

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH  
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Commercial Complex (BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 23 SEP 1988

APPLICATION NO. 787 / 88(F)

W.P. NO. \_\_\_\_\_

Applicant(s)

Shri K.E.V. Nair

To

Respondent(s)

V/s The Supdt of Police, CBI, Bangalore & another

1. Shri K.E.V. Nair  
Inspector of Police  
Central Bureau of Investigation  
Special Police Establishment  
107, Ground Floor  
Hebbal Agricultural Farm Post  
Ganganahalli  
Bangalore - 560 024
2. Dr M.S. Nagaraja  
Advocate  
35 (Above Hotel Swagath)  
1st Main, Gandhinagar  
Bangalore - 560 009
3. The Superintendent of Police  
Central Bureau of Investigation  
SPE Division  
Bangalore - 560 024

4. The Deputy Inspector General of Police  
Central Bureau of Investigation  
Hyderabad  
Andhra Pradesh
5. Shri M. Vasudeva Rao  
Central Govt. Sng Counsel  
High Court Building  
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/ ~~STAY~~ / ~~INTERIM ORDER~~  
passed by this Tribunal in the above said application(s) on 7-9-88.

Encl : As above

DEPUTY REGISTRAR  
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 7TH DAY OF SEPTEMBER, 1988.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy,

.. Vice-Chairman.

And

Hon'ble Mr. L.H.A. Rego,

.. Member(A).

APPLICATION NUMBER 787 OF 1988

K.E.V. Nair,  
Aged 38 years,  
S/o late Karunakara Pillai,  
Inspector of Police,  
Central Bureau of Investigation,  
Special Police Establishment,  
107, Ground Floor,  
Hebbal Agricultural Farm Post,  
Gangnahalli,  
Bangalore-560 -24.

.. Applicant.

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

v.

1. The Superintendent of Police,  
CBI, SPE Division,  
Bangalore.
2. The Deputy Inspector General Police,  
Central Bureau of Investigation,  
HYDERABAD.

.. Respondents.

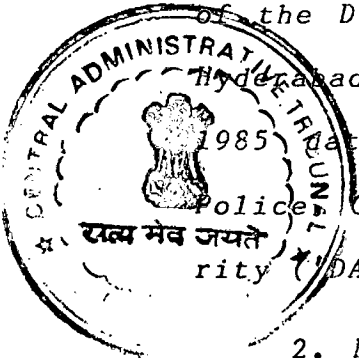
(By Sri M. Vasudeva Rao, Standing Counsel)

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

O R D E R

In this application made under Section 19 of the Administrative Tribunals Act, 1985 ('the Act') the applicant has challenged Order NO. 1703/PF/KEVN/CBI/BLR/HR dated 25/26-5-1987 (Annexure-A5) of the Deputy Inspector General of Police, CBI, Hyderabad Zone, Hyderabad and the Appellate Authority ('AA') and Order No. 270/- dated 31-12-1985 (Annexure-A3) of the Superintendent of Police, CBI, SPE Division, Bangalore and the Disciplinary Authority ('DA').

2. From August, 1981 to December, 1981 with which period only



we are concerned, the applicant was working as Police Inspector, CBI, Special Police Establishment, Cochin ('Inspector'). In the course of his duties as Inspector, the applicant dealt with the activities of one Sri Hrudayadas, a contractor of a Government Company called Fertiliser and Chemical Travancore Limited ('FACT') situated at Alwaye of Kerala State.

3. In connection with the seizure and retention of records from FACT and an incident stated to have occurred on 20-12-1981, the DA, by his Memo No.A2/II/Misc./85/ADM/BLR dated 15-11-1985 ('Charge Memo') (Annexure-A1) initiated disciplinary proceedings against the applicant under the Delhi Special Police Establishment (Subordinate Ranks) (Discipline and Appeal) Rules, 1961 ('the Rules') framed by the President under the proviso to Article 309 of the Constitution on the charge appended in Annexure-I to the same, which reads thus:

That Sri K.E.V.Nair, while functioning as Inspector of Police, SPE, CBI, Cochin during the period September, 1981 and December, 1981 committed misconduct and failed to maintain absolute integrity, devotion to duty and acted unbecomingly of a public servant, inasmuch as he collected unauthorisedly certain files from FACT and kept them with him and transported his household articles from his old residence to his new residence on 20-12-1981 without paying charges as detailed in the statement of allegations vide Annexure-II and thereby contravened Rule 3(1)(i) to (iii) of the Central Civil Services (Conduct) Rules, 1964.

In Annexure-II to the Charge Memo viz., the Statement of Allegations, this is elaborated.

4. In answer to the Charge Memo, the applicant filed his statement of defence ('statement') before the DA denying the charges levelled against him.

5. On an examination of the Charge Memo, the statement and the records, the DA by his Order dated 31-12-1985 (Annexure-A3) holding the applicant guilty of the charges, inflicted on him the penalty of 'withholding the next two increments for

a period of two years not affecting the future'. Aggrieved by this order, the applicant filed an appeal before the AA, who by his order dated 25/26-5-1987 (Annexure-A5) dismissed the same. Hence, this application.

6. The applicant has urged more than one ground as justifying our interference. We will notice and deal with them in due course.

7. In their reply, the respondents have supported the orders on the very grounds stated by them and also on other grounds and have produced their records at the hearing.

8. Dr.M.S.Nagaraja, learned counsel for the applicant, contends, that the order made by the AA which does not deal with the material contentions urged by his client in his appeal, on questions of fact and law, was not a speaking order and is illegal. In support of his contention Dr.Nagaraja strongly relies on the ruling of the Supreme Court in *RANCHANDER v. UNION OF INDIA* (AIR 1986 SC 1173).

9. Sri M.Vasudeva Rao, learned Additional Central Government Standing Counsel appearing for the respondents sought to support the order of the AA.

10. The Rules substantially follow the Central Civil Services (Classification, Control and Appeal) Rules, 1965 ('the 1965 Rules') which generally regulate the conduct of disciplinary proceedings against all other civil servants of the Union of India. Rule 22 of the Rules corresponds to Rule 27 of the 1965

11. In his appeal memo, which runs to 40 pages, the applicant had urged a large number of grounds, on questions of fact and law, which according to him justified the interference of the AA.

12. On the appeal of the applicant, the AA in his order



states thus:

Please refer to your office order No.270/1985 dated 31-12-1985 awarding a minor penalty to Inspector K.E.V.Nair. I have carefully perused the enquiry report of SP, CBI Cochin into the allegations against the delinquent officer.

I have also carefully studied the explanation of the delinquent officer.

The enquiry report substantiated by statements of witnesses casts a doubt on the integrity of the delinquent officer.

While collecting records during a confidential enquiry done from time to time, the second allegation of utilising a contractor's truck for shifting personal effects of the delinquent officer has been proved.

The background facts of the pending files in the first allegation are definitely disreputable and though not proved casts a shadow on the integrity of the officer and raises a suspicion in ones mind about the conduct of this officer.

I feel there is no reason to set aside the minor punishment imposed. The appeal is dismissed.

In this order, the AA had not considered the material contentions urged by the applicant in his appeal on questions of fact and law and had not also conformed with the requirements of Rule 22 of the Rules. Even placing the most charitable construction on the language employed, we find it difficult to hold that the order of the AA is a speaking one. On this defect, we should normally set aside the order of the AA and remit the case to him for fresh disposal. But, we do not propose to do so and proceed to examine the validity of the order of the DA as affirmed by the AA.

13. Dr. Nagaraja contends that the AA had held that the first part of the charge levelled against the applicant was not proved and therefore, had not held him guilty of that charge.

14. Sri Rao refuting the construction suggested by Dr. Nagaraja contends that the AA had concurred with the findings of the DA and had held the applicant guilty of the first part of the charge also.

15. We have earlier set out the charge memo and the order of the AA in their entirety.

16. The charge levelled against the applicant is rather an amalgam. But, when the same is properly analysed and understood, we find, it consists of 2 charges, the first one relating to unauthorised collection and retention of the records seized or secured by the applicant from FACT and the second relating to the use of a vehicle for transportation of his goods on 20-12-1981 without payment of hire charges. We regret to state that the order of the AA besides being not a speaking order is also couched in a language which is not clear on what had been examined and dealt with on the first charge. But, notwithstanding the same, we must construe the same reasonably one way or the other.

17. In more than one place, the AA holds that the applicant was not guilty of the first charge viz., unauthorised collection of the files from FACT and their retention with him. We construe the order of AA on the first charge in this way only. We cannot read the same as suggested by Sri Rao. We need hardly say that as the AA in this capacity was competent to do so.

18. On the foregoing discussion, we hold that the AA had exonerated the applicant of the first charge.

19. Sri Rao strongly relies on confidential instructions issued by the Government or the CBI on 18-7-1973 in the matter of securing records and their retention by the officers of the CBI to sustain the finding of the DA on the first charge.

20. We have carefully read the circular instructions issued on 18-7-1973 by Government/CBI to which no reference had been made in the charge and the statement of allegations furnished to the applicant. We do not think that this Circular can be



read as prohibiting an officer from retaining the records for a period necessary for their examination by that officer. We cannot uphold the finding of the DA on the first charge on the basis of the Circular relied on by Sri Rao.

21. In his explanation, the applicant had set out in great detail all the circumstances on the collection of the files from the FACT and their retention also. Unfortunately the DA without referring to any of them but adverting to what is stated in the charge and statement of allegations had found the applicant guilty of the first charge. We are of the view that this was irregular and improper. On this score also we cannot sustain the finding of the DA on the first charge.

22. Dr. Nagaraja contends that the finding of the AA and the DA on the second charge viz., that the applicant had transported his household articles on 20-12-1981 from his old to new residence without making payment of hire charges to the transporter or the person that had arranged for their transport, was solely based on a statement of one Sri Jose, a transporter, the existence or truth of which had not been disclosed, was vitiated on more than one ground and was unsustainable.

23. Sri Rao contends that the finding of the authorities on Charge No.2 was based on relevant material and was not vitiated.

24. On the second charge, the finding of the AA is as perfunctory as it could be. In upholding the finding of the DA on this charge, the AA had not critically examined the order of the DA, the statement of Jose relied on by the DA and the grounds urged by the applicant in his appeal against them. On these, we consider it proper to ignore the finding of the AA on this charge also and deal with the same on the finding recorded by the DA.

25. In upholding that the applicant was guilty of the second charge, the DA had solely relied on the statement of one Sri Jose, owner of St. Xavier Lorry Service.

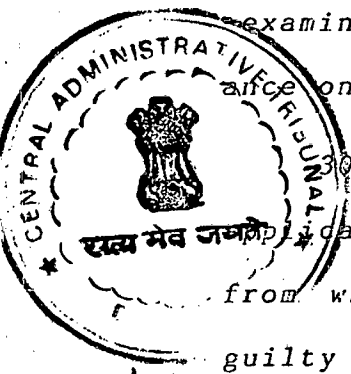
26. But, the DA in his Charge Memo (Annexure-I) or the Statement of Allegations (Annexure-I) had neither cited reference to the same nor had he furnished that statement to the applicant.

27. Rule 9 of the Rules regulates the procedure for imposition of minor penalties. In such a case, the DA must disclose all that he proposes to rely, to the delinquent, either in the charge, statement of allegations or atleast furnish a copy of the pertinent document to enable the delinquent to narrate his case in his statement of defence and adduce his own evidence, if any. This had not been done by the DA. From this it follows that in relying on the statement of Jose, the DA had contravened Rule 9 of the Rules and the principles of natural justice. On this short ground the finding of the DA on the second charge cannot be upheld.

28. We find that the statement of Sri Jose has been recorded in Malayalam language and an English translation of the same is kept in the file. We have read the English translation.

29. When the statement of Jose was recorded, the applicant was not present and was not afforded an opportunity to cross-examine him. We must, therefore, be cautious in placing reliance on the same.

30. In his statement, Sri Jose does not at all refer to the applicant on the charge. Sri Jose makes general statements from which it is not possible to hold that the applicant is guilty of the second charge.





31. In reaching his conclusion on the charge, the DA had not examined the statement filed by the applicant and the nature of the explanation offered by him.

32. When the statement of Sri Jose is excluded either for the reason that the same had been relied in contravention of the principles of natural justice or for the reason that it does not really implicate the applicant, then there is really no evidence to sustain the finding of the DA on the second charge also.

33. We have earlier noticed that the applicant holding the rank of a Police Inspector had made confidential inquiries against Sri Hrudayadas in August/September, 1981 and had submitted a report against that person in September, 1981 on the basis of which action had been taken by his superiors. If that is true, then it seems incredible to impute that the applicant had approached Sri Hrudayadas on 20-12-1981 to arrange for transport facilities as this is against normal human conduct.

34. What emerges from our above discussion is that the findings recorded by the AA and DA on the two charges are either based on 'no evidence' or are so perverse that no reasonable man would have ever reached them, on which grounds, we must take exception to them and annul them.

35. In the light of our above discussion, we hold that the impugned orders are liable to be quashed. We, therefore, quash the impugned orders. But, in the circumstances of the case, we direct the parties to bear their own costs.

36. Application allowed.

TRUE COPY



Sd/-  
VICE CHAIRMAN

Sd/-  
MEMBER (A)  
7.11.1988  
DEPUTY REGISTRAR (JDL)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE