

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 343/2007

this the 19th day of, February, 2009

C O R A M

**HON'BLE DR K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

T.T. Ismail
Field Assistant
Fisheries Unit
Kiltan, Lakshadweep.

Applicant

By Advocate Mr. N. Nagaresh

Vs.

- 1 Director of Fisheries
Fisheries Department
Administration of Union Territory of Lakshadweep
Kavaratti,
- 2 Administrator
Union Territory of Lakshadweep
Kavaratti
Lakshadweep
- 3 P. Seethikoya
Fisheries Inspector
Fisheries Unit
Kadmat
- 4 K.I. Hamzakoya
Fisheries Inspector
Fisheries Unit
Chetlat.

Respondents

By Advocate Mr. S. Radharkishnan

The Application having been heard on 23.1.2009 the Tribunal delivered the following

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ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by non-regularisation of the period of his service from 28.2.2006 to 9.3.2006 as "on duty" and non-release of his annual increment which fell due on 1.7.2008.

2 The facts in brief are that the applicant a native of Kiltan is working as Field Assistant in the Fisheries Unit at Bitra. In February, 2006 the Village Panchayat Authorities interfered with the discharge of duties by the applicant, pressurised him to sell store items on credit to the islanders. But the applicant refused to supply materials on credit which was criticized by the Panchayat Authority. On 13.2.2006 the Chair person issued a memo to the applicant ordering that sale of certain materials can be effected only after obtaining prior permission (Annexure A1). On 27.2.2006 he was served with memo alleging that he is not selling store items to islanders (A2). Photocopies of the notice on the basis of which the applicant effected sale after 13.2.2006 are produced (Annexure A-3). On 27.2.2006, the applicant was not permitted to mark attendance. Though he was present he was marked absent. This was brought to the notice of the 1st respondent (A-5). On 1.3.2006 the Executive Officer issued memo to show cause alleging that the applicant has failed to obey superiors. (A-6). The applicant submitted reply (A-7). On 8.3.2006 the 1st respondent issued order directing the applicant to hand over the charge of stores to Shri P.P. Sharahabeel (A-8). When the applicant received salary he came to know that he was marked absent for 10 ½ days from 27.2.2006 though he had worked on those days, his salary for the period from 27.2.2006 to 9.3.2006 has been withheld. This fact was brought to the notice of 1st



respondent (A-9). On 18.5.2006 he was transferred and posted to Kiltan. Due to non regularisation of the period from 27.2.2006 to 9.3.2006 his increment due on 1.7.2006 was withheld. Applicant submitted representation to the 2nd respondent (A-10) followed by another representation (A-11). As there was no response, he filed O.A. 849/06 which was disposed of directing the 1st respondent to dispose of the representation dated 16.10.2006 within two months (A-12). The 1st respondent disposed of the representation by order dated 12.3.2007 stating that whatever has been done to the applicant very well required as a penalty against disobedience to his superior and that an adverse remark will be reflected in his ACRs (A-13). Hence, he filed this O.A. During the pendency of the O.A. juniors to the applicant have been promoted to the post of Fisheries Inspector (A-14).

3 The main grounds urged by the applicant are that :

- (i) A-13 order offends Articles 14, 16 and 300-A and runs on the settled principles of natural justice.
- (ii) The period from 27.2.2006 to 9.3.2006 has been treated as absent by way of penalty without issuing a charge sheet and without following the procedure prescribed in CCS (CCA) Rules.
- (iii) No enquiry was conducted on 9.3.2006 when the unit office remained closed. Statements of certain persons have been taken behind the back of the applicant. Copies of the statements have not been given to the applicant.
- (iv) The applicant has been proceeded against under CCS (CCA) Rules. He has not been found guilty of any misconduct. Therefore, the respondents cannot withhold either the salary of the applicant or annual

increment due to him. The applicant worked during the period. The salary was withheld illegally without any enquiry.

(v) The applicant has been denied promotion on the basils of A-13 which itself is illegal and ultravires. The grant of promotion to the juniors is patently illegal and unsustainable as the promotion is made on seniority-cum-fitness basis.

4 The applicant filed this O.A. to quash Annexure A-13, to declare that his pay or increment cannot be withheld without due process of law, to direct the respondents to disburse the salary for the period from 27.2.2006 to 9.3.2006, to direct the respondents to release the annual increment which fell due on 1.7.2006 and to direct the respondents to promote the applicant to the post of Fisheries Inspector w.e.f. 4.8.2007 with all consequential benefits .

5 The respondents in the reply stated that the applicant disobeyed his immediate superior, the Village Executive Officer by not allowing him to verify the records of the unit and not submitting cash book and other records for approval and attest the entries in the stock register and that the applicant is not selling spare parts, oils and other materials to fishermen and that the applicant is not opening the unit office and workshop properly (R-1(a). The Chairperson Village (Dweep) Panchayat, Bitra had informed that the applicant is not seen obeying the instructions Annexure (R1(b) and (R1(c). It was also informed that since the applicant refused to open the office after 4 p.m. the diesel generators could not be operated for power supply (R-1(d). The first respondent issued Annexure (R1(e).. In the meantime the Chairperson Village (Dweep) Panjayat Bitra himself had reported the matter directly to the 2nd respondent (R-1(f). On the basis of

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this, Assistant Director of Fisheries and Fisheries Officer, Kavaratti were deputed to Bitra by Annexure A-8 order to conduct an enquiry and sort out the problem. After enquiry it was reported that the crisis was due to the irresponsible action of the applicant. Hence the first respondent made arrangement for change of charge {R-1(g)}. The officers submitted their report {R-1(h)}. On the basis of the documents produced, verification of cash book and on enquiry it was found that the the Fisheries Unit had not functioned from 28.2.2006 to 9.3.2006 and the applicant did not attend office during the said period. A copy of the cash book from 1.12.2005 to 9.3.2006 is also produced {R-1(n)}. Hence the Controlling Officers of the applicant marked the period as absent in the attendance register. In an earlier occasion the 1st respondent clearly instructed the applicant to work under the Chairperson and Executive Officer and obey their instructions. They have also produced documentary proofs for similar behaviour and disobedience from the part of the applicant when he was working at Bitra during 1999-2000.

6 The respondents have submitted that the Fisheries Unit and the staff attached to it in Bitra were transferred to Panchayat during 1999 as ordered by the 2nd respondent. Hence all the staff including the applicant are fully under the control of the Panchayat authorities and the Chairperson and the Executive Officer are the controlling officers of the staff at Bitra. They are empowered to issue instructions memos and call for explanations from the staff when found necessary.

7 As regards non-promotion of the applicant the respondents have submitted that promotion is to be made on the basis of the seniority cum fitness. The DPC found him unfit for promotion. Hence on the basis of the

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recommendations of the DPC his juniors has been promoted.

8 The applicant has filed rejoinder reiterating the averments in the O.A. The respondents have filed additional reply statement.

9 We have heard Shril N. Nagaresh the learned counsel for the applicant and Shri S. Radhakrishnan appearing for the respondents and perused the documents produced before us.

10 The learned counsel for the applicant argued that the issue relates to the allegations of disobedience of the applicant, absence of the applicant and the non-functioning of the Fisheries unit office and workshop at Bitra for the period from 28.2.2006 to 9.3.2006 and the applicant not performing the official duty regularly etc. The whole episode started with refusal of the applicant to sell certain items on credit to the islanders. According to the learned counsel of the applicant though the applicant was present in office he was not permitted to sign the Attendance Register and was marked "absent". The Chairperson and the Executive Officer of the Village Panayat were sending regular complains/reports to the higher authorities against the applicant, the applicant was also reporting each and every incident to the higher authorities. According to the learned counsel for the applicant a preliminary enquiry was conducted behind the back of the applicant. The counsel argued that the penalty has been imposed without issuing a charge sheet and without following prescribed rules under CCS (CCA) Rules. To treat the period as absence, at least a show cause notice should have been issued. The decision of the respondent in Annexure A-13 was based on the statement given by certain persons against the applicant. Nothing was communicated to the applicant. The

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counsel argued that the promotion of the juniors of the applicant is patently illegal and unsustainable.

11 The learned counsel for the respondents argued that the Executive Officer and the Chair Person of Village Panchayat, Bitra are the direct superiors and controlling officers of the applicant and that the applicant misbehaved with them and disobeyed their orders. Therefore, action was taken against him after conducting a preliminary enquiry. The counsel submitted that the present case against the applicant is a continuation of several incidents/misbehaviour of the applicant. On the basis of the report of the Panchayat Authorities, enquiry report and other documentary evidences departmental action under CCS (CCA) Rules was also contemplated against the applicant. Documentary proof for earlier similar behaviour and disobedience on the part of the applicant was also taken into consideration. As regards non-promotion of the applicant the counsel submitted that the DPC after considering all aspects made its own assessment found the applicant "not yet fit" for promotion.

12 We find that this is for the second time that the applicant is approaching this Tribunal against showing him absent in the Attendance Register for the period from 28.2.2006 to 9.3.2006 and non-payment of salary for the same period and withholding of increment. The first O.A. 849/2006 was disposed of by the Tribunal on 21.6.2007 directing the first respondent to dispose of the representation submitted by him on 16.10.2006, within two months. Annexure A-13 dated 12.3.2007 seems to have been issued pursuant to the direction of the Tribunal, though no reference has been made to that effect in the order. It is admitted in Annexure A-13 order that it has been issued based on the complaints

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received from the Chairperson/Executive Officer Village (Dweep) Bitra on the misbehaviour of the applicant and that the unit office was not functioning from 28.2.06 to 9.3.06 and that the applicant did not attend office on these days, the preliminary report submitted by the Assistant Director, Fisheries and Fisheries Officer, Kavaratti and on relying on earlier incidents of alleged disobedience of the applicant. The applicant has been further warned that "adverse remark" will be reflected in his ACRs in case no improvement is seen in future. The respondents have not produced any orders treating the alleged period of absence of the applicant as "unauthorised" or withholding of increment etc. on the applicant. Neither a show cause notice was issued nor an enquiry as contemplated under the CCS (CCA) Rules, 1965 held for treating the period as "unauthorised absence" or withholding salary for the period respectively. Even then, it is admitted by the respondents that punitive action was taken against the applicant by treating the period as "unauthorised absence" withholding increment and transferring him to Kiltan. These punishments were imposed on the applicant without issuing proper show cause notice or conducting an enquiry following the procedure prescribed under the CCS (CCA) Rules. We are, therefore, of the view that merely marking him as "absent" and withholding of pay and increment cannot be done without a due process of law. The action of the respondents are not sustainable in law.

13 In view of what is stated above, we set aside Annexure A-13 order. We hold that treating of the period in question as "unauthorised absence" and consequential withholding of salary and increment without following proper procedure prescribed under the Rules is bad in law. Since there is a dispute regarding marking of attendance of the applicant from 27.2.2006

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to 9.3.2006 we are of the opinion that the interest of justice will be met if we permit the applicant to apply for eligible leave for the period from 27.2.2006 to 9.3.2006. We do so. The applicant is permitted to submit eligible leave application for the period in question within one month from the date of receipt of this order. If the applicant applies for leave as permitted above, we direct the respondents to grant eligible leave to the applicant for the period. The applicant will be entitled for all consequential benefits.

14 As regards promotion to the post of Inspector, we have perused the DPC proceedings. We are satisfied that the non-selection of the applicant for promotion has nothing to do with the alleged absence from 28.2.2006 to 9.3.2006 or connected issues raised in the O.A. The applicant was found "not yet fit for promotion" by the DPC.

15 In this view of the matter, the O.A. is partly allowed as above. No costs.

Dated 19th February, 2009.


K. NOORJEHAN
ADMINISTRATIVE MEMBER


Dr. K.B.S. RAJAN
JUDICIAL MEMBER

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