

6

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.308/86.

Shri Andayil Rajakrishnan,  
Room No.18, Chandra Cottage,  
Parsi Wada, Andheri (East),  
Bombay - 400 099.

... Applicant.

V/s.

1. The Secretary,  
Government of India,  
Ministry of Science and Technology,  
Technology Bhavan,  
Near Quatab Hotel,  
Mehrauli Road,  
New Delhi - 110 003.
2. The Director General,  
Meteorological Office,  
Mausam Bhavan,  
Lodhi Road,  
New Delhi - 110 003.
3. The Director,  
Regional Meteorological Centre,  
Colaba,  
Bombay - 400 005.

... Respondents.

Coram: Vice-Chairman, B.C.Gadgil,  
Member(A), J.G.Rajadhyaksha.

Appearances :

- 1) Mr.R.K. Shetty, Advocate  
for the Applicant.
- 2) Mr. Subodh Joshi with  
Mr.M.I.Sethna, Counsel for  
Respondents.

Oral Judgment :

(Per B.C. Gadgil, Vice-Chairman)

Dated: 12.11.1983

The applicant who is Upper Division Clerk in the Indian Meteorological Department at Colaba is challenging his suspension order and the departmental enquiry that is contemplated against him.

2. For considering the main application, we would like to state a few facts. The applicant is Upper Division Clerk since about 1962. In 1977 a departmental enquiry was held against him for having committed a mis-conduct. At the end of the enquiry, a penal <sup>of</sup> 2/-

compulsory retirement was inflicted on him on 31.3.1978. The applicant's appeal against this order was dismissed. He filed Writ Petition No.153/79 in the High Court of Bombay. That Writ Petition was decided on 24th March, 1982, the judgment is at pages 39 to 53 of the compilation. There is a dispute about the nature of this decision. According to the Respondents the Writ Petition was allowed on a technical ground, namely the violation of the principles of natural justice, while the applicant contends that the High Court has held that the alleged misconduct has not been proved. We will consider this point at a later stage.

3. After the High Court's Judgment, Respondents passed Order dated 28th July, 1982 (vide page 23 of the compilation) putting the applicant under suspension again w.e.f. 31.3.1978. The said order states that a fresh departmental enquiry is proposed to be held against the applicant and hence the suspension. We are told that even uptill now no charge sheet was framed against the applicant, nor has the enquiry been started.

4. Though a number of points have been taken in the application, only two points are relevant. It was urged by Mr. Shetty that a second enquiry is not permissible in the background of the High Court Judgment. According to him, the High Court has given him a clean chit, even on merits, while Mr. Subodh Joshi contends that the impugned order dated 31.3.1978 was quashed only for the reason that the rules of natural justice were not followed. We have been taken through the entire judgment of the High Court and a plain reading of the judgment shows that the High Court has quashed the order not on merits, but only on the ground that the

..

was violation of the principles of natural justice. After recording such a finding, the learned Judge of the High Court was inclined to remit the enquiry proceedings back to the Enquiry Officer for proceeding afresh in the matter. However, this course was not followed, as the learned Judge found that it would not be permissible, while exercising jurisdiction under Article 226 of the Constitution. In our opinion, the proper construction of the judgment of the High Court would only mean that the order of compulsory retirement was quashed on technical grounds and not on merits.

5. It is not disputed before us that a second enquiry is permissible if the earlier enquiry is vitiated on account of a technical flaw. Consequently, there would not be any difficulty which would prevent Respondents from holding a second enquiry, simply because of the Judgment of the High Court. Shri Shetty however, contended that the matter is a very stale one and that ordinarily a departmental enquiry should not be permitted after a long lapse of time. In our opinion, much will depend upon the facts of each case and also on the alleged misconduct. Reading the charge sheet, which was earlier framed, (vide page 77 of the compilation) gives an indication of the nature of the misconduct. The first article of misconduct alleged is that of unauthorised absence from duty. The second and third articles of misconduct are about un-lawful retention of residential quarters and the fourth article is about non-payment of the licence fee for such occupation. The 5th and 6th allegations are about utterance of some slanderous words, and the last allegation is about the refusal to do the work of entering dak. We are told by Mr. Joshi that the second enquiry would mainly be on

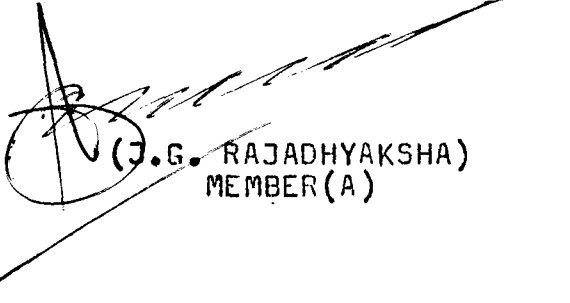
the basis of these very allegations mentioned above. They are of such a nature that lapse of time would not have much relevance. Consequently, the proposed second enquiry is not in any way illegal or improper.

6. There is however, much substance in the grievance of Mr. Shetty that the applicant has been kept under suspension for about 8 or 9 years and that this is neither just nor legal. The applicant was under suspension during earlier enquiry. Ordinarily, that suspension would have come to an end after the High Court quashed the compulsory retirement order. However, the authorities concerned have issued a fresh suspension order on 28.7.1982 on the ground that another enquiry is proposed to be held against him. It is however, material to note that even after 4 years, such an enquiry has not as yet been initiated. It is true that the competent authority has power to keep an employee under suspension pending enquiry, but that power has to be exercised judiciously. We fail to understand, as to why, the departmental enquiry has not been initiated for a long period of 4 years after the suspension order of 1982. Secondly, the allegations against the petitioner as mentioned in the earlier charge sheet would not warrant that the applicant should be kept under suspension for such an inordinately long period. Hence the suspension is liable to be revoked.

7. The result, therefore, is that the application partly succeeds. The suspension of the applicant is hereby revoked. Secondly, from today onwards the applicant will be treated to be "not under suspension", and the Respondents would be liable to take the applicant on duty. The Respondents would be at liberty to hold

the proposed fresh enquiry. However, we may observe that it is desirable that the said enquiry should be held and completed expeditiously. The applicant should be given the subsistence allowance right from the day he had been kept under suspension till today. This Bench passed an order on 18-9-1986 about the grant of such subsistence allowance and we are told that the said order has been complied with. Mr. Shetty wants that the said order should be made retrospective w.e.f. 7.4.1977. However, that request is not granted. Parties to bear their own costs of this application.

  
(B.C. GADGIL)  
VICE-CHAIRMAN

  
(J.G. RAJADHYAKSHA)  
MEMBER(A)