

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 377 of 2011

Thursday this the 19th day of July, 2011

CORAM:

**HON'BLE MR.JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE MR.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

P.P.Surendran, aged 55 years,
S/o (late) Paramu,
Peon,
Directorate of Cashewnut & Cocoa Development,
Kochi-11
Residing at: Puduvelil House, Cherai-683 514,
Ernakulam District.

... **Applicant**

(By Advocate:Mr.T.C.G.Swamy)

VERSUS

1. Union of India, represented by
The Secretary to the Government of India,
Ministry of Agriculture,
Department of Agriculture & Co-operation,
Krishi Bhavan, New Delhi - 1
2. The Director,
Directorate of Cashewnut & Cocoa Development,
Ministry of Agriculture,
(Department of Agriculture & Co-operation),
Kera Bhavan, Kochi-682 011.
3. Shri M.Tamil Selvan, Director,
Directorate of Arecanut & Spices Development,
Ministry of Agriculture,
(Department of Agriculture & Co-operation),
Calicut-673 005.
4. Shri Venkatesh N.Hubballi, Director,
Directorate of Cashewnut & Cocoa Development
Ministry of Agriculture,
(Department of Agriculture & Co-operation),
Kera Bhavan, Kochi-682 011.
5. The Additional Commissioner (H.O.R.T),
Ministry of Agriculture,
(Department of Agriculture & Co-operation),
Krishi Bhavan, New Delhi – 1



6. Dr. Homey Cherian, Inquiry Officer,
 Deputy Director,
 Directorate of Areca Nut & Spices Development,
 (Ministry of Agriculture), West Hill,
 Kozhikode : 673 005

... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC for R1, 2 & 5)

This Application having been heard on 04.07.2012, the Tribunal on
19-07-12 delivered the following:

ORDER

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER:

The applicant is a Peon under suspension with the respondent No.2, Director of Cashewnut & Cocoa Development, Kochi. He was placed under suspension pending enquiry into the charges of wilful insubordination and physical intimidation on 02.04.2008. As the disciplinary authority himself was a prime witness, an ad hoc disciplinary authority was appointed on 13.05.2008. Upon his transfer, the present ad hoc disciplinary authority was appointed on 3/4.12.2008. He issued the charge sheet on 02.01.2009 against the applicant setting out 9 articles of charges, out of which only 2 were pertaining to the incidents of 02.04.2008. As the ad hoc disciplinary authority was specifically appointed for the disciplinary proceedings pertaining to the incidents on 02.04.2008, the applicant challenged the said charge memo in O.A. No. 783/2009 which was allowed by this Tribunal on 18.06.2010. A fresh charge memo dated 10.01.2011 as at Annexure A-1 was issued. The applicant vide letter dated 17.01.2011 submitted to the ad hoc disciplinary authority that he believed that the disciplinary authority was biased and prejudiced against him and that he did not have faith in getting justice at his hand and sought dropping of the charge memo dated 10.01.2011. His request was not acceded to. He made another representation on 15.03.2011



in the matter. But an enquiry authority was appointed vide order dated 16.03.2011. A preliminary enquiry was scheduled on 05.05.2011. Aggrieved, the applicant has filed this O.A. for the following reliefs:

- (i) Call for the records leading to the issuance of Annexures A-1 and A-2 and quash the same;
- (ii) Direct the respondents to grant all consequential benefits to the applicant, as if Annexures A-1 and A-2 had not been issued at all;
- (iii) Award costs of and incidental to this application; and
- (iv) Grant such other and further reliefs as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case including costs.

2. The applicant submitted that the 3rd respondent was completely biased and prejudiced against the applicant. He has no jurisdiction to initiate proceedings against the applicant with reference to the incidents which were part of the earlier proceedings before this Tribunal. Annexures A-1 and A-2 are opposed to the basic principles of natural justice. The conduct of the 3rd respondent during the pendency of the O.A No. 739/2009 would show that the apprehension of bias on the part of the applicant is not illusory. He would not get justice at the hands of the 3rd respondent nor will he be in a position to defend his case effectively, particularly in the light of the notions of the principles of natural justice that the 3rd respondent nurtured in his mind as evident by his own statement before this Tribunal.

3. In their reply statement, the respondents submitted that the 3rd respondent was swearing in the statements before this Tribunal as an officer authorised and not in the capacity as ad hoc disciplinary authority. The issuance of the previous charge memo or the statements in Paras 3 and 28 of

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his reply statement cannot be said to have caused any prejudice to the applicant nor any inference can be drawn therefrom that the ad hoc disciplinary authority concluded the matter and the proposed enquiry is going to be an empty formality. In departmental enquiry, the employer has to form a provisional or *prima facie* opinion about the guilt of an employee before he proposes to enquire into the charges by way of a formal enquiry. A tentative opinion does not invalidate the officer concerned. In this regard, they relied on the judgements of Hon'ble Supreme Court in *Asutosh vs. West Bengal*, AIR 1956 Cal 278 and *K.R. Chari vs. Cantonment Board, Secunderabad*, AIR 1961 AP 37. Pending completion of disciplinary proceedings, the applicant continues to be under suspension with effect from 02.04.2008. He is being paid subsistence allowance at the rate of 75% of the pay and allowance since 1st July, 2008. The bias petition filed by the applicant is premature, devoid of legal merit and not supported by statutory rules.

4. We have heard Mr. T.C. Govindaswamy, learned counsel for the applicant and Mr. Sunil Jacob Jose, learned SCGSC, appearing for R1, 2 and 5 and perused the records.

5. The departmental enquiry is a quasi-judicial process to find out the truth about the charges framed against the charged officer by the disciplinary authority. He has to keep an open mind free of any prejudice or bias to apply his mind objectively to the finding arrived at by the enquiry officer. He should not have any pre-conceived notion as to the guilt or innocence of the charged officer. It has been found by this Tribunal that a number of charges against the applicant in Annexure A-10 were beyond the jurisdiction of the 3rd



respondent in his capacity as ad hoc disciplinary authority. In paragraph 28 of the reply statement (Annexure A-18) filed by the respondents in O.A. No. 738/2009, the 3rd respondent stated as under:

"In this connection, the the respondents beg to submit that the rules of natural justice should not be stretched too far. Only too often the people who have done wrong seek to invoke the rules of natural justice so as to avoid the consequence".

He also stated in paragraph 29 of the same reply statement as under:

"If the Annexure A-7 (charge memo) is not allowed to be proceeded, it would set a shocking precedent having legal ramification and administrative consequence. The very basic ideas of administrative morality would stand brittle."

In the additional reply statement (Annexure A-19) in O.A. No. 738/2009, the 3rd respondent submitted that "*Annexures R-1 and R-16 clearly establish that the the applicant was involved in the incident in which he has attempted an assault on the 2nd respondent.*" This statement and such other statements in Annexures A-18 and A-19 would give the impression that the 3rd respondent has already concluded the case against the applicant. Therefore, the apprehension of the applicant that he would not get justice at the hands of the present ad hoc disciplinary authority is not without any basis inspite of the assurances given by the 3rd respondent himself that he would be an unbiased officer.

6. In view of the above position, the applicant has sought quashing of Annexures A-1 and A-2 orders which in our considered opinion is not reasonable. It would in effect mean that there should not be any enquiry against the applicant. It is absolutely necessary in the interest of discipline that the enquiry into the charges framed against the applicant is concluded as early as possible. The applicant is under suspension for more than 4 years and is in receipt of subsistence allowance to the tune of 75% of his pay

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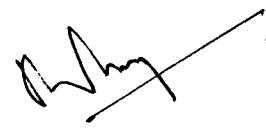
without doing any work. The apprehension of the applicant as to the prejudice and bias of the 3rd respondent against him can be met with by appointing another ad hoc disciplinary authority to consider the enquiry report and ends of justice would be met. Accordingly, it is ordered as under:

7. The enquiry initiated against the applicant pertaining to the incidents on 02.04.2008 should be concluded as early as possible, at any rate, within a period of three months from the date of receipt of a copy of this order. The applicant should co-operate with the enquiry. The 1st respondent should ensure that in place of the 3rd respondent, another ad hoc disciplinary authority should be appointed to consider the enquiry report and to take further action as per rules.
8. The O.A. is disposed of as above with no order as to costs.

(Dated, the 19th July, 2012)



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R.RAMAN
JUDICIAL MEMBER

cvr.