

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT BANGALORE.

DATED THIS THE 25th DAY OF FEBRUARY, 1987.

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

and

Hon'ble Shri P. Srinivasan, Member (A).

APPLICATION No. 1585 of 1986

Between:

Shri Madiwalappa Ramachandra Sutar,
resident of H.No. 3862,
Virupaxi Chawl,
Kotwal Galli,
Belgaum.

...Applicant.

(Shri Shantaram Sawant, Advocate)

and

The Union of India,
rep. by Secretary,
Ministry of Defence,
New Delhi.

...Respondent.

(Shri M. Vasudeva Rao, Addl. CGSC)

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

ORDER

In this transferred application received from the Court of the Munsiff, Belgaum, under Section 29 of the Administrative Tribunals Act, 1985, the applicant has challenged Order No. 78655/527/77 dated 27.3.1981 of the

Engineer-in-Chief, Army Headquarters, New Delhi ('EC').

2. At the material time, the applicant was working as a civilian carpenter in the Office of the Garrison Engineer (Project), Belgaum ('GEP'), one of the units of the Indian Army. For the period from 10.12.1976 to 6.10.1977, the applicant absented himself from duty. Hence, the EC commenced disciplinary proceedings against the applicant under the Central Civil Services (Classification, Control & Appeal) Rules, 1965 ('the Rules'), framed the necessary Articles of Charge with the statement of imputations and sought to serve on the applicant, which inspite of efforts was not personally served on him. In that view, the EC effected service of notice of the same by paper publication, to which the applicant filed his written statement on 8.10.1977. Thereafter, after some intermediate proceedings, the narration of which is not necessary to notice, the EC appointed one Shri C.V. Gopalakrishnan, an Assistant Executive Engineer of the Office of the GEP as the Inquiry Officer ('IO') under the Rules to inquire into the said charge, who held a regular inquiry and then submitted his report to the EC. In his report, the IO found the applicant guilty of the charges levelled against him. On a consideration of the report of the IO and the evidence on record, the EC, by his order dated 27.3.1981, inflicted the penalty of removal from service against the applicant. Without availing the legal remedies available to him under the Rules, the applicant on 1.3.1982 commenced O.S. No. 99/82

in the Court of the Munsiff for striking down the order of the EC. On transfer, the said suit has been registered as Application No. 1585 of 1986.

3. Among others, the applicant has urged that he was not afforded a reasonable opportunity to defend himself before the IO. In its written statement, the respondent has denied this assertion of the applicant and had asserted that the applicant deliberately failed to avail the opportunities afforded to him.

4. Shri Shantaram Sawant, learned counsel for the applicant, contends that the IO had not afforded a reasonable opportunity to his client to defend himself in the inquiry and the same was in contravention of Article 311 of the Constitution, the Rules and the principles of natural justice.

5. Shri M. Vasudeva Rao, learned Additional Standing Counsel for the Central Government, appearing for the respondent, refuting the contention of Shri Sawant, contends that the applicant who had deliberately failed to avail the opportunities afforded to him cannot complain of the violation of the Rules and the principles of natural justice.

6. In its reply, the respondent has asserted that the applicant was afforded all reasonable opportunity to defend himself and he did not avail himself of the same.

We have no reason to disbelieve this assertion of the respondent. But, in order to assure ourselves on the rival pleas, we have carefully examined the original records of the inquiry produced before us. We find from those records that the applicant was afforded more than one opportunity to take the assistance of a defence assistant which he did not avail and did not also participate in the inquiry of which he had due notice. From this, it follows that this is not a case in which there was a denial of opportunity by the IO at all.

7. When the applicant had not availed the opportunities afforded by the IO to take the assistance of a proper defence assistant and conduct his case on the dates the inquiry was fixed from time to time, it is even strange for the applicant to contend that he had not been afforded a reasonable opportunity by the IO to defend himself in the inquiry held against him. We see no merit in this contention of Shri Sawant and we reject the same.

7. Shri Sawant next contends that this is a fit case in which the extreme penalty of removal from service should be modified to a minor penalty, and in any event, to one of compulsory retirement.

8. Shri Rao opposes any modification in the penalty imposed by the disciplinary authority.

9. We have carefully examined the punishment imposed against the applicant. We are of the view that

on the facts and circumstances of this case, the disciplinary authority was justified in imposing the penalty of removal from service. When once we find that the disciplinary authority was justified in imposing the penalty of removal from service, the question of modifying the same to a minor penalty or compulsory retirement as suggested by Shri Sawant will not arise. We see no merit in this contention of Shri Sawant and we reject the same.

10. As all the contentions urged for the applicant fail, this application is liable to be dismissed. We therefore, dismiss this application. But in the circumstances of the case, we direct the parties to bear their own costs.

N.S. Parkar
N.S. Parkar
VICE CHAIRMAN
25/2/87

P. Franks
P. Franks
MEMBER(A) 25/2/87

dms.