

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 27th FEBRUARY 1987

Present : Hon'ble Sri Ch. Ramkrishna Rao - Member (J)

Hon'ble Sri P.Srinivasan - Member (A)

APPLICATION No. 1596/86

Xavier Francis Carrick
No.20 Mutton Butcher Street
Camp Belgaum 590 001

- Applicant

(Dr.M.S.Nagaraja, Advocate)

and

1. Officer-in-Charge, Records
The Maratha Light Infantry
Abhilekh Karyalaya,
Belgaum 590 009

2. The Adjutant General,
Organisation Directorate
Army Headquarters
New Delhi 110011

3. The Chief Administrative Officer
Adjutant General's Branch
Army Headquarters
New Delhi 110 011

- Respondents

(Sri M.V. Rao, Advocate)

This application came up for hearing
before this Tribunal and Hon'ble Sri Ch.Ramakrishna
Rao, Member (J) to-day made the following

O R D E R

The facts giving rise to this application
are, briefly, as follows. Memorandum No. 2748345/C/41LA
dated 23 May 81 ('Memo') was issued by the Officer-in-
Charge, Records - R1 to the applicant levelling two
charges against him set out in the statement enclosed
thereto. The Enquiry Officer ('EO') arrived at the
conclusion that the charges against the applicant were
established. R1 accepted the report of the EO in his

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order dated 11-6-84 (Annexure 'M') and imposed the penalty of compulsory retirement from service on the applicant. Aggrieved by this order, the applicant has filed this application.

2. Dr. M.S. Nagaraja, learned counsel for the applicant, strenuously contends that during the enquiry his client alleged bias against the EO but it was rejected in appeal; that copies of documents listed in the enclosure to the Memo were not furnished to his client; that witnesses were not called for examination during the enquiry; that the EO ~~xxx~~ himself entered the arena of controversy in the absence of the delinquent and the presenting officer and the impugned order being not a speaking order is liable to be set aside. Dr. Nagaraja submits that denial of inspection of the documents is a serious infirmity in the proceedings held against his client.
3. Shri M.Vasudeva Rao, learned counsel for the respondents, invites our attention to para 12 of the reply filed on behalf of the respondents which reads as follows:

"The applicant attended the Inquiry on 29 Dec 83. Thereafter, vide his application dated 30 Dec 83, abstained from attending the Inquiry. Statements of witnesses recorded in his absence, were, therefore, forwarded to the applicant vide Records, The Maratha Light Infantry, Belgaum vide letter No. 2748345/C/III/98/LA dated 27 Feb 84. Capt SR Kotwal and Sri LM Lad, ex UDC were prosecution witnesses, but their statements were not recorded by the Inquiry Officer in view of the documentary evidence. They were not the Defence witnesses as contended by the applicant. As regards supplying of original documents at the time of issuing Charge Sheet, it was not possible for security reasons. It is clarified that the original documents could not be shown to the applicant, as he did not appear before the Inquiry Officer after 03 Apr 84, i.e. the date of application."

End

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4. We have considered the matter carefully. The respondents have merely stated in the reply extracted above that the original documents were not supplied to the applicants 'for security reasons'. It is a well established proposition that unless copies of the documents are furnished to ~~xx~~ the delinquent by the disciplinary authority or inspection thereof is ~~not~~ ^{not} offered, the enquiry cannot be deemed to have been fairly conducted in the eye of law. If really there is a valid security reason, it should be recorded on the file and disclosed at least when the proceedings are challenged which has not been done in the present case. This omission on the part of R1, in our view, has vitiated the enquiry.

5. This apart, we note that while coming to the conclusion that the charges were established, the EO recorded a finding in respect of Charge I that the official seal of the records the Maratha Light Infantry, Belgaum was either affixed by the applicant or by some one else at his instance for his personal gain. In respect of Charge II, he has recorded a finding that 'either the applicant himself has signed as Lt R M Sandhu or got some one else to do the signature for his own personal benefit.' Thus the EO has not recorded a clear finding that the applicant was solely responsible for the alleged mis-conduct. In other words, the EO was in doubt whether the applicant was responsible or some one else, whose identity he has not pin-pointed. We have,

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therefore, no hesitation in holding that the findings of the EO are not categorical and suffer from ambiguity and accordingly, we set ^{aside} ~~as~~ the impugned order (Annexure 'M') which is based on the report of the EO.

6. This will not, however, debar the respondents R1 from holding an enquiry afresh, if deemed fit and necessary, after complying with the procedural requirements and in the light of the foregoing. We also direct R1 to re-instate the applicant with all consequential benefits.

7. In the result the application is allowed.
No order as to costs.

Chandrasekhar
Member (J) 27/2/87

P. S. ...
27/2/87
Member (A)

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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Commercial Complex(BDA),
Indiranagar,
Bangalore - 560 038

Dated : 14/8/87.

CONTEMPT OF COURT APPLICATION NO. 22 / 87.)
IN APPLICATION NO. 1596/86(F)

W.P. NO. _____/

Applicant

Shri Xavier Francis Carrick

V/s The Officer-in-Charge(Records)
Maratha Light Infantry, Belgaum

To

1. Shri Xavier Francis Carrick
No. 20, Mutton Butcher Street
Camp Belgaum - 590 001
2. Shri K.V. Srinivasan
Advocate
C/o Dr M.S. Nagaraja
Advocate
35, (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009

3. Brigadier M. Chandrasekharan
Officer-in-Charge, Records
Maratha Light Infantry
Abhilekh Karyalaya
Belgaum - 590 009
4. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/
~~INTERIM ORDER~~ passed by this Tribunal in the above said Contempt
application on 5-8-87.

R.V. Venkatesh
DEPUTY REGISTRAR
~~SECTION OFFICER~~
(JUDICIAL)

Encl : as above

IN THE CENTRAL ADMINISTRATIVE
TRIBUNAL ADDITIONAL BENCH,
BANGALORE

ORDER SHEET

Contempt of Court Application No

22

of 1987

Applicant

XAVIER FRANCIS CARRICK

Advocate for Applicant

Dr H.S. Nagaraja

Respondent

v/s Officer-in-charge, Records,
Maratha Light Infantry, Belgaum
Advocate for Respondent

H. Vasudeva Rao

VC/M(R)

AUGUST 5, 1987.

Order

In this application made under Section 17 of the Administrative Tribunals Act, 1935 and the Contempt of Courts Act of 1971 the petitioner has moved this Tribunal to punish the contemnor for wilful disobedience of the order made in his favour on 27-2-1987 in Application No. 1596 of 1986 (Annexure-C).

Sri S.K. Srinivasan, learned counsel for the petitioner, in our opinion very fairly and rightly submits that the contemnor had fully complied with the directions issued by the Tribunal and, therefore, this proceeding may be dropped as not pressed. We, therefore, drop the proceedings as 'not pressed'. No costs.

K.B. Prakash
VICE-CHAIRMAN.

[Signature]
MEMBER(A)

- True copy -

[Signature]
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

