

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

TR.NO. 322/86

Mr.L.F.Saldanha,
(SE. Retd.)
38 MM Road,
Fraser Town,
Bangalore.

APPLICANT

V/S.

Union of India
through
Secretary,
Ministry of Defence,
New Delhi

RESPONDENTS

CORAM : HON'BLE VICE CHAIRMAN B C GADGIL
HON'BLE MEMBER (A) J G RAJADHYAKSHA

APPEARANCE :

Applicant in person

2. Shri M.I.Sethna
Advocate for
Respondent

JUDGEMENT

Dated: 19.1.1988

(PER: Hon'ble Member (A) J G Rajadhyaksha)

Regular Civil Suit No. 630 of 1980 on the file of the 5th Jt. Civil Judge, Sr.Dn. Pune has been transferred to this Tribunal and bears T.A.No. 322/86.

2. The facts leading to the application (Original Suit) are that applicant was an Assistant Garrison Engineer at Bangalore during the year 1972-74. There were some allegations of irregularities in the issue of cement to contractors. The matter was investigated into by the Central Bureau of Investigation. The applicant was charge-sheeted. A Departmental Enquiry was held and a penalty imposed on the applicant reducing his pay from

Rs.1300/- to Rs.1150/- p.m. for a period of 5 years. It is this penalty that has been challenged by the applicant in his application (Original Complaint).

3. Though several contentions have been raised by the applicant in his application. His main grievance is that the enquiry was held in violation of principles of natural justice inasmuch as his defence was not taken into account by the Enquiry Officer, and that the penalty imposed upon him amounts to reduction in rank and, therefore, Article 311 of the Constitution of India is attracted. The order of penalty issued without giving to the applicant a copy of the Enquiry Report is also therefore bad.

4. The respondents have filed the written statement in the Civil Court resisting the suit, as according to them it was misconceived and not tenable in law. There was denial of any suggestion that the Enquiry Officer had cross-examined witnesses or violated the procedure for departmental enquiries. The findings of the Enquiry Officer were not perverse in any way, and he had taken into account all aspects of the allegations and the defence.

5. We have heard the applicant in person and Shri Sethna the learned counsel for the respondents. The applicant ^{of stated that he f} submitted his defence on 29.9.1979, and it was received by the Commissioner for Departmental Enquiries on 3.10.1979. In the meanwhile, on 25.9.1979 the Enquiry Officer, i.e. the Commissioner for Departmental Enquiries finalised his report without waiting for the applicant's defence brief. His telegraphic request for time had also not been granted. In conclusion, the applicant stated that because of the penalty during which period applicant was not earning any increments, his pension has also been adversely affected.

6. Shri Sethna appeared for the respondents and pointed out that Rule 14 of the C.C.S. (CC&A) Rules ~~has~~ been scrupulously followed and there was no lacuna in the procedure. He contended that the applicant had been given certain time for submitting his defence. He had failed to do so within the time. Rule 14, Sub.Rules (19) & (20) permitted the Enquiry Officer to proceed ex parte if the charged officer failed to submit his say within the prescribed time. In this particular case, the applicant had so failed to submit his defence within the prescribed time and, therefore, he was not now entitled to raise this plea. As for the contention that the penalty amounted to reduction in rank, Shri Sethna pointed out that there were a number of decisions which laid down the law on this point stating that 'reduction of pay to a lower stage or stages in the same time scale' was not 'reduction in rank'. Reduction in rank implied physical movement to a lower post by way of punishment or to a lower rank in the hierarchy in the service, or to a lower service, grade or post, or to a lower time scale of pay. None of these have been awarded to the applicant and, therefore, there was no reduction in rank in the applicant's case. Shri Sethna, therefore, added that the article 311 of the Constitution was not attracted in this case nor could the question of supplying a copy of the Enquiry Officer's report to the applicant in terms of the full bench decision of the Central Administrative Tribunal given in Transfer Application No. 2 of 86 (P.K.Sharma V/S. Union of India) on 6.11.1987 arise in this case.

7. After hearing both the applicant and the counsel for the respondents, we have perused the records of the departmental enquiry which are on record in Ex.24

on the Civil Judge's file in five folders. Folder No. III contains the Daily Order Sheet. The proceedings on 5.9.1979 signed on 6.9.1979 indicate that the parties were allowed to submit their written briefs. The Presenting Officer was allowed time upto 12.9.1979 and the Charged Officer i.e. the applicant upto 20.9.1979. Admittedly, the applicant submitted his defence on 29.9.1979 which reached the Enquiry Officer on 3.10.1979. The Enquiry Officer had already prepared and finalised his report on 25.9.1979. It is, therefore, clear that in terms of Rule 14, the Enquiry Officer was entitled to proceed without waiting for the defence brief. He has done just that, and no fault can be found with the procedure followed by the Enquiry Officer, in the absence of either the defence brief or a request for more time.

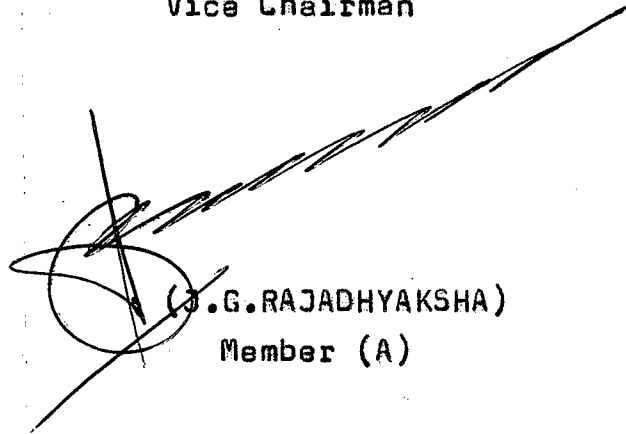
8. We also accept Mr. Sethna's contention that since the penalty does not amount to reduction in rank, Article 311 of the Constitution is not attracted and since that is not one of the three major punishments discussed in the Full Bench decision of the Central Administrative Tribunal on TR.A.No. 2 of 86, it was not necessary to furnish to the applicant a copy of the Enquiry Officer's report before the disciplinary authority passed the order of penalty.

9. Thus, we find that on both the points raised by the applicant he cannot succeed as there is neither violation of any procedure or rules of natural justice in the holding of the enquiry, or imposition of the penalty.

10. In view of this discussion, the applicant cannot succeed. We, therefore, order that the application is dismissed. In the circumstances of the case, however, we pass no orders as to costs.



(B.C.GADGIL)
Vice Chairman



(J.G.RAJADHYAKSHA)
Member (A)