

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

*Twenty Four*  
DATED THIS THE ~~TWENTYFOURTH~~ DAY OF OCTOBER, 1986  
*De* *By*

Present: Hon'ble Shri Ch. Ramakrishna Rao ..MEMBER(J)  
Hon'ble Shri P. Srinivasan ..MEMBER(A)

Application No. 331/86(T)

Shri DD Prasad,  
S/o Late Shivaram Singh,  
Sr. Store Keeper,  
PA No.24577,  
Elementary Flying School,  
Air Force Station, Bidar,  
No.38- LIG, KHS Colony,  
BIDAR.

..Applicant

( Shri GN Seshagiri Rao .. Advocate)

Vs.

1. Air Marshal, Air Officer,  
Commanding-in-Chief,  
HQ Training Command, I.A.F.  
=Hebbal, BANGALORE.
2. Group Captain,  
Commandant,  
Elementary Flying School,  
Air Force Station,  
BIDAR - 585 401.

..Respondents.

( Shri N. Basavaraju .. Advocate )

This application came up for hearing before Court today.

The Hon'ble Members(J) and Member(A) made the following:

ORDER

The applicant was working as Senior Store Keeper(SSK), Elementary Flying School, Air Force Station, Bidar, under the Air Officer, ~~as~~ Commandant-in-Chief, Training Command of the Indian Air Force, till he was compulsorily retired by an order dated 14.8.1980(Annex.L) passed by the Respondent No.2(R.2). The applicant filed an appeal

..2/-

against this order, which was dismissed by order dated 31.10.1980 (Annex.N) passed by the Respondent No.1(R.1).

2. Shri GN Seshagiri Rao, learned counsel for the applicant, raised a number of objections against the procedure adopted in the enquiry before the applicant was compulsorily retired, of which we may mention only the first, viz., that the order compulsorily retiring him by way of punishment was passed by an authority subordinate to that by which he was appointed and hence the said order was bad, being violative of Art. 311(i) of the Constitution. The appointing authority in respect of the applicant when he was working as SSK was R.1, while the order compulsorily retiring the applicant was passed by R.2, who was subordinate to R.1. Therefore, he submits that the said order be struck down.

3. Shri N. Basavaraju, learned counsel for the respondents, hotly contends that the order was validly passed by a competent authority, and draws our attention to rule 12(2) of the CCS(CCA) Rules and in particular to clause (a) thereof, which states that any of the penalties specified in rule 11 of the said rules may be imposed on any Government servant, without prejudice to the provisions, of sub-rule (1), but subject to the provisions of sub-rule(4) on a member of a Central Civil Service other than the General Central Service, by the appointing authority or the authority specified in the schedule in this behalf or by <sup>any</sup> other authority empowered in this behalf by a general or special order of the President. He also informs us that by an order dt. 12.11.1979, the President, in exercise of the powers conferred by rule 12(2)(a) referred to supra empowered officers of the rank of Group Captain (R.2) or above, to act as disciplinary authorities in respect of Group 'C' posts under their command. Therefore, R.2 in this case was the competent authority to impose the penalty which has been imposed on the applicant.

We have considered the matter in depth. In relying on rule 12 (2) (a) of CCS(CCA) Rules, we find that Shri Basavaraju has overlooked the fact that the said rule starts with the words "without prejudice... but subject to provisions of sub-rule (4)". Now, we turn to sub-rule (4) of ~~xxx~~ rule 12, which is as follows:

"Notwithstanding anything contained in this rule -  
(a) except where the penalty specified in clause(v) or clause (vi) of Rule 11 is imposed by the Comptroller and Auditor-General on a member of the Indian Audit and Accounts Service, no penalty specified in clauses (v) to (ix) of that rule shall be imposed by any authority subordinate to the appointing authority;

(b) xxxx...

(c) xxxx..."

The penalty of compulsory retirement is listed as item(vii) in rule 11, and hence it cannot be imposed by any officer subordinate to the appointing authority. It is common ground that the appointing authority in the case of the applicant was R.1, and that R.2 is subordinate to R.1. Since the order imposing the penalty was passed by R.2, it has to be struck down as violative of Art.311(1) of the Constitution, as also rule 12(4) of CCS(CCA) Rules. We accordingly set aside the said order. In the view we have taken, we are not going into the other points urged by the applicant's counsel and the replies given thereto by the respondents' counsel. The application is allowed with all consequential benefits flowing therefrom. No order as to costs.

SB -  
( CH. RAMAKRISHNA RAO )  
MEMBER(J)

24.10.86.

23

SD  
( P.SRINIVASAN )  
MEMBER(A)

24.10.86.

23

True copy

*[Signature]*  
SECTION OFFICER 31/10/86  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE

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