

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH : BANGALORE.

Present: Hon'ble Mr. Justice K.S. Puttaswamy, Vice-Chairman,

and

Hon'ble Mr.P. Srinivasan, Member (Admn).

DATED THIS THE ~~TWENTY FOURTH~~ TWENTIETH DAY OF FEBRUARY, 1987.

Application No. 1294/86

M.R. Ganesan,
Accounts Officer,
PAO (ORs) ASC (Supplies),
BANGALORE-560007.

... Applicant.

(Shri (Dr.) M.S. Nagaraja, Advocate)

• vs.

1. The Controller General of Defence Accounts,
New Delhi-110 022.

2. The Financial Adviser,
Defence Services,
Ministry of Finance,
New Delhi-110 001.

3. The Union of India,
represented by the Secretary
to the Govt. of India,
Ministry of Home Affairs,
New Delhi.

... Respondents.

(Shri M. Vasudeva Rao, Addl. CGSC)


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

ORDER

In this transferred application received from
the High Court of Karnataka under Section 29 of the

Administrative Tribunals Act, 1985, the applicant has challenged Order No. nil dated 28.3.1984 (Annexure-L) of the Government of India ('Government'), Order dated 22.10.1982 (Annexure-J) of the Financial Adviser (Defence Services) ('FADS'), and order dated 2.2.1982 (Annexure-G) of the Controller General of Defence Accounts ('CGDA').

2. At the material time, the applicant was working as a Section Officer in the Office of the Controller of Defence Accounts, Southern Command, Poona. When working in that office, he applied for house building advance, which was sanctioned by the competent authority. In conformity with the same, the applicant had drawn the amounts and has constructed a house at a place called Ambattur near Madras City. In that connection, the CGDA initiated disciplinary proceedings against the applicant under rule 16 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 ('the Rules'), and served a charge memo and Statement of Imputations on him on 10.6.1981 (Annexure-E) setting out the alleged misdemeanours, which were denied by him. On an examination of the charge memo, reply filed and the records, the CGDA on 2.2.1982 found the applicant guilty of the charges levelled against him and imposed a penalty of stoppage of one increment for one year without cumulative effect. Aggrieved by the same, the applicant filed an appeal before the FADS, who on 22.10.1982, disposed of the same reducing the penalty to one of 'Censure'.




Aggrieved by these orders, the applicant filed a review under rule 29 of the Rules before the President of India, who, on 28.3.1984, has rejected the same. Hence this application.

3. The applicant has challenged the orders on more than one ground. The respondents have resisted this application.

4. Dr. M.S. Nagaraja, learned counsel for the applicant, contends that the order made by the FADS as an appellate authority ('AA'), which had not examined the three requirements of rule 27 of the rules, was not a speaking order, and illegal. In support of his contention, Dr. Nagaraja strongly relies on the ruling of the Supreme Court in RAM CHANDER v. UNION OF INDIA & OTHERS (AIR 1986 SC 1173).

5. Shri M. Vasudeva Rao, learned Additional Central Government Standing Counsel, appearing for the respondents, sought to support the appellate order of the FADS.

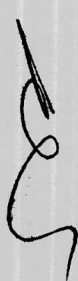
6. Aggrieved by the order made by the CGDA, which inflicted a penalty of stoppage of one increment for a period of one year without cumulative effect, the applicant filed an appeal on 5.3.1982 setting out a large number of grounds which according to him justified the reversal of the order made by the CGDA on questions of fact and law. In disposing of that appeal, the FADS as the AA had not considered any of the material contentions



urged by the applicant in support of his appeal, both on questions of fact and law. He had also not adhered to the requirements of rule 27 of the Rules. Unfortunately, the AA had disposed of the appeal without examining the material contentions and the requirements of rule 27 of the Rules, by making one or two observations, reducing the penalty to one of 'censure'. Without any doubt, the order made by the FADS as the AA was in contravention of rule 27 of the Rules and is not a speaking order, the true requirements of which have been elaborately reiterated by the Supreme Court in RAM CHANDER's case. On this short ground, the order of the FADS and the order of the reviewing authority, which only confirmed the former, are liable to be quashed.

7. When once we hold that the AA had not properly disposed of the appeal, this Tribunal should normally set aside the said order, and direct the AA to redetermine the matter in accordance with law and the principles enunciated by the Supreme Court in RAM CHANDER's case. On this view, we decline to examine the other grounds urged by Dr. Nagaraja against the order of the CGDA.

8. When the appeal is redetermined by the FADS in pursuance of our order, the applicant cannot be placed in a worse position than at present. In the event of the FADS still holding that the applicant was guilty of the charge made against him, he should not award a greater penalty than the one already awarded.




9. In RAM CHANDER's case, the Supreme Court has ruled that an applicant in an appeal under the Railway Servants (Discipline and Appeal) Rules, 1968, which are in pari materia with the Rules, was entitled to an opportunity of oral hearing. We have no doubt that the appellate authority will offer such an opportunity if the applicant insists on the same. Before the AA, the applicant is undoubtedly entitled to rely on the ruling of the Supreme Court in A.L. KALRA v. PROJECT EQUIPMENT CORPORATION OF INDIA (1984 SCC L&S 497), in support of his case.

10. As this simple matter is pending for a fairly long time, and appears to affect the applicant's chances of promotion to the next higher post, we consider it proper to direct the AA to dispose of the appeal expeditiously and in any event within a period of three months from the date of receipt of our order.

11. In the light of our above discussion, we make the following orders and directions:

(1) we quash the order dated 28.3.1984 (Annexure-L) of the Government, and the order dated 22.10.1982 (Annexure-J) of FADS and direct the FADS to restore the appeal filed by the applicant to its original file and dispose of the same with all such expedition as is possible in the circumstances of the case, and in any event, within a period of three months from the date of receipt of the order of this Tribunal. In doing so, if the FADS still feels that the charge against the applicant is proved, he shall not enhance the penalty earlier awarded by him; and



/6/

(2) we direct the respondents not to enforce the order dated 2.2.1982 of the CGDA till the appeal of the applicant is disposed of by the FADS.

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

13. Let this order be communicated to the parties within a week from this day.

Ms. D. K. Kaur
VICE CHAIRMAN

P. S. - G. C.
MEMBER(A)

20/2/1987

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91

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