

CENTRAL ADMINISTRATIVE TRIBUNAL, BANGALORE

Present: Hon'ble Shri Justice K.S. Puttaswamy,
& Vice-Chairman
Hon'ble Shri P. Srinivasan, Member(A).

DATED THIS THE TWENTY SEVENTH DAY OF MARCH, 1987.

APPLICATION NO. 1242/86

K. Ravindran Nair,
No.15, 9th Cross,
Bapuji Nagar,
Mysore Road,
Bangalore-26.

... Applicant.

(Shri S.V. Shastry, Advocate)

v.

1. Union of India,
Ministry of Finance,
Customs & Central Excise Dept.
New Delhi.
2. Collector of Customs & Central Excise,
Karnataka Collectorate,
Central Revenue Buildings,
Queen's Road, Bangalore-1.
3. Asst. Collector (Hqrs),
Customs & Central Excise Dept.
Central Revenue Buildings,
Queen's Road, Bangalore-1. Respondents.

(Shri M.S. Padmarajaiah, Senior CGSC)

This application having come up for hearing
today before this Tribunal, Hon'ble Vice-Chairman
made the following:-

ORDER

This is a transferred application and is received
from the High Court of Karnataka under Section 29 of
the Administrative Tribunals Act, 1985 ('the Act').

2. On 24.7.1971, the applicant joined service as a Sepoy, a Class IV or a Group 'D' post, in the Office of the Assistant Collector, Bangalore II Division of the Central Excise and Customs Department of the Government of India, and was working in that office eversince then.

3. On 28.3.1980, the Assistant Collector, Headquarters Bangalore, who is his appointing and disciplinary authority ('the DA'), commenced disciplinary proceedings against the applicant under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 ('the Rules') and served on him the articles of the charge with the statement of imputations, lists of documents and witnesses. The 3 charges framed by the DA and served on the applicant reads thus:

"Article-I"

Shri K. Ravindran Nair while functioning as Sepoy of Central Excise, Bangalore-II Divn., during the period 24.7.71 and onwards, was engaged in private trade/business in Room No.127/6/9, Sree Venkateswara Lodge, Kalasipalyam, New Extension, Bangalore-2. For this purpose, he got phone No.605536



allotted to him by the General Manager, Telephones, Bangalore. Further he entered into a partnership Deed of the firm M/s. Jyothi Transport Corporation, No.57, First Main Road, Chamarajpet, Bangalore and conducted business as a Managing Partner of the Firm.

Shri K. Ravindran Nair, by his above act, contravened the provisions of Rule 15(1) of the Central Civil Services (Conduct) Rules, 1964, in as much as he engaged in business/trade without the previous sanction of the Government.

Article-II

Shri K. Ravindran Nair, Sepoy of Central Excise, Bangalore-II Division, invested a sum of Rs5,000/- (Rupees five thousand only) and became a Managing Partner of M/s. Jyothi Transport Corporation and conducted business.

Shri K. Ravindran Nair, by his above act, contravened the provisions of Rule 16(2) of Central Civil Services (Conduct) Rules, 1964 in as much as he made investment which is likely to embarrass or influence him in discharge of his official duties.

Article-III

Shri K. Ravindran Nair, Sepoy of Central Excise, Bangalore-II Divn., paid a sum of Rs.5,000/- to the General Manager, Telephones, Bangalore for the purpose of getting allotment of phone No.605536 for doing business.

Shri K. Ravindran Nair by his above act, contravened the provisions of Rule 18 (3) of Central Civil Services (Conduct) Rules, 1964 in as much as he entered into a transaction exceeding value of Rs1,000/-without

obtaining prior permission from the competent Authority."

In his written statement, the applicant denied the charges and therefore the DA appointed one Shri N.A. Balawally, Superintendent of Central Excise, Headquarters Bangalore, as the Inquiry Officer ('IO') and submit his report.

4. In pursuance of the said order of the DA, the IO held a regular inquiry into the 3 charges, recorded evidence and then submitted his report on 20.9.1980 to the DA (Annexure-D). In his report, the IO held that the investigation on charges 1 and 2 was incomplete and on that ground declined to offer his opinion on those charges (vide para 14). But on charge No.3, that IO summed up his conclusions thus:

" It is no doubt true that prior permission is not required before investment for allotment of telephone, since it is an investment with Central Government Agency. However, it is obligatory and incumbent on the part of the Delinquent Officer to give the intimation within 30 days of such investment as required by Rule 10(3) of Central Civil Services (Conduct) Rules, 1964. The Delinquent Officer has grossly failed to comply with this statutory requirement as borne out by the evidence on record.

As already discussed above, even the alleged prior intimation in his letter dt. 21.2.78 is also false. The only logical conclusion that can therefore be drawn is that the said Ex.D1 has been deliberately inserted by him subsequently with a view to cover up his lapse.

17. In view of the above, I hold that contravention of Rule 18(3) of the CCS(Conduct) Rules, 1964 by Shri K. Ravindran Nair, the Accused Officer, is conclusively proved."

Concurring with this report of the IO, the DA made an order on 14.11.1980 and imposed on the applicant the penalty of dismissal from service (Annexure-E). Aggrieved by this order, the applicant filed an appeal before the Collector, Central Excise, Bangalore ('the Collector'), who by his order made on 30.4.1982 (Annexure-F) upheld the findings of the DA, but modified the penalty imposed on the applicant to one of removal from service. Aggrieved by these orders, the applicant filed W.P. No. 17642/83 before the High Court on 3.10.1983, which on transfer to this Tribunal, has been registered as Application No.1242/86.

5. The applicant has challenged the orders of the Collector and the DA on more than one ground. In justification of the orders made, the respondents have filed their statement of objections before the High Court.

6. Shri S.V. Sastry, learned counsel for the applicant, contends that the punishment imposed on the applicant was on the charge that he had not given intimation of his investment within 30 days and the alleged intimation Ex.D1 was a fabricated one as against the charge of non-obtaining prior permission for investment under Rule 18(3) of the CCS (Conduct) Rules, 1964 ('Conduct Rules'), or for an entirely different charge than the one levelled against him in the charge memo and the same, in any event, without affording him an opportunity of hearing, was impermissible and illegal.

7. Shri M.S. Padmarajaiah, learned Senior Central Government Standing Counsel, appearing for the respondents, refuting the contention of Shri Sastry, sought to support the impugned orders.

8. On charges 1 and 2, which we have earlier extracted in full, the IO after some discussion concluded thus:

" I have gone through the evidence on record. I do not agree with the Presenting Officer that all the three charges framed against the Accused Officer are conclusively proved, nor do I agree with the Accused Officer's arguments that the three charges are framed on presumption and assumptions and are not proved. From the evidence let in by the

prosecution, it appears that complete and thorough investigations have not been conducted in respect of the first two charges framed against the Accused Officer. On the basis of such incomplete investigation which is apparent on the face of records and evidence, I am unable to offer any opinion on the said two charges."

On this, the DA in his order expressed thus:

"I am inclined to agree with the Inquiry Officer in this regard and accordingly, do not propose to give my finding or take any action against charges No.1 & 2 at this stage. Further investigation into these charges and if warranted as a result of such further investigation, further enquiry would be necessary to come to any proper conclusion."

On these findings concerning charges 1 and 2, construing that they had been dropped by the IO and the DA, and were in his favour, the applicant did not challenge them before the Collector, who also did not deal with them in any way.

9. On the nature of the findings on charges 1 & 2, their scope and ambit, both sides have put their own different and conflicting glosses before us. We do not propose to examine and decide them, as the punishment of the applicant is founded on charge No.3 only. We, therefore, leave open their respective cases on charges 1 and 2 and proceed to examine validity of punishment on charge No.3 only.

40. While charge No.3 stated that the applicant had not obtained prior permission for investment as required by Rule 18(3) of the Conduct Rules, the IO found him guilty of not giving intimation of that investment within 30 days and that Ex.D1 stated to have given such information, was fabricated one, with which the DA and the Collector had concurred. From this, it is crystal clear that the applicant had been found guilty and punished of a charge that was not framed against him. Every one of the facts on which the applicant has been found guilty and punished are not admitted by the applicant. Before recording his findings on the new charge, the IO did not also afford an opportunity of hearing on the same to the applicant.

11. Rule 14(23) of the Rules, which regulates the situation, reads thus:

"23 (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain -

- (a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (b) the defence of the Government servant in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the findings on each article of charge and reasons therefor.

EXPLANATION - If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority, where it is not itself the disciplinary authority shall forward to the disciplinary authority the records of inquiry which shall include -

- (a) the report prepared by it under clause (i);
- (b) the written statement of defence, if any, submitted by the Government servant;
- (c) the oral and documentary evidence produced in the course of the inquiry;
- (d) written briefs, if any, filed by the Presenting Officer or the Government servant or both during the course of the inquiry; and
- (e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry."

First, this rule authorises an IO to record his findings on a charge that is not framed against the delinquent or the charged officer. The power

to record a finding on a charge that is not framed and conveyed to a delinquent official is expressly conferred by this Rule. In this view, the IO was competent to record his finding against the delinquent on a different charge. Sri Sastry also does not dispute this.

12. But the conferment of that power is not absolute and unregulated. The proviso to the Rule or the Explanation sets out two conditions that should be complied before the IO so records his finding. The requirements of the proviso are the procedural safeguards to a civil servant. Without complying with the procedural safeguards, the IO will be acting illegally in recording his finding on an altogether a differnt charge.

13. The first procedural safeguard is that the delinquent should admit all the facts on the basis of which the IO proposes to record his finding on an altogether different charge. We have earlier noticed that the applicant had not admitted the facts.

14. If facts relating to the finding are not admitted, a further procedural safeguard has been provided, viz., that the delinquent must be afforded a reasonable opportunity of hearing on

the new or different charge. This only incorporates the principle of audi alteram partem, one of the basic components of principles of natural justice, the ambit and extent of which we have explained in detail in our order made today in P.K. SHIVANANDA V. COLLECTOR OF EXCISE (A.No.1839/86). We, therefore, consider it unnecessary to elaborate the same in this case also.

15. Before recording his finding on the new or a different charge, the IO did not at all give an opportunity to the applicant to state his case, much less a reasonable opportunity as enjoined by the proviso to explanation to Rule 14(23) of the Rules. Without any doubt, the procedure adopted by the IO was in manifest contravention of the mandatory proviso to Rule 14(23) of the Rules and the requirements of the principles of natural justice. From this, it follows that the IO had acted illegally, and he did not cure that illegality at any time before submitting his report to the DA. Unfortunately, the DA and the Collector without curing that illegality committed by the IO, acted on the same, and inflicted the punishment. We cannot, therefore, uphold the orders of the Collector, the DA and the report of the IO.

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16. We are of the view that the illegality committed by the authorities, which goes to the root of the matter, cannot be cured by this Tribunal and can only be cured by the authorities only. If that is so, then we must necessarily reserve liberty to the IO and the DA to hold a fresh inquiry into the new charge on which the applicant was found guilty and punished by the authorities.

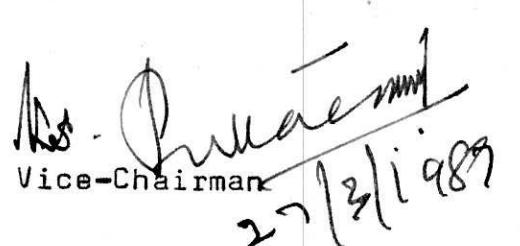
17. When once we find that the orders are liable to be interfered with by us on the ground noticed and dealt with, it is unnecessary for us to deal with all other contentions raised by the applicant or the defences urged by the respondents against all of them. We therefore leave them open.

18. We are informed by Sri Padmarajaiah that Sri Balawally, who held the inquiry against the applicant, has since retired from service. If that is so, the DA has undoubtedly the competence to appoint a new IO to inquire into the new charge on which the applicant was found guilty, if he decides to hold a fresh inquiry. Whether he should do so or any of the other authorities should exercise any of the other powers available to them under the Rules is a matter for them to examine and decide.



19. In the light of our above discussion, We quash order Nos.(1)C.No.II/26/11/81 A.3 dated 30.4.1982 (Annexure-F), and (2) C.No.II/10A/6/80 A.3 dated 14.11.1980 (Annexure-E) of the Collector and the DA, and the report of the IO to the extent they held the applicant guilty on charge No.3. But this does not prevent them or the IO to hold a fresh inquiry into the same or the new charge, if necessary by appointing a fresh IO, or even exercise any of the powers available to them against the same or the other two charges also.

20. Application is disposed of in the above terms. But in the circumstances of the case, we direct the parties to bear their own costs.


Vice-Chairman
27/3/1987


P. S. V
27/3/1987
Member (A)

dms/Mrv