

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

411

1990

DATE OF DECISION 20.6.1991

M. Ibrahimkutty Applicant (s)

Mr. C. P. Sudhakara Prasad Advocate for the Applicant (s)

Versus

The Secy. to Govt. of India, Respondent (s)
Min. of Environment & Forests,
Paryavaran Bhavan, CBO Complex Phase II,
Lodi Road, New Delhi & Another

Mr. NN Sugunapalan, SC65C(R.1) Advocate for the Respondent (s)
Mr. PV Mohanan (for R.2)

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? *Y*
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)

The applicant, a retired officer of the Kerala Cadre of the Indian Forest Service has filed this application under Section 19 of the Administrative Tribunals Act, praying that the order dated 7.8.1989 of the Government of Kerala at Annexure-A1, placing him under suspension with immediate effect under Rule 3(1) of the All India Services (Discipline & Appeal) Rules and the order dated 16.3.1990 at Annexure-A2 of the Government of India rejecting the appeal filed by him against the order of his suspension may be set aside, that it may be declared that the respondents

are not competent to continue the disciplinary proceedings against him based on the charge sheet dated 19.9.1989, at Annexure-A5, and that the respondents may be directed to give the applicant Junior Administrative Grade from 1.4.1988 and to give him his retirement benefits without delay.

2. While the applicant was working as Deputy Conservator of Forests, by the impugned order at Annexure-A1 dated 7.8.1989 he was placed under suspension in contemplation of disciplinary proceedings against him for certain alleged irregularities in the Stone Wall construction in Goodrical Range in Ranni division while he was holding the post of Deputy Conservator of Forests of Ranni. As the construction of the Stone Wall was during the period from 1984-85 to 1986-87 and as the construction was inspected previously by ^{the} Chief Conservator of Forests (Vigilance), the applicant felt that ^{he} was not responsible for any irregularities, and that the impugned order of suspension was not justified and therefore he filed an appeal before the Govt. of India, Ministry of Environment and Forests challenging the order of suspension. While the appeal was pending consideration, the applicant was served with the Annexure-A.5 memorandum of charges dated 19.9.1989. The charges framed against the applicant were as follows:

1. You connived in the misappropriation of Government funds amounting to more than Rs.3 lakhs in the construction of Stone-

Wall in Goodrical Range of Ranni Forest Division, by approving more quantity of work recorded in the measurement book than what was actually executed and by admitting the expenditure therefore after check-measurement.

2. That you committed gross dereliction of duty by not exercising proper control on the execution of the said stone wall, resulting in substandard construction.

The applicant filed an explanation denying the charges levelled against him. The Chief Conservator of Forests had while forwarding the appeal to the Chief Secretary, Govt. of Kerala for forwarding the same to the Govt. of India, written a covering letter in which he had expressed his view that considering the good record of service of the applicant and the facts of the case, a drastic action like suspension was not really warranted. A copy of this covering letter is at Annexure-A7. As the appeal submitted by the applicant remained undisposed of, the applicant filed OA 749/89 before this Tribunal for a direction to the Govt. of India to dispose of his appeal and also for a direction to the Govt. of Kerala to reinstate him in service. During the pendency of that application the Govt. of India disposed of the appeal by order dated 28.12.1989 at Annexure-A8. The OA 749/89 was disposed of by this Tribunal by order dated 26.2.1990 at Annexure-A9 holding that the Annexure-A8 was not a speaking order and directing the

Appellate Authority, Govt. of India to dispose of the appeal *denovo* in accordance with law within a period of one month from the date of issue of that order.

Pursuant to this direction the Govt. of India disposed of the appeal by order dated 16.3.1990 at Annexure-A2 rejecting the appeal. ~~Pending consideration of the~~

~~In the meanwhile,~~ the applicant retired from service on 28.2.1990. Aggrieved by the rejection of the appeal and non-finalisation of his pensionary claims the applicant has filed this application. He has averred in the application, for various reasons mentioned in the application, ^{that} the Annexure-A5 memorandum of charge is not sustainable and that the respondents are not justified in proceeding with the disciplinary proceedings against him on the basis of the above charge. It has also been averred by the applicant that he is entitled to get the Junior Administrative Grade from 1.4.1988 and pay fixation on that basis. Therefore, the applicant prays that the Annexure-A1 and A2 orders may be set aside, and that it may be declared that the respondents are not competent to continue the disciplinary proceedings against the applicant on the basis of the Annexure-A5, articles of charge and ^{that a direction may be issued to} settle his pensionary benefits without delay.

3. The respondents in their detailed reply statement have sought to justify the impugned orders at Annexure-A1 and A2 on the ground that, considering the nature of the

irregularities for which the applicant is charge sheeted, placing him under suspension was perfectly in order, that the Annexure-A2 is a speaking order, and that the Govt. is competent to proceed with the disciplinary proceedings on the basis of the impugned charge sheet.

4. We have heard the arguments of the learned counsel on either side and have also carefully gone through the documents produced. Now that the applicant has retired from service on 28.2.1990, the suspension is no more in force ^{from that date.} If the respondents are competent to proceed with the disciplinary proceedings on the basis of the impugned charge sheet, Annexure-A5, on completion of the disciplinary proceedings, the Disciplinary Authority will be passing orders as to how the period under suspension ^{prior to his superannuation} is to be regularised. Going through the averments in the charge sheet and the statement of imputations attached to it and also through the pleadings available on record, we are of the view that it would be improper to say that the respondents are incompetent to proceed with the disciplinary proceedings. The applicant will be at liberty to raise all his contentions against the charge and to defend himself in the disciplinary proceedings. On a careful scrutiny of the documents available on record, we are not in a position to hold that the respondents are not competent to proceed with the disciplinary proceedings. Therefore, the applicant is not entitled to

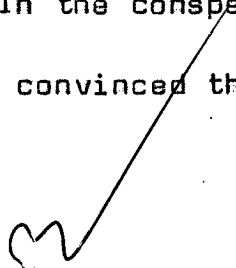
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a declaration that the respondents are not competent to proceed with the disciplinary proceedings. As the Govt. of India has stated the reasons for rejecting the appeal filed by the applicant in the Annexure-A2 order, it cannot be said that Annexure-A2 order is a non-speaking one. Therefore, we are not persuaded to interfere with the Annexure-A1 and A2 orders. After completion of the disciplinary proceedings against the applicant, as the Disciplinary Authority would be passing appropriate orders in accordance with law in regard to the regularisation of the period of suspension, ~~we~~ we are of the view that at this stage the applicant has no legitimate grievance on that score. Regarding the applicant's eligibility to Junior Administrative Grade, the same would be considered as admitted by the respondents in the reply statement after the completion of the disciplinary proceedings. Therefore, at this juncture the applicant is not entitled to any relief on that score. It has been stated in the reply statement of the respondents that provisional pension has been sanctioned to the applicant, and that the disbursement of gratuity and finalisation of other pensionary benefits will be made immediately after completion of the disciplinary proceedings. We are not in a position to say that this stand is unreasonable.

5. In the conspectus of facts and circumstances, we are not convinced that the applicant is entitled to the

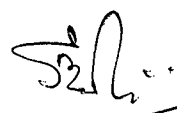
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relief claimed in this application. But since the finalisation of the pensionary claims of the applicant is delayed solely for the reason of the pendency of the disciplinary proceedings against him, we are of the view that the respondents have to be directed to complete the disciplinary proceedings within a reasonable time and pass orders regarding his eligibility to Junior Administrative Cadre and to finalise his pensionary claims without delay. In the result, the application is disposed of in the following lines.

Though the applicant is not entitled to have the Annexure-A1, A2 and A5 set aside as ^{prayed for by} him, the respondents are directed to complete the disciplinary proceedings initiated against the applicant pursuant to the Annexure-A5 charge sheet, within a period of 4 months from the date of communication of this order and to consider and dispose of his claim for Junior Administrative Grade and pensionary benefits within a month thereafter. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER
20.6.91


(S.P. MUKERJI)
VICE CHAIRMAN
20.6.91

10.6.1991