

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE
DATED THIS THE 18TH DAY OF FEBRUARY, 1987

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

APPLICATION NO. 1751/86

Shri Shivanna,
Aged 43 years,
S/o Sri Veerabhadraiah,
Driver cum Mechanic,
Central Poultry Breeding Farm,
Hesaraghatta,
Bangalore North.

... Applicant

(Shri M.S. Nagaraja, Advocate)

V.,

1. The Director,
Central Poultry Breeding Farm,
Hesaraghatta,
Bangalore North.

2. The Joint Secretary
to the Government of India,
Ministry of Agriculture,
and Irrigation, Department
of Agriculture, New Delhi.

3. The Chief Vigilance Officer,
Government of India,
Ministry of Agriculture,
and Operation, New Delhi.

... Respondents

(Shri M.S. Padmarajaiah, (S.C.G.S.C.))

This application having come up for hearing
to-day, Shri P. Srinivasan, Hon'ble Member (A)
made the following.

O R D E R

This is a transferred application received from
the High Court of Karnataka.

P. Srinivasan

2. The facts giving rise to this application may now be stated. The applicant joined the Central Poultry Breeding Farm, Hesaraghatta, an institution under the Ministry of Agriculture, Government of India on 11.12.1964 as Driver-cum-Mechanic. He was confirmed in that grade from 21.8.1967. In May, 1975, disciplinary proceedings were initiated against him by the Director of the Central Poultry Breeding Farm. A Memo dated 30.5.1975 was served on him along with the articles of charge in respect of which enquiry was to be made. An Inquiry officer was duly appointed. He proceeded with the ^{inquiry} ~~inquiry~~ and gave his report on 24.7.1976 holding that the charges against the applicant had been proved. The Inquiry officer was an Under Secretary to the Government of India in Delhi. It was stated that he was appointed as Inquiry officer because the disciplinary authority did not want any local officer to conduct the inquiry as he might be subject to local influences. On the basis of the report of the Inquiry Officer, the disciplinary authority issued a show cause notice to the applicant as to why the penalty of termination of service should not be imposed on him. This show cause notice was issued on 8.9.1976 and the applicant was asked to give his reply within 15 days. Both sides agree that the said show cause notice was served on the applicant either the same day or the next day. The applicant

P. L. B.

did not furnish his reply within the stipulated 15 days from the date of receipt thereof. The disciplinary authority, therefore, proceeded to pass the order on 25.9.1976 by which he terminated the services of the applicant with effect from the same day i.e., 25.9.1976. A reply to the show cause notice bearing the date 22.9.1976 was despatched by the applicant on 25.9.1976 and was received in the office of the disciplinary authority only on 27.9.1976, as shown by the post marks on the envelope produced by the respondents before us. By that time the order imposing penalty had already been passed, (on 25.9.1976 as stated above). In that order, the disciplinary authority viz., the Director, Central Poultry Breeding Farm, narrated that he was imposing the penalty in exercise of the powers conferred on him by rule 19 (1) of the Central Civil Services (Classification, Central and Appeal) Rules, 1965. Thereupon, the applicant filed an appeal. The appellate authority by his order dated 31.5.1977, upheld the finding of guilt but reduced the penalty to one of stoppage of two increments with cumulative effect. A review petition filed by the applicant on 26.7.1977 addressed to the Secretary, Department of Agriculture and Irrigation, Delhi was rejected and the rejection was conveyed in a letter of July 1978 sent to the applicant by the Deputy Secretary, Ministry of Agriculture and Irrigation. The applicant made a further

R. L. ———— He

representation for reconsideration of the aforesaid order. In 1980, in a Memo dated 1.10.1980, the Director of the Central Poultry Breeding Farm, rejected the second review application stating that the matter had already been considered in connection ~~1st~~ with his earlier application and rejected. Not content with this, the applicant went on pursuing the matter with the department. He received a reply from the Ministry of Agriculture dated 24.12.82 which reiterated that the applicant had already been intimated that there was no case for review, he was advised to desist from submitting petitions repeatedly on the same point. It is only thereafter that the applicant filed writ petition No.5164 of 1983 before the High Court of Karnataka on 11.3.1983.

3. It appears that the High Court took notice of the delay in the filing of the writ petition and called for the explanation of the applicant for the delay. The applicant, thereupon, filed an affidavit dated 4.4.1983 sworn by him before the High Court in which he explained that though the penalty was initially imposed on 25.9.1976 and his appeal and review petition dismissed in 1977 and 1978, respectively, he had been pursuing the matter and the last communication received by him was dated 7.2.1983 and it is only thereafter that he had come before the Court. The High Court took no decision on this affidavit and subsequently the writ petition was transferred to this Tribunal under Section 29 of the Administrative Tribunals Act 1985.

P. S. — Ue

4. Before examining the merits of the application, we may deal with the question of delay and laches. Dr. M.S. Nagaraja, learned counsel for the applicant, reiterated what has been stated in the applicant's affidavit before the High Court namely that the applicant was pursuing his remedy from his department and it was only on receipt of the reply dated 7.2.1983 that he took recourse to the legal action.

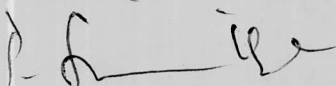
5. Shri M.S. Padmarajaiah, learned counsel for the respondents, strongly contended that the application should be dismissed on the ground of laches.

6. After hearing rival counsel, we are of the opinion that this application deserves to be dismissed as being badly delayed. The last statutory departmental remedy available to the applicant was exhausted when his review petition was rejected in 1978. That he was pursuing the matter and requesting the authorities to reconsider their decision cannot be taken into account in determining whether the delay in moving the High Court was unreasonably long. It is significant to note that every time he made a representation after 1978, the authorities referred to their earlier communication and advised the applicant not to make repeated applications. Therefore for the purpose of determining reasonable delay, we have to take into account only the first rejection of the applicant's review application which was in July 1978. The writ petition was filed on 11.3.1983, nearly five years after this. This constitutes too long a delay and the application therefore deserves to be dismissed on this ground itself. However, since

P. S. Nagaraja

the learned counsel for the applicant argued the merits of the case at length, we proceed to consider the merits of the application in deference to his wishes.

7. The main point of attack in the application is against the first order by which the penalty of termination of service was imposed on the applicant. As is mentioned earlier, the disciplinary authority had made reference to rule 19 of the CCS(CCA) Rules, 1965. Rule 19 deals with the circumstances under which an inquiry can be dispensed with before imposing a penalty on a Government servant. In the present case, an inquiry had been duly initiated, an inquiry officer appointed and his report duly received by the disciplinary authority. This being so, Dr. Nagaraja contends that the disciplinary authority went wrong in relying on rule 19 for the purpose of levying penalty, particularly because it was not a fit case in which, according to the provisions of the rule, inquiry could have been dispensed with. On merits, Dr. Nagaraja contended that the charge upon which the applicant was punished was that he had disobeyed orders to take the farm vehicle from Hesarghatta to Bangalore on 12th March 1975 as a Japanese expert who had come to visit the farm at Hesarghatta had to go to Bangalore that evening and come back the next morning. This, according to the article of charge, constituted "grave conduct of indiscipline, insubordination and defiance of orders" contravening



Rule 3 of the Central Civil Services (Conduct)

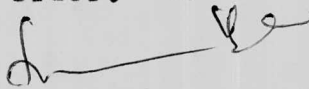
Rules 1964. Dr. Nagaraja contended that on that particular day, the applicant's wife was ill and he could not take the vehicle to Bangalore and stay away overnight at Bangalore. The applicant had explained at the time that he could not take the vehicle for this reason and thereafter he had been given other duty on the same day.

21 The records of ^{the} poultry farm would show that the applicant was on duty till late in the day on 12th March 1975 which indicates that the authority concerned had changed his earlier order and so the applicant was not guilty of indiscipline or disobedience. The Inquiry Officer had not taken into account the evidence produced by the applicant in the form of a medical certificate which showed that his wife was ill on the material date. Therefore, Dr. Nagaraja, contended that the disciplinary authority was not right in holding the applicant guilty of the charge and the appellate authority went wrong in accepting this finding, though he reduced the penalty of termination to one of stoppage of increments for two years with cumulative effect. Even this punishment involved considerable loss to the applicant; not only did he lose the increments due to him for two years, but the period during which he was placed under suspension earlier would also not count for increment. In any event, the punishment was excessive, relative to the offence said to have been committed by the applicant.

P. L. —————

8. Shri MS. Padmarajaiah learned counsel for the respondent strongly refuted the contentions of Dr. Nagaraja.

9. Having considered the rival contentions, we are of the view that this application deserves to be dismissed. As for the reliance on rule 19 in the order of the disciplinary authority, we must point out that this appears to be a mistake committed by oversight. The applicant's counsel himself admits that a proper inquiry was in fact conducted and full opportunity was given to the applicant of being heard and therefore the question of dispensing with an inquiry did not arise. The disciplinary authority had considered the report of the Inquiry Officer and had thereupon imposed the penalty which he was empowered to do under the rules. If the action is otherwise within the power of the authority concerned, it does not become invalid if a wrong provision is cited for exercising that action. This is a well settled proposition. The disciplinary authority acted in terms of rule 15 by which he was empowered to levy a penalty and he did so after fulfilling all the requirements of the rules concerning the holding of an inquiry. Therefore his action was perfectly valid notwithstanding the reference to a wrong rule in his order.

P. S. 

10. Coming to the merits of the case, we may here mention that when an application is filed before us against a penalty imposed after disciplinary proceedings, we are not expected to re-appraise the evidence and on the basis of such re-appraisal come to a different conclusion from that of the authorities concerned. We are only required to examine whether there was evidence on the basis of which the authority could come to the decision which it did and not ^{or} whether the evidence was sufficient or whether on the same evidence another person would come to a different decision. We can strike down the order imposing penalty only if it was not based on any evidence or was patently arbitrary. Bearing these points in mind, we find that there is no dispute in this case that the applicant had disobeyed the order asking him to take the vehicle to Bangalore, which he was bound to do as part of his official duties. There is no record as such to show that the applicant had at the time explained his inability to do so because of his wife's illness. The disciplinary authority had to weigh the contemporaneous evidence, such as there was, ~~on the~~ ^{or} ~~basis of the refusal~~ ^{or} to support the applicant's contention that he had pleaded inability to take

R. L. ———— K. S.

81 the vehicle due to his wife's illness and come to a conclusion whether disobedience had been ^{and after doing so,} proved, he found the applicant guilty of the charges. We cannot find fault with the decision reached by him. This is not a case of no evidence or arbitrary decision nor were any irrelevant considerations taken into account. In the circumstances we do not feel called upon to interfere with the order of the appellate authority who has been considerate enough to reduce the penalty to a minor one of stopping increments for two years.

11. In the result, the application is dismissed. Parties will bear their own costs.

Ms. P. Narasimha

Vice-Chairman

18/2/81

P. L. Narasimha

Member (A)

GR/Mrv.

Dy no 78/211/89
13-3-89

D.No. 3749/87 /Sec.IVA

SUPREME COURT OF INDIA
NEW DELHI

Dated 23.2.1989 8-3-89

From:

The Additional Registrar,
Supreme Court of India.

To,

The Registrar,
Central Administrative Tribunal
Bangalore Bench (Bangalore)
Commercial Complex (BDA)
Indira Nagar, Bangalore-560038

13/3/89
60/10
13/3
S.P.R.K.

PETITIONS FOR SPECIAL LEAVE TO APPEAL (CIVIL) NOS. 9920 of 1987
(Petitions under Article 136 of the Constitution of India for
Special Leave to Appeal to the Supreme Court from the
Judgment and Order dated the 18.2.87 of the
High Court of
Karnataka/Central Administrative Tribunal, Bangalore Bench at Bangalore
in Application No. 1751/1986.)

Sri Shivanna

.. Petitioner (S)

Versus.

The Director, Central Poultry Breeding Farm & Ors

.. Respondent (S)

Sir,

I am to inform you that the Petitions above-mentioned for
Special Leave to Appeal to this Court was/were filed on behalf
of the Petitioner above-named from the Judgment and Order of the
High Court of

Karnataka/Central Administrative Tribunal

noted above and that the same was/were dismissed/disposed of allowed to be with-
drawn
by this Court on the 18th day of January, 1989.

Yours faithfully,

for Addl. Registrar.