

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00187/2018

Monday, this the 9th day of April, 2018

CORAM:

**HON'BLE Dr.K.B.SURESH, JUDICIAL MEMBER
HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER**

Sri.M.K.Aboo,
MES-109620,
Fitter Pipe (SK),
Military Engineer Services,
O/o. The Assistant Garrison Engineer (I) R&D,
Thrikkakara P.O., Kakkanad, Kochi – 682 021. ...Applicant

(By Advocate Mr.P.K.Madhusoodhanan)

V e r s u s

1. Chief Engineer R&D,
Military Engineer Services,
Picket, Secunderabad – 500 003.
2. The Chief Engineer,
Head Quarters, Southern Command,
Pune – 411 001.
3. Commander Works Engineer (NW),
Military Engineer Services,
Kataribagh, Naval Base P.O.,
Kochi – 682 004.
4. Union of India represented by its Secretary,
Ministry of Defence, South Block,
New Delhi – 100 001. ...Respondents

(By Advocate Mr.N.Anilkumar,Sr.PCGC [R])

This application having been heard on 4th April 2018 the Tribunal on 9th April 2018 delivered the following :

.2.

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A.No.180/187/2018 is filed by Shri.M.K.Aboo, Fitter Pipe (SK), Military Engineer Services, Kochi aggrieved by the issuance of the charge memo dated 22.11.2017 by the 1st respondent on the same matter in issue in which he had been awarded punishment by his Disciplinary Authority, the 3rd respondent.

2. The relief sought are as follows :

- (a) Call for the original of Annexure A-15 and set aside the same.
- (b) Issue necessary directions to the respondents not to harass, cause loss and hardship to the applicant further in the matter in issue involved in Annexure A-5 which came to the conclusion by issuance of Annexure A-7 order, as well as Annexure A-8 and Annexure A-9 punishment transfer posting to him.
- (c) Award costs of these proceedings to the applicant.

And

- (d) Grant such other and further reliefs as this Hon'ble Tribunal deems fit and proper.

3. The applicant has been in service with the Military Engineer Services for the last 34 years. On 22.2.2017 he had submitted a request to the 3rd respondent under Rule 48A of the CCS (Pension) Rules 1972 read with FR 56(K), for permission to retire voluntarily from service (Annexure A-1). In reply, he received a communication dated 20.3.2017 (Annexure A-2) intimating that the 3rd respondent has returned his application for VRS on the ground that his application could not be processed till the finalization of the

.3.

pending disciplinary case. The applicant goes on to state that one Shri.Rafeeq, Njarakkattil House, Edathala who is on inimical terms with the applicant, acting in connivance with a “military officer who belongs to Aranmula” started sending complaints against him. This has resulted in issuance of the show cause notice dated 30.11.2016 (Annexure A-5) calling upon him to submit his explanation for the charges mentioned in the memorandum failing which disciplinary action under CCS (Conduct) Rules, 1964 will be initiated against him. The applicant submitted his explanation on 1.12.2016, a copy of which is available at Annexure A-6 and requested that further action may be dropped. The 3rd respondent after considering the matter in issue decided to impose upon him the punishment of 'warning' in view of the reason that he has tendered his unconditional apology and also on the intimation from the bank that the applicant has not received any remuneration for services to the bank. The copy of the said 'warning' issued vide letter dated 19.1.2017 is at Annexure A-7.

4. The case against the applicant was that he had involved himself in the activities of a Service Cooperative Bank. However, he resigned from the post of Director as well as that of President of the Service Co-operative Bank, Edathala on 31.1.2017. What followed was an Office Order dated 14.2.2017 transferring him from GE(NS) Kochi to AGE (1) R&D, Kochi (Annexure A-8). As no disciplinary proceeding or any impediment for granting VRS to him was in existence the applicant again submitted a representation dated 12.4.2017 (Annexure A-10) requesting the 3rd respondent for grant of VRS.

.4.

The 3rd respondent on receipt of the same, forwarded it with his letter dated 1.5.2017 (Annexure A-11) to the Chief Engineer (NW) Kochi requesting to process the VRS application at the earliest. In the said communication there is a mention of the imposition of punishment as per Annexure A-7 and punishment posting order mentioned by the 3rd respondent. As there was no further news about his VRS application the applicant approached this Tribunal by filing O.A.No.180/525/2017 and obtained an order dated 17.7.2017 (Annexure A-12) wherein the 3rd respondent or any other authority vested with the power to consider the VRS application was directed to do so as expeditiously as possible. After the applicant filed C.P.No.180/150/2017, the 3rd respondent issued Annexure A-11 rejecting his VRS application. This action has also been challenged by the applicant by filing O.A.No.180/816/2017 before this Tribunal which has been admitted to file and is pending consideration.

5. At this stage, the applicant being on sick leave, was served with a letter by registered post which contains transfer/movement orders mentioned as Annexure A-13 and Annexure A-14 respectively. The applicant was constrained to challenge the same by filing O.A.No.180/811/2017 which was also admitted to file. Subsequently by communication No.10304/E1NB dated 2.2.2018 the respondents have cancelled the transfer order vide Annexure A-13 and the O.A was closed vide order dated 5.2.2018.

.5.

6. The matter underwent an altogether different twist at this stage when the 1st respondent issued the impugned memorandum dated 22.11.2017 (Annexure A-15) directing the applicant to submit within ten days of receipt, a written statement of defence on the charges mentioned therein. The applicant submitted his written statement which is at Annexure A-16 denying the Articles of Charges and also pointing out that further action on the same set of charges for which he has received punishment is in violation of Rule 12 and 13 of CCS (CCA) Rules and Article 20(2) of the Constitution of India. However, the 1st respondent has decided to continue with the action as evidenced from Annexure A-18 and Annexure A-19.

7. As grounds, the applicant submitted that Annexure A-15 is *per se* illegal, erroneous, contrary to law and tainted with malice apart from being arbitrary and malafides. This is owing to the fact that the competent authority had already imposed upon the applicant punishment as per law and there is no power vested in any authority to proceed against the applicant on the very same set of charges again. It is not a valid reason to argue that while one authority has decided to impose only a minor penalty on the applicant, a higher authority thinks that the punishment imposed is not to his liking and reopens the entire case afresh. Clearly the case involves the question of double jeopardy and harassment which is in violation of the relevant provisions of the Constitution of India as well as various sections of CCS (CCA) Rules. The applicant had severed

.6.

his connection with the Cooperative Bank, Edathala which had been the subject matter of the initial disciplinary action. He had submitted his explanation to the first show cause stating that he was not aware that prior approval of his employer was necessary before taking up the directorship. This had been found acceptable and the matter had been closed after the issuance of a warning. Now it is improper on the part of the authorities to rake up the issue again because of external pressure exerted by Shri.Rafeeq and others.

8. Per contra, the respondents have cited the pendency of the disciplinary proceeding as the reason for rejecting the application for VRS submitted by the applicant. In any case, no employee can claim VRS as a matter of right and the competent authority was well within its power to withhold permission. In so far as the first action that was taken against the applicant was concerned, he had admitted that he has not sought prior permission for taking up the directorship of the Cooperative Bank. The respondents go on to contend that the Disciplinary Authority had erred in closing the matter with a warning. It is the view of the respondents, as expressed in the reply statement that the individual had not been exonerated by the then Disciplinary Authority, viz, the Commander Works Engineers (NW), Kochi. No proper inquiry had been conducted and no witnesses were examined. It is only now that a proper departmental inquiry has been instituted as per the orders of the 2nd respondent.

9. It is further maintained by the respondents that there had been yet another complaint dated 10.2.2017 received against the applicant which alleges that the applicant continues to be a Director of the bank. As this particular complaint had not been a subject matter of the earlier inquiry it should be considered as an altogether new one and the present Disciplinary Authority viz. Chief Engineer (R&D) Secunderabad had directed that it should be pursued along with earlier complaints. It is reiterated that the applicant was let off with a warning and the entry “punishment posting” mentioned in Annexure A-11 was a mistake that has occurred because of an errant departmental official. This particular transfer came to be cancelled by the duly competent authority. To the specific contention that the respondents have appointed an officer subordinate to the applicant as the Inquiry Officer, it is maintained that such an action is not prohibited under CCS (CCA) Rules.

10. The applicant has filed a rejoinder to the reply statement wherein he has reiterated his contentions that the impugned order is the result of personal malice and is a clear instance of harassment. The applicant in support of his case relied on the judgment of the Hon'ble Apex Court in **Lt. Governor, Delhi and Ors. v. HC Narinder Singh (2004) 13 SCC 342** and judgment of the Hon'ble High Court of Kerala in **Ranganathan v. Assistant Commandant, C.I.S.F. Unit 2015 (2) KLT 429**. In the first judgment the Apex Court had ruled that a second charge sheet on a matter that had been subject of an earlier proceeding would amount to double punishment and would be untenable in law.

11. We have heard Shri.P.K.Madhusoodhanan, learned counsel for the applicant and Shri.N.Anilkumar, Sr.PCGC (R) on behalf of the respondents. As is seen from the facts on record there are other O.As filed by the same applicant relating to his voluntary retirement application and transfer of station. Here we are concerned with the specific issue relating to a charge sheet dated 22.11.2017 (impugned : Annexure A-15). It is seen that the applicant had been proceeded against on the ground that he had involved himself in the activities of a Service Cooperative Bank, being elected to its Director Board. As per Annexure A-7 issued after an inquiry, the 3rd respondent had brought the issue to closure by awarding a recorded warning to the applicant. He was also instructed to sever his connections with the bank which admittedly the applicant has done.

12. Keeping aside the issue of VRS application as well as his transfer which was subsequently cancelled, and which are in any case subject matter of other O.As before this Tribunal, the central issue here is the second charge memo. On a perusal of Statement of Articles of Charge annexed with the memorandum it is apparent that the very same charges which had been the subject matter of the show cause at Annexure A-5 have been resurrected and issued under three parts. All relate to his association with the Edathala Service Cooperative Bank, Aluva, Ernakulam between the period from 20.11.1992 to 30.11.2016. Viewed from this perspective, we are not willing to accept the averment made in the reply statement that the complaint forming the basis for the impugned show cause notice “is an altogether new one”. We

cannot discern any circumstances or instances in the impugned order which had not been raised in the earlier notice at Annexure A-5. Clearly the respondents have hung further action on the same peg on which they had issued the warning.

13. The applicant has maintained that the 3rd respondent who brought the earlier action to a conclusion as per Annexure A-7 is his Disciplinary Authority. In the reply statement the respondents maintain that it is the 2nd respondent “at present”. We do not have anything on record to dispute the averment made by the applicant regarding the competence of the 3rd respondent to act as a Disciplinary Authority over the applicant. Rather, the respondents have contended that “the warning issued by the Disciplinary Authority was erroneous and not in order”. The reason given is that the warning is not considered as a punishment of any kind under CCS (Conduct) Rules. The argument that the Disciplinary Authority may not have found it necessary to impose any of the punishments mentioned in CCS (Conduct) Rules at all does not seem to have entered into their consideration. The term “punishment posting” mentioned in Annexure A-11 is also categorized by the respondents in the reply statement as a “mistake”. The repeated mistakes and errors admitted by the respondents are unworthy of a storeyed, regimented organization and befits more the proverbial Tower of Babel, where each denizen speaks in a different voice.

.10.

14. After carefully examining the facts on record and the pleadings made before us, we conclude that the applicant has merit on his side. We allow the O.A and quash and set aside Annexure A-15 along with any consequent action undertaken. No costs.

(Dated this the 9th day of April 2018)

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

**(Dr.K.B.SURESH)
JUDICIAL MEMBER**

asp

List of Annexures in O.A.No.180/00187/2018

- 1. Annexure A-1** - True copy of the representation dated 22.2.2017, submitted by the applicant through proper channel, to the 3rd respondent.
- 2. Annexure A-2** - True copy of the reply to Annexure A-1, communication dated 20.3.2017 of the Assistant Garrison Engineer, R&D, Kochi, received by the applicant.
- 3. Annexure A-3** - True copy of the letter dated 15.3.2017 by the 3rd respondent.
- 4. Annexure A-4** - True copy of the letter dated 6.3.2017 of the 2nd respondent.
- 5. Annexure A-5** - True copy of the show cause notice dated 30.11.2016, to the applicant issued by the 3rd respondent.
- 6. Annexure A-6** - True copy of the explanation dated 1.12.2016 submitted by the applicant.
- 7. Annexure A-7** - True copy of the 'warning' issued vide letter dated 19.1.2017 by the 3rd respondent.
- 8. Annexure A-8** - True copy of the order dated 14.2.2017.
- 9. Annexure A-9** - True copy of the letter/movement order, dated 18.2.2017 issued by the 3rd respondent to the applicant.
- 10. Annexure A-10** - True copy of the representation dated 12.4.2017 submitted by the applicant.
- 11. Annexure A-11** - True copy of the letter dated 1.5.2017 by the 3rd respondent on receipt of Annexure A-10.
- 12. Annexure A-12** - True copy of the order dated 17.7.2017 in O.A.No.180/525/2017 on the file of this Hon'ble Tribunal.
- 13. Annexure A-13** - True copy of the movement order No.10304/767/EINB dated 27.9.2017 issued by the 3rd respondent.
- 14. Annexure A-14** - True copy of the office order No.59/2017 dated 28.9.2017 issued by the 3rd respondent.
- 15. Annexure A-15** - True copy of the Memorandum dated 22.11.2017 (except the listed documents in Annexure AIII) of the 1st respondent.

16. Annexure A-16 - True copy of the written statement dated 30.11.2017 through proper channel, submitted by the applicant before the 1st respondent.

17. Annexure A-17 - True copy of the letter No.10612/MK Aboo/Kochi/08/E1C dated 29.6.2017 by the 1st respondent to the second respondent.

18. Annexure A-18 - True copy of the No.10612/MK Aboo/Kochi/75/E1C dated 22.12.2017 issued by the 1st respondent.

19. Annexure A-19 - True copy of the No.10612/MK Aboo/Kochi/76/E1C dated 22.12.2017 issued by the 1st respondent.

20. Annexure A-20 - True copy of the notice dated 7.2.2018 of the Inquiry Authority issued to the applicant.

21. Annexure A-21 - True copy of the daily order sheet dated 12.2.2018 issued to the applicant.

22. Annexure A-22 - True copy of the letter dated 26.2.2018 submitted to the Inquiry Officer.

23. Annexure A-23 - True copy of the Letter dated 17.2.2018 submitted to the Inquiry Officer.

24. Annexure R-1 - True copy of the letter dated 10.7.2017 issued by Commander Works Engineer (NW).

25. Annexure R-2 - True copy of the O.M.No.11012/6/2008 dated 7.7.2008.
