BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 31st DAY OF MARCH 1987

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

Hon'ble Sri L.H.A. Rego - Member (A)

Application No. 1370/86(T)

E.F. Mangalanathan
Ex-Precision Mechanic (Token No. LI 33)
Electronics & Radar Development Establishment
Block No.8, House No. 4, House Surgeons'
Quarters, Albert Victor Road,
Chamarajapet, Bangalore 560 018 - Applicant

(Sri M. Narayanaswamy, Advocate)

v

1. The Union of India represented by ~~the~~ its
Secretary, Ministry of Defence
New Delhi

2. The Scientific Adviser to the
Ministry of Defence & Director General
Defence Research & Development
Organisation, Government of India
New Delhi

3. The Director,
Electronics & Radar Development Establishment
High Grounds, Bangalore 560 001 - 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

ORDER

This application was initially filed in the High Court of Karnataka and subsequently transferred to this Tribunal. The facts giving rise to the application are, briefly, as follows. The applicant entered service in the office of the Director, Electronics & Radar

....2

Development Establishment, Bangalore (R3) in 1959 and was promoted as a Precision Mechanic on 8.11.73. He worked in that capacity till 11.4.79 when an order (Annexure 'A') was passed by R3 imposing the punishment of compulsory retirement from service after conducting a disciplinary proceedings under the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (Rules, for short). The order of R3 was confirmed by the Scientific Adviser to Ministry of Defence (R2). Aggrieved by the order of compulsory retirement the applicant has filed this application.

2. The contention, in the main, of Sri M.Narayanswamy learned counsel for the applicant, is that the Inquiry Officer ('IO') ought to have adjourned the inquiry which stood posted to 26.4.78 in view of the fact that his client had applied for leave on grounds of illness from 26.4.78 to 29.4.78. According to Sri Narayanaswamy, his client fell ill on 26.4.78; that he immediately sent an application for leave from 26.4.78 to 29.4.78 and as he was prevented by sufficient cause from attending the inquiry on 26.4.78, the IO was not justified in proceeding ahead with the inquiry and submitting his report, on the basis of which R2 and R3 have passed the impugned orders.

3. Sri M.V. Rao, learned counsel for the respondents, submits that the application was actually received in the office on 27.4.78; that it was not obligatory on the officer concerned to inform the IO about the

...3

application for leave submitted by the applicant and in any case the application for leave having been received a day after the the date to which the proceedings stood posted, no intimation could be given to the IO. According to Sri Rao, the applicant was adopting dilatory tactics and the IO was justified in proceeding ahead with the enquiry and submitting his report.

4. We have considered the rival contentions carefully. It is a moot point whether the office, when it receives an application for leave from the delinquent, should inform the IO about the same. While it would be desireable on the part of the applicant not only to address the office but also endorse a copy of the same to the IO with a request to adjourn the proceedings, the office may also bring it to the notice of IO so that the IO would be in a position to take a decision regarding the postponement or otherwise of the proceedings to be held on that date. Be that as it may, the crux of the matter is whether the provisions of Rule 14(11) of the Rules have been applied in the present case, which reads as follows:

> "The Inquiring Authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require ehe Presiding Officer to produce the evidence by which he proposed to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant, may for the purpose of preparing his defence:-
>
> (i) inspect within five days of the order or within such further time not exceeding five days as the Inquiring Authority may allow, the documents specified in the list referred to in sub-rule (3);

...4

"(ii) submit a list of witnesses to be examined on his behalf;

(iii) give a notice within 10 days of the order or within such further time not exceeding 10 days as the Inquiring Authority may allow, for the discovery or production of any documents which ~~the~~ are in the possession of Govt. but not mentioned in the list referred to in sub rule (3)."

5. On a plain reading of rule 14(11) it is manifest that the IO is required to do three things:

(1) to call upon the presenting officer to produce evidence in support of articles of charge;

(2) to adjourn the case to a later date not exceeding 30 days; and

(3) to order that the delinquent may give notice for the discovery and production of documents.

From the language and tenor of the rule extracted above, it is manifest that the object and purpose of the rules is to ensure compliance with the basic principles of natural justice, by affording as much opportunity as possible to the delinquent to participate effectively in the proceedings and present his case to his utmost satisfaction.

6. In the present case the inquiry stood posted to 26.4.78. On that date the applicant could not be present before the IO because he suddenly took ill. As already observed, rule 14(11) of the Rules envisages inter alia adjournment of the case to a later date not exceeding 30 days in a case where the Government servant

....5

fails to appear within the specified time subject to directions being given by the IO in the manner stated therein. Instead of acting in conformity with the provisions of Rule 14(11), he chose to hold the proceedings on 26.4.78 itself and chose to call upon the Presenting Officer to present the case on 27.4.78. The IO failed to afford an ~~x~~ opportunity to the applicant to inspect the documents within 5 days of his order dated 26.4.78; submit a list of witnesses to be examined on his behalf and give notice within 10 days of the order or within such other time, not exceeding 10 days as the EO may allow, for the discovery and production of any documents which are in the possession of the Government.

7. Two factors seem to have weighed with the appellate authority in justifying the action of the IO in holding the proceedings on 26.4.78 and 27.4.78: (1) that the applicant had earlier availed of several adjournments and no further adjournment was necessary; and (2) that rule 14(20) of the Rules, which provides as under :

> "If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the Inquiry Authority or <u>otherwise fails or refuses to comply with the provisions of this rule</u>, the Inquiring Authority may hold the inquiry <u>ex-parte</u>."(underlining ours)

enables the IO to hold the proceedings <u>ex-parte</u>. True, rule 14(20) provides for holding the inquiry <u>ex parte</u> but that rule makes it clear that the power of the

Cmd

... ...6

officer in holding the ex parte inquiry would come into play in several situations, of which the situation relevant to the present case is covered by the words underlined in the rule extractdd above. Rule 14(11) very much falls within the ambit of the words underlined in 14(20) and in view of this it is mandatory on the part of the IO to have passed an order under Rule 14(11) before invoking Rule 14(20) for holding the proceedings ex parte. Turning to the other factor, viz. that the delinquent had availed of several adjournments, it doesnot have any relevance in a case like the present where the delinquent suddenly took ill on the day to which the inquiry stood posted for the obvious reason that illness is a matter beyond human control and the bare circumstance that several adjournments were earlier given would not justify the adjournment being refused. This aspect, however, need not be pursued further since the mandatory requirements of Rule 14(11) have not been complied with in the present case.

8. We, therefore, set aside the impugned order passed by R2 (Annexure 'B') confirming the order passed by R1 Annexure 'A'). R1, however, is at liberty to hold the proceedings afresh from the stage when the I.O. refused to adjourn the proceedings on 26.4-78, in the light of the foregoing and in accordance with law.

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

Ch. Ramakrishna
31.3.87
Member (J)

Member (A) 31.3.87