

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

341/91

488

DATE OF DECISION

15.7.1992.

Mr MS Dasan

Applicant

Mr Girijavallabhan

Advocate for the Applicant

Versus

Union of India (Secy. Ministry of Defence) & 3 others

Respondent (s)

Mr K Prabhakaran, ACGSC

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 ? *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 ? *Yes*

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

The applicant, Shri MS Dasan, who was compulsorily retired from service while serving as a Lascar in the Naval Ship Repairing Yard, Kochi, has filed this application under Section 19 of the Administrative Tribunals Act challenging the order dated 22nd June, 1990 of the 3rd respondent (Annexure G) imposing upon him the punishment of compulsory retirement from service and the appellate order dated 29th November, 1990 of the 2nd respondent (Annexure J) confirming the Annexure G order and praying

that the respondents may be directed to reinstate him in service with consequential benefits. The facts can be briefly stated as follows.

2. While the applicant was working as a Lascar, the 4th respondent, Captain Superintendent, Naval Ship Repairing Yard, issued a charge-sheet dated 4.8.1987 (Annexure A) containing six articles of charges. The allegations forming the basis of the charges were that on 4th August, 1987 at about 19.30 hours, ^{applicant} ~~the~~ while on duty consumed liquor and became violent under the influence of alcohol, caused hurt to his co-worker Shri CK Thankappan by hitting him, used abusive language against Shri Thankappan and his family, caught hold of the shirt-collar of Shri R Singh, POME, No. 105473N his superior officer, attempted to assault him, damaged electrical fittings on board HSD Pradayak and created disturbance to the co-workers in a manner unbecoming of a Government servant. Though the applicant denied the charges, an inquiry was held and the disciplinary authority accepting the inquiry report by order dated 14th March, 1988 found the applicant guilty and imposed on him the punishment of compulsory retirement. As the appeal filed by him against the above said order was not considered by the appellate authority for long, he filed OA 708/89. By an interim order dated 7th December, 1989 in OA 708/89, the respondents in that application were directed to dispose of the appeal within

a period of two months from that date. The 4th respondent by letter dated 2nd January, 1990 directed the applicant to prefer a proper appeal in accordance with the rules before the appropriate appellate authority on or before 10th January, 1990. The applicant filed an appeal as directed. The appellate authority by order dated 9.2.1990 set aside the penalty of compulsory retirement on the ground that the disciplinary authority has gone wrong in not giving the applicant xxx/a copy of the inquiry report and an opportunity to make representations before making a final order in the case and directed the disciplinary authority to pass appropriate order after giving the applicant an opportunity to make his representation against the findings of the inquiry authority. The applicant was thereafter given an opportunity for making a representation. He submitted a detailed representation. The disciplinary authority, the 3rd respondent, has thereafter issued the impugned order at Annexure G dated 22.6.1990 imposing upon the applicant at the punishment of compulsory retirement from service finding him guilty of the charges. Aggrieved by the above order, the applicant preferred an appeal to the 2nd respondent who by the order at Annexure J confirmed the order of the disciplinary authority. It is aggrieved by these two orders and the resultant punishment that the applicant has filed this application.

3. The important grounds on which the impugned orders are challenged are that there has been procedural irregularities in the conduct of the inquiry since the provisions of CCS (CCA) Rules have not been scrupulously followed that the authority who issued the charge-sheet and the authority which imposed the penalty have not been duly notified in the Gazette as authorities empowered to proceed against the applicant under the CCS (CCA) Rules and, therefore, they lack jurisdiction to award the punishment to the applicant, that the finding that the applicant is guilty is not based on any legal evidence that the principle of natural justice have been grossly violated in the conduct of the inquiry and that the punishment awarded is grossly disproportionate to the misconduct alleged.

4. The respondents in their reply statement have contended that the inquiry has been properly and validly held, that the principles of natural justice have been fully complied with in the conduct of the inquiry and that as the President of India had vide order No.5(18)/79/D(Lab) dated 13th September, 1979 as amended by order of even number dated 15th July, 1981 empowered the Chief Staff Officer (P&A), Southern Naval Command, to award all penalties listed under clause (i) to (ix) of Rule 11 of the CCS (CCA) Rules to all Group C and D employees under his control and jurisdiction and the officers of the rank of Commander and above including Heads of Departments/Depots are/competent

to award the penalties listed at Clause (i) to (iv) of Rule 11 of the said rules to all Group C & D employees, there is no merit in the contention that the impugned orders are passed by incompetent persons.

5. We have heard the arguments of the learned counsel on either side and have also carefully perused the pleadings and documents. The contention of the applicant that the 3rd respondent, The Chief Staff Officer (P&A), Headquarters Southern Naval Command, Kochi is not the competent authority to impose upon him the punishment of compulsory retirement from service cannot stand in view of Annexure K & H orders dated 13th September, 1979 and 15th July, 1981 of the Government of India, Ministry of Defence. As per the orders dated 13th September, 1979 at Annexure K, the authority to impose all penalties to Civilian Group C posts in the navy is shown as Director of Civilian Personnel, Naval Headquarters; Chief Staff Officer (P&A), Headquarters Western Naval Command; Chief Staff Officer (P&A), Headquarters, Eastern Naval Command, Command Supply Officer, Southern Naval Command; Flag Officer Commanding etc.etc. This has been amended by the order dated 15th July, 1989 at Annexure H and 'Command Supply Officer, Southern Naval Command' has been substituted by 'Chief Staff Officer (P&A), Headquarters Southern Naval Command'. It is idle to contend that this order dated 15th July, 1989 has not been notified in the Gazette and that it has not taken effect. Therefore, the

competent
3rd respondent is ~~bound~~ to impose the penalty of compulsory
retirement on the applicant. This contention is, therefore,
liable to be rejected.

6. The applicant has contended that the impugned
order at Annexure G is vitiated as the inquiry has not
been held in conformity with the principles of natural
justice and in accordance with the procedure laid down
under the CCS (CCA) Rules. The learned counsel for the
respondents argued that since the applicant is employed
in a defence establishment, his service comes under
'services connected with defence' and so, the provisions
of Article 311 of the Constitution ^{are} not applicable to
him and the applicant is not entitled to contend that the
provisions of Article 311 of the Constitution ~~have~~ been
violated. In support of this argument, the learned counsel
invited our attention to the ruling of the Hon'ble Supreme
Court in Union of India and another v. KS Subramanian,
AIR 1976 SC 2433, wherein it was observed as follows:-

"Even if we were to hold that the plaintiff-respondent was constructively punished, the provisions of Article 311, unfortunately, do not apply to such a Govt. servant as the respondent was. Whereas the power contained in Article 310 governs all Government servants, including those in the services connected with defence, the benefits of Article 311, which impose limitations on the exercise of this power in cases of punishment, do not extend to those who holds posts "connected with defence". A Constitution Bench of this Court had held, after a review of relevant authorities, this to be the position of the holder of a post such as that of the plaintiff-respondent in LR Khurana v. Union of India, (1971) 3 SCR 908 - (AIR 1971 SC 2111)."

But in this case, as the impugned orders at Annexure 'G' is the result of a disciplinary proceedings held against the applicant, the very case of the respondents is that the applicant was held guilty in a duly conducted disciplinary inquiry and that he was retired compulsorily from service as a punishment by the respondents. The CCS (CCA) Rules, 1965 is applicable to the Civilian Government servants in the defence service. Rule 3 of the above rules reads as follows:-

"3. Application

(1) These rules shall apply to every Government servant including every civilian Government servant in the Defence Services, but shall not apply to--"

As the punishment of compulsory retirement was awarded to the applicant as a punishment for misconduct after holding an inquiry as required under the CCS (CCA) Rules, it is necessary that the inquiry must be held in conformity with the procedure laid down in these rules which include the principles of natural justice enshrined in Article 311 of the Constitution. The fact that the applicant holds a post "connected with defence" does not affect this requirement. That this is the position in law can be seen from the observations of the Hon'ble Supreme Court in Union of India and another v. KS Subramanian, AIR 1976 SC 2433. It is pertinent to extract the relevant observations in paragraphs 17 & 21 of the above ruling.

"17. These rules merely lay down procedure for matters covered by Article 311 of the Constitution. There is no doubt that proceedings under Article 311 of the Constitution constitute an exception to the doctrine of pleasure contained in Article 310 of the Constitution. But, in the case before us, no question of any disciplinary proceedings has been discussed because it did not arise at all. There is no finding that any punishment was imposed upon the plaintiff-respondent. It may be that mere termination of service, when the plaintiff-respondent was holding a permanent post and entitled to continue in service until 60 years of age, may constitute punishment per se even when the termination of service is not meant as a punishment. But, in that event, there had to be a finding on the rule or order under which the plaintiff was entitled to continue in service until he reached the age of 60 years. The High Court had cited no rule made under Article 309 to show that there was any such provision."

"21. As the plaintiff-respondent was not entitled to the protection of Article 311, the only effect of the 1965 Rules upon his case is that they could be applied if disciplinary proceedings had been taken against him as the holder of a post "connected with defence". In other cases of such servants, where no such disciplinary proceedings are instituted (and none were started against the plaintiff-respondent), the 1965 Rules, governing procedure for punishments to be imposed, will not apply at all. There is no legal obligation to apply those rules here. The legal obligation to apply them to every case of punishment flowing from Article 311, is confined to holders of posts covered by Article 311. On this question, we are bound by the decision of a bench of five learned Judges of this Court in the Khurana's case (AIR 1971 SC 2111)."

Therefore, ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ it is
clear that if a Government servant like the applicant, in
the service connected with defence, a termination of
service as a punishment can be awarded on the basis of a
finding in a disciplinary proceedings only if the proceedings
have been held validly and in accordance with the provisions
of the CCS (CCA) Rules.

7. The applicant has in the application contended that
there are procedural irregularities in the manner in which

the inquiry was held. In his representation submitted to the 3rd respondent in regard to the finding of the inquiry authority, the applicant had pointed out the irregularities in the conduct of the inquiry. In the appeal filed by the applicant before the 2nd respondent also he had taken a ground that there were irregularities in the conduct of the inquiry. In the rejoinder, the applicant has stated that the inquiry was held in an utterly irregular manner from the very beginning. It has been averred that the applicant was not given the assistance of an assisting Government servant, that he was not given sufficient time to inspect the documents relied on in support of the charges, that the inquiry authority has permitted the Presenting Officer to examine the applicant before any evidence in support of the charges was taken, that after the evidence in support of the charges was taken, the applicant was not questioned as required under Rule 14 (18) of the CCS (CCA) Rules and that ^{would} a perusal of the inquiry file revealed that the entire inquiry was held in violation of the rules regarding the conduct of inquiry. It has also been averred that the appellate authority has not cared to see whether the inquiry has been held in conformity with the rules or not.

8. We have perused the entire file relating to the disciplinary proceedings against the applicant produced for our perusal by the learned counsel. It is seen from the file that the inquiry commenced on 12th November, 1987.

At first the inquiry authority asked the applicant whether he had understood the charges framed against him to which the applicant replied in negative. Then the Presenting Officer read out the charges and explained to the applicant in Malayalam and asked whether he pleaded guilty. The applicant answered in the negative. Thereafter, granting the wish of the Presenting Officer, the inquiry authority allowed the Presenting Officer to examine the applicant. The applicant was also not offered the assistance of an assisting Government servant. It is seen that several questions connected with the allegations forming the charges against the applicant were put to the applicant. It is seen that the inquiry authority also has put some question regarding the incident which formed the basis of the charges. Thereafter, the Enquiry was adjourned to 19th November, 87.

On 19th November, 1987, the witnesses on behalf of the disciplinary authority ~~Defence~~ were examined. It is seen that the Presenting Officer put several leading questions suggesting the answer to the witnesses examined in support of the charges. The following are some of the examples of the leading questions:-

Question No.40 to PW No.1:

Did anybody report that Mr MS Dasan, Lascar I, caught hold of the uniform of Duty CPO, R Singh, POME, No.105473-N?

Question No.43 to the same witness:

Did Commander Z Mathews (40317-8), Production Manager of BRO(C) come to the incident spot?

Question No.79 to PW.3:

On record, it is stated that on 4th August, 1987 at about 1900 hrs the Duty CPO informed Commander Z Mathews that there was some altercation in Pradayak. Is it correct?

Question No.82 to the same witness:

It has been stated that he was abusing Mr CK Thankappan, Fireman. Is it correct?

Question No.83 to the same witness:

Have you seen anything in Pradayak broken or damaged by Mr MS Dasan, Lascar-I?

Question No.85 to the same witness:

In your opinion, can you please tell that the individual was guilty in that, to take to Police Station?

Question No.98 to PW-4:

Was Mr Dasan appeared to be in a drunken state?

Question No.100 to the same witness:

With what implement Mr Dasan has beaten to your leg?

Question No.104 to the same witness:

Can you tell me, whether Mr MS Dasan, Lascar-I, has damaged any property in Pradayak?

Question No.109 to the same witness:

Whether Mr Dasan used to come after drinking or in the habit of drinking on board during duty hours?

Question No.113 to the same witness:

In your opinion, do you feel that Mr MS Dasan, Lascar-I is guilty of charges?

Question No.128 to PW-5:

Did you witness whether Mr Dasan was breaking any articles on board Pradayak? If so, what are they?

Question No.134 to the same witness:

Can you say whether Mr MS Dasan was drunk on 4th August, 1987? If so, how could you substantiate it?

Question No.136 to the same witness:

Did you ever see Mr Dasan drink during duty hours?

Question No.138 to the same witness:

In your opinion, was Mr MS Dasan, Lascar-I guilty of charges?

Though the applicant was asked whether he wanted to put any question in cross-examination to these witnesses, it appears that the applicant has not put any question. It should be remembered that the applicant was not given the assistance of an assisting Government servant. After the evidence in support of the charges was taken, the inquiry authority requested the Presenting Officer to submit his report on the inquiry. It appears that what the inquiry authority meant was submission of a written brief by him. Anyhow, the Presenting Officer submitted his brief. The applicant was not called upon to state his defence nor was he offered an opportunity to adduce evidence in defence. He was also not questioned by the inquiry authority on the evidence appearing against him in the testimonies of the witnesses examined in support of the charges as required under Sub-rule 14 of Rule 14 of the CCS (CCA) Rules. According to Sub-rule 14 of Rule 14 'on the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved should be produced by or on behalf of the disciplinary authority'. The witnesses in support of the charge are to be examined by the Presenting Officer. According to Sub-rule 16 of

Rule 14 "when the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer".

According to Sub-rule 17 of the same Rule, the evidence on behalf of the Government servant shall then be produced.

Sub-rule 18 of Rule 14 states that "the inquiry authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him".

9. These provisions of the CCS (CCA) Rules have been completely given a go-by by the inquiry authority in the conduct of the disciplinary proceedings against the applicant. Contrary to the mandate of Sub-rule 14 of Rule 14 that on the date fixed for the enquiry, the applicant, the delinquent Government servant, was compulsorily examined by the Presenting Officer. It was thereafter that the witnesses in support of the charge were examined. In examining these witnesses, the Presenting Officer asked leading questions putting the answer in the mouth of the witnesses. The applicant was not given the assistance of an assisting Government servant. As the applicant did not examine himself as a witness, the inquiry authority was bound under

Sub-rule 18 of Rule 14 to question the applicant on the circumstances appearing against him in the evidence for the purpose of enabling him to explain such circumstances appearing against him in the evidence. This has not been done by the inquiry authority. So, we find that the entire disciplinary proceedings are vitiated by non-observance of the principles of natural justice. The inquiry has been totally one-sided, held in highly improper and irregular manner and denying the applicant a fair and reasonable opportunity to defend his case. It is on the basis of the evidence recorded in the above said inquiry that the disciplinary authority has found the applicant guilty of the charges and imposed on him a punishment of compulsory retirement from service by the impugned order at Annexure G. We are convinced that the impugned order of punishment is unsustainable as it is a product of ~~a~~ vitiated proceedings held in violation of the principles of natural justice denying the applicant a reasonable opportunity to defend himself. The order, therefore, has to be quashed. Even though the applicant had in his memorandum of appeal stated that there has been irregularities in the conduct of inquiry, the appellate authority has brushed aside these contentions by stating that this particular ground was vague ~~and as~~ ^{particular} ~~instances~~ instances have not been brought out. Rule 27 of the CCS (CCA) Rules reads as follows:-

"27. Consideration of appeal

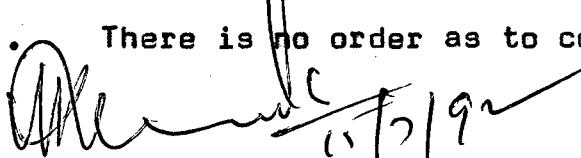
- (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 10 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.
- (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider--
 - (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
 - (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
 - (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe....."

As seen from the above provision, it is incumbent on the appellate authority to consider whether the procedure laid down in the rule has been complied with in the conduct of the inquiry and if not complied with whether such non-compliance has resulted in miscarriage of justice or violation of any of the provisions of the Constitution. Had the appellate authority in this case cared to peruse the file relating to the inquiry, the irregular manner in which the inquiry was held could not have escaped his notice. The examination of the applicant by the Presenting Officer, the leading questions put by the Presenting Officer to the ~~Prosecutor~~ ^{examined} ~~witnesses~~ ^{in support of the charge,} the omission on the part of the inquiry authority to question the applicant on the evidence appearing against him in the

testimonies of witnesses examined on the side of the disciplinary authority, the omission to require the applicant to state his defence and to offer the applicant an opportunity to adduce evidence on his side are all very serious irregularities which have prejudiced the defence and vitiated the entire proceedings on that ground. It is unfortunate that the appellate authority has lost sight of this aspect when he considered the appeal. The appellate order, therefore, is devoid of application of mind and is liable to be quashed.

10. In view of the facts and circumstances as discussed above, we find that the impugned orders at Annexure G and J are unsustainable in law and that the guilt of the applicant has not been established by a duly conducted disciplinary proceedings. In the result, we quash the impugned orders at Annexure G and J and direct the respondents to reinstate the applicant in service with all consequential benefits, including back wages and continuity of service within a period of two months from the date of communication of this order.

11. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

15.7.1992.

18-1-93
(26)

CP(C)-1/93 in OA-341/91

Mr M Girijavallbhan for petitioner
Mr Sivan Pillai represents Mr K Prabhakaran, ACGSC
for respondents and takes notice.

The learned counsel for the respondents seeks
2 weeks' time to file reply to the CP(C). He may do so
with a copy to the petitioner.

List for further direction on 11.2.93

AVH

SPM

18-1-93

(31) Mr M Girijavallabhan
Mr K Prabhakaran by proxy.

Learned counsel for the respondents seeks some
more time to file reply to the CPC. 2 weeks' time
granted. List on 1.3.93.

RR

AVH

11.2.93

1.3.93 Mr. K. Prabhakaran th. proxy
24 None for the original petitioner.

The learned counsel for the respondents/^{pleads for} more time
to file reply. He may do so with a copy to the learned
counsel for the petitioner. List on 23.3.93.

AVH

SPM

1.3.93

(21) Mr M Girijavallabhan
Mr Tomy Sebastian

Since there is change in counsel for the respondents 2 weeks' time is sought to file reply to the CPC with copy to the learned counsel for the applicant. Granted. List for further directions on 15.4.93.

RR

AVH

123/3

(30) Mr M Girijavallabhan
Mr Tomy Sebastian

Learned counsel for the applicant ^{submits} that the statement filed by the respondents has been served on him ^{only today} and prays for time to verify the facts. 1 week's time granted. Post on 30.4.93.

RR

ND

15.4.93

00.4.93 Mr. Girijavallabhan
33 Mr. Tomy Sebastian th. proxy

The respondents have filed a statement producing an order passed after filing the CP(C), stating that they have complied with the directions. The learned counsel for the petitioner submits that there is no full compliance of the directions contained in para 10 of the judgment. However, after going through the statement, we are satisfied that the CP(C) need not be pursued further ^{in this writ of summons}. Accordingly we close this CP(C) and discharge notice of contempt reserving the right of the applicant to challenge ^{Set aside order passed after this judgment, if by his aggrieved} his grievances if any in a separate proceedings.

(R. Rengarajan)
AM

(N. Dharmadan)
JM

123/3
R.D.
M.B.C.