charge stating that his absence was owing to severe illness and unavoidable domestic problems. The 1st respondent ordered an enquiry. The enquiry was held ex parte as the applicant did not participate according to him because he was physically and mentally unwell. The Inquiry Authority submitted a report holding the applicant guilty. The 1st respondent accepting that report, held the applicant guilty and imposed on him a punishment of removal from service.

The applicant filed an appeal. The second respondent, the Appellate Authority confirmed the finding of guilt but modified the penalty to one of reduction in rank from Office clerk 'B' to Office clerk 'A'. Challenging these orders, the applicant filed OA K-214/88. This OA was disposed of with a direction to the second respondent to dispose of the appeal afresh in accordance with law and in the light of the observations made in the judgement. The second respondent has disposed of the appeal imposing on the applicant a punishment of reduction in rank from Office Clerk 'B' to Office Clerk 'A' with effect from 1.2.1988 until found fit to be restored to

the higher post and also directing that the period between 10.1.87 till 1.2.88 should be treated as leave of any kind by the order dated 28.1.90 (Annexure-A8). Aggrieved by these orders, the applicant has filed this application. It has been averred in the application that, the Inquiry Officer has not held the inquiry in conformity with principles of natural justice, that the Disciplinary Authority has denied to the applicant a fair and reasonable opportunity to defend himself because, before finding him guilty and imposing a major penalty on him, the Disciplinary Authority did not give him a copy of the Inquiry Authority's report and ^{an} opportunity to make a representation about it, ^{that} thus there is total denial of natural justice offending the provision of Article 311(2) of the Constitution, that the Appellate Authority though directed to consider the entire matter afresh, considering the various grounds raised in the appeal memorandum has failed to consider these aspects and have in fact discarded the direction of this Tribunal in the judgement in OA 214/88, and that ^{for} these reasons, the impugned orders, Annexure-A1 and A8 are unsustainable.

3. The respondents in the reply statement have sought to justify the impugned orders, on the ground that exparte inquiry had to be held only because the applicant did not cooperate inspite of repeated adjournments being given, that the inquiry has been held in full compliance with the ~~xxxxxxxxxxxx~~ principles of natural justice, and

that the Appellate Authority has while disposing the appeal by the impugned order at Annexure-A8 considered all the points raised in the appeal memorandum and given reason for its decision.

4. We have heard the learned counsel for the parties and have carefully considered the pleadings and evidence.

5. The charge against the applicant is that, he unauthorisedly absented from duty with effect from 10.1.87, thereby showing lack of devotion to duty and behaved in a manner unbecoming of a Government Servant in violation of Rule 3(1)(ii) and (iii) of CCS Conduct Rules, 1964. The circumstances in which the charge happened to be issued ~~xxxxx~~ are as follows: From 20.8.86 onwards the applicant did not report for duty and went on applying for leave on medical ground, producing medical certificates from various Medical Officers. Not being convinced about the genuineness of the claim, ^{That the} ~~as~~ the applicant was unwell, the first respondent directed the applicant to appear before the VSSC Medical Board at 2.00 pm on 18.12.86 by a letter dated 12.12.86. The applicant informed the first respondent by his letter dated 19.12.86 that he received the letter directing him to appear before the Medical Board on 18.12.86 only on that date, and that, therefore, he could not comply with that direction. He was again directed to appear before the Medical Board on 31.12.86 which he did. On examination by the Board, the Board on 2.1.87 came to

the conclusion that the applicant was not having signs of acute illness. The Chief Medical Officer informed ~~that~~ the applicant that he was fit to join duty, by his letter dated 8.1.87. Though the applicant was directed to report for duty forthwith vide letter dated 9.1.87 of the Assistant Administrative Officer, and though the letter was received by the applicant on 10.1.87, he did not report for duty. In the meanwhile the applicant informed the Administrative Officer-II by a telegram dated 26.12.86 that he was advised by the doctor to take rest and not to travel and requested for grant of leave for another 45 days. He also sent a leave application on the same date supported by a medical certificate issued by Mr.K. T.Shenoy, Assistant Professor, Medical College Hospital, Trivandrum. Once again the applicant was directed to report for duty before 30.1.87. As the applicant did not comply with the above direction, the applicant was charge-sheeted for unauthorised absence from 10.1.87, as he was granted leave on medical ground only upto 9.1.87. Though the applicant submitted a reply to memorandum of charges stating that, it was on account of his illness and other pressing personal problems that he could not report for duty. This explanation was not accepted. The applicant did not participate in the disciplinary inquiry held by the Enquiry Officer. Though he was asked to appear before the Enquiry Officer for preliminary enquiry on 8.4.87, the applicant sent a

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telegram stating that he was unable to attend the enquiry owing to ill-health. The enquiry was postponed to 29.4.87 on which date the Enquiry Officer received a letter from the applicant alongwith the medical certificate issued by Dr. Kesavankutty Nair, Associated Professor of Psychiatry, Medical College Hospital, Govt. Mental Hospital, Trivandrum certifying that the applicant was suffering from depressive illness from 18.3.87 onwards and he was advised to take rest for a period of 2 months from 18.3.87 onwards. The Enquiry Officer therefore decided to give the applicant a further chance to take part in the enquiry, and the enquiry was adjourned to 11.5.87 and ~~informed~~ ^{informed that} Shri Prasanna kumar, if he did not appear on that date, the enquiry would be held exparte. The Enquiry Officer adjourned the enquiry once again with a view to give the applicant another opportunity and the date of enquiry was fixed as 4.6.87. As the applicant did not appear on that date also, the enquiry was again re-scheduled on 16.6.87. The special messenger deputed to deliver the letter intimating the applicant of the date of postponed enquiry could not serve the letter, as the applicant was not available in his residence on 15.6.87 and 16.6.87. In the meanwhile, the Enquiry Officer received a telegram on 11.5.87 from Shri Divakaran, the father of the applicant requesting for postponement of the enquiry for 2 months. But, as the applicant did not appear to participate in the enquiry, on 16.6.87 the Inquiry Authority

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conducted the enquiry exparte. Thereafter, the applicant sent a letter dated 17.7.87 stating that he was willing to attend the enquiry and to furnish the names of defence witness etc. The Enquiry Officer granting his request, despatched a letter to the applicant directing him to appear and also to bring his defence witnesses. But this letter was returned stating that the applicant was not available in his residence either on 25.7.87 or 28.7.87. Again a letter was received from the applicant on 13.8.87, requesting for postponement of enquiry to facilitate his participation. Finding that the applicant was not keen in availing the opportunities given to him effectively to participate in the inquiry and to furnish the names of his defence witness, on the basis of the evidence recorded the Enquiry Officer concluded that the charge against the applicant was established. This report and finding were accepted by the Disciplinary Authority. The learned counsel for the applicant argued that though the above referred history of the disciplinary proceedings would at the first flush make it appear that the applicant was wilfully abstaining himself from taking part in the enquiry, if the enquiry proceedings and the file relating to the disposal of the appeal produced by the learned counsel for the respondents are carefully perused, it would be seen that the applicant was during the time when the enquiry/exparte and immediate thereafter in a state of unsound mind and under the treatment

of eminent psychiatrists; and that, therefore, the decision of the Enquiry Officer to hold the enquiry ex-parte without actually verifying whether the applicant was really unwell or not amounted to denial of a reasonable opportunity and violation of principles of natural justice. The learned counsel invited our attention to the statement in the enquiry report, that the applicant on 29.4.87 sent a letter alongwith a medical certificate issued by Shri Kesavankutty Nair, Associate Professor of Psychiastry, Medical College Hospital, Govt. Mental Hospital, Trivandrum certifying that the applicant was in a state of depressive illness, and that, he required 2 months time from 18.3.87 to become normal and also to the statement that, on 11.5.87 the applicant's father sent a telegram requesting the postponement of enquiry by 2 months and submitted that, in these circumstances the Enquiry Officer should have attempted to take steps to satisfy himself whether the applicant was in a state of mind so as to be able to understand ~~xxxxx~~ the nature and quality of the proceedings in which he was called upon to participate. The learned counsel submitted that the medical certificate produced before the Appellate Authority issued by Dr. Santhakumar, an eminent Psychiatrist of Kerala, stating that the applicant was under his treatment from 17.5.87 onwards for depressive illness and that, he became normal and fit ^{to} ~~to~~ join duty only on 18.10.87 ^{would} ~~show~~ that the non-participation of the applicant in the enquiry was for reasons beyond his

control, and that, therefore, it is a fit case in which to meet the ~~ends~~ ^{ends} xxx of justice, the order of the Disciplinary Authority and the Appellate Authority bas^{ed}~~ing~~ on a report of enquiry held at a time when the applicant was not in a sound state of mind should be quashed. Going through the proceedings of the enquiry, enquiry report and the records relating to the disposal of the appeal by the Appellate Authority, we find that, there is considerable force in this argument. In the medical certificate issued by Dr. Kesavan Kutty Nair, Associate Professor, of Psychiatry, Medical College Hospital, Trivandrum on 18.3.87 attached ^{to} the letter sent by the applicant on 29.4.87, requesting for postponement of enquiry for 2 months, Dr. Kesavankutty had certified that the applicant was suffering from depressive illness, which is a disease of the mind which normally would render a person incapable of taking proper decisions. When the enquiry was re-scheduled ^{to} be heard on 16.6.87, the applicant's father had by a telegram requested the postponement of the enquiry for 2 months on the ground that the applicant was unwell. But ^{on} the ground that, no letter followed the telegraphic request made by the father of the applicant, and that the applicant did not make any further request for adjournment, the Enquiry Authority held the enquiry exparte on 16.6.87. Since the disease of the applicant as certified by the Associate Professor of Psychiatry was unsound ^{ness} ~~on~~ the mind, we are of the view that the Disciplinary Authority

should not have proceeded with the enquiry before satisfying himself by cogent evidence, that the applicant was in a fit state of mind to participate in the enquiry. Further, though pursuant to the letter of the applicant dated 17.7.87, the Enquiry Officer granted the applicant an opportunity to appear and produce his evidence, the communication in this matter was not served on the applicant before the date on which further enquiry was held. The photo copy of the certificate issued by Dr. Santhakumar, ^{formerly} Director Institute of Mental Health & Neuro-Science, Calicut, Director & Professor of Psychiatry, Medical College Trivandrum & Calicut and Advisor to Mental Health & Supdt. Mental Hospital, Calicut dt.18.10.87 is available at page 113 of the file relating to the disciplinary proceedings made available for our perusal by the learned Senior Central Government Standing Counsel appearing for the respondents. The certificate reads as follows:

"This to certify that Sri: D.Prasanna Kumar S/o, Divakaran, Age 38 years, T.C.27/969 Pattor Vanchiyoor P.O., Trivandrum-695035, employed in Vikram Sarabhai Space Centre, Trivandrum was seen by me on consultation from Dr.M.Haridas, Calicut on 17.5.1987 and was under my treatment since then. He was found to be suffering from Depression. He was advised to take complete rest and treatment from 17.5.1987 onwards.

He has now fully recovered. He is found fit to resume duties."

At page 112 of the file, the prescriptions by Dr.Santhakumar dated 17.5.87, 13.6.87, 15.6.87 ,28.6.87, etc. are seen.

These documents show that ~~the applicant was under treatment~~

the applicant was under treatment of Dr.Santhakumar as referred for consideration by Dr.M.Haridas who also has issued a certificate available at page 111 of the same file which discloses that the applicant had been treated by him in consultation with Dr.Santhakumar from 17.5.87 to 18.10.87 for mental depression. It was during this period that the applicant was set exparte by the Inquiry Authority and the enquiry was held exparte. Dr.Santhakumar who had issued the certificate, copy of which is placed at Page No.113 of the file relating to the Disciplinary proceedings is a well-known and eminent Psychiatrist who had headed the department of Psychiatric medicine in Calicut and Trivandrum Medical Colleges, and also the Institute of Mental Health and Neuro-Science, Calicut. We are not persuaded to believe that such an eminent scientist in the field of Psychiatry would issue a certificate if he had not actually seen the applicant and treated him for mental ailment. Therefore, we are convinced that, at the time when the applicant was set exparte by the Inquiry Authority and when the enquiry proceeded exparte, the applicant was in a state of mental depression and undergoing treatment for that disease, and that his non-participation in the disciplinary proceedings was therefore for reasons beyond his control. We are of the view that the Inquiry Authority should have in the above circumstances deferred the disciplinary proceedings to a date after the applicant became free from his ailment.

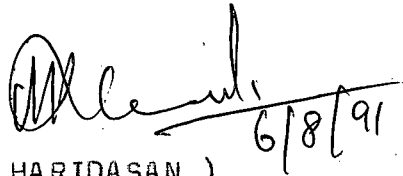
By issuing notices during a time when the applicant was in a mentally depressed state, it cannot be said that a reasonable opportunity had been given to him to participate in the enquiry proceedings. We are of the view that the principles of natural justice have not been complied with by the Inquiry Authority before he proceeded to conduct the enquiry *ex parte*.

6. Before the Disciplinary Authority accepted the enquiry report and entered a finding that the applicant was guilty of the charge, he had not issued a copy of the enquiry report to the applicant. The Disciplinary Authority should have furnished the applicant with a copy of the enquiry report and given him an opportunity for making representation about the acceptability or otherwise ^{of} ~~the~~ report before coming to a conclusion about his guilt basing on the above report. The non-supply of the copy of the enquiry report and an opportunity to the delinquent Government Servant to make a representation regarding that before the Disciplinary Authority decided about the guilt of the Govt. Servant, violates the principles of natural justice embodied in the Article 311(2) of the Constitution of India. In Mohd. Ramzan Khan Vs. Union of India & Others (1990(2) SCALE) the Hon'ble Supreme Court has held that the non-supply of a copy of the enquiry report and denial of opportunity to make representation against the acceptance thereof before the Disciplinary Authority decided the question of

guilt of the Government servant incase where the punishment awarded is one of the penalties mentioned in the Article 311 (2) of the Constitution of India is violative of the provisions contained in Article 311(2) of the Constitution of India. In this case also as the punishment imposed on the applicant by the Annexure-A1 is removal from service, Annexure-A1 order is vitiated for the same reasons. Though in the appeal memorandum the applicant had raised several contentions about the denial of opportunities to defend his case, the Appellate Authority did not consider whether the enquiry was held in full conformity with the principles of natural justice or not. The certificates issued by Dr.Kesavankutty and Dr.Haridas and the prescription by Dr.Santhakumar were all placed before the Appellate Authority. These documents should have been taken into account by the Appellate Authority in deciding whether the applicant had wilfully absented himself from the enquiry or whether his non-participation was on account of his mental ill-health. Since, we have held that the applicant was in a depressed state of mind during the period when the disciplinary proceedings were held exparte, we are of the view that the Appellate Authority has not considered this aspect in the right perspective while disposing of the appeal. We are ^{fore}there_{of} the view that the impugned orders Annexure-A1 and A8 are liable to be quashed.

7. In the conspectus of facts and circumstances and in the interest of justice, we find that the applicant will have to be

given an opportunity to defend the charge and that the disciplinary proceedings have to be held denovo. In the result, we quash the impugned orders at Annexure-A1 and A8. We also direct the Disciplinary Authority, namely, the first respondent to hold a disciplinary proceedings afresh against the applicant from the stage of the charge sheet already issued to him, and thereafter also to pass orders regarding the regularisation of the period between 10.7.87 and 1.2.88 within a period of three months from the date of communication of this order. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

6-8-1991