

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

Original Application No.180/01101/2017

Wednesday, this the 13th day of November, 2019

Hon'ble Mr.Bharat Bhushan, Administrative Member

Hon'ble Mr.Ashish Kalia, Judicial Member

Neeraj Singh, aged 45 years, S/o.Kalicharan Singh

Executive Engineer

Working as Joint Director at CE (NW) Kochi

Residing at MES Officers Mess

Katari Bagh, Naval Base P.O

Kochi 682 004

..... **Applicant**

(By Advocate – Mr.R.Sreeraj)

V e r s u s

1 Union of India, represented by its Secretary
To the Government of India
Ministry of Defense
New Delhi – 110 001

2. The Engineer-in-Chief
Military Engineer Services
New Delhi – 110 001

..... **Respondents**

(By Advocate – Mr.N.Anilkumar,SCGSC)

This Original Application having been heard on 8.11.2019, the Tribunal on 13.11.2019 delivered the following:

ORDER

Per: Mr.Bharat Bhushan, Administrative Member

Original Application No.180/01101/2017 is filed by Mr.Neeraj Singh, Executive Engineer, working as Joint Director at Chief Engineer (NW) Kochi, aggrieved by the order dated 19.4.2017 issued by the first respondent by which the penalty of “reduction to a lower stage in time scale of pay by one stage for a period of three (03) years, without cumulative effect and not adversely affecting his pension” was imposed on him, a copy of which is at Annexure A-1. The reliefs sought in the Original Application are as follows:

- “(i) To quash Annexure A-1 and direct the respondents to grant the applicant all the consequential benefits flowing out of that within a time frame to be prescribed by this Hon’ble Tribunal.
- (ii) Such other relief as may be prayed for and this Hon’ble Tribunal may deem fit to grant.
- (iii) Grant the cost of this Original Application. “

2. It is submitted that the applicant was proceeded against under Rule 16 of the CCS(CC&A) Rules. A copy of the Charge Memorandum dated 25.4.2016,

issued by the first respondent is at Annexure A-2. Applicant had denied the charges levelled against him by filing a Written Statement of Defense. He contended that in the alleged incident there has been no element of fraud or faking of documents, but it is just an instance of an inadvertent error. He requested that the proceedings may be dropped, or else, an Inquiry may be instituted giving him an opportunity to defend himself. A copy of the Written Statement of Defense dated 2.8.2016 submitted by the applicant to the first respondent is at Annexure A-3. However, the first respondent issued Annexure A-1 order, imposing the punishment, despite the applicant specifically seeking holding of an Inquiry. The first respondent did not exercise the discretion vested in him in this regard and there is not even a reference to such a request in Annexure A-1 order. The applicant maintains that Annexure A-1 order is vitiated on this count. He declares that the case had been declared “too petty” by the Central Vigilance Commission but has been instrumental in denying the applicant timely placement in the appropriate scale as also functional promotion due to him as can be seen from Annexure A-4.

3. As grounds, the applicant reiterates his contention that respondent no.1 had failed to exercise the discretion accorded to him to conduct an Inquiry, despite the applicant specifically requesting the same. Further, the applicant

maintains that there has been no consideration of the defence put forward by the applicant. The proceedings itself had been instituted 5 years after the alleged misconduct and such inordinate delay has greatly been to his detriment.

4. In the reply statement filed by the respondents, the nature of the misconduct indulged in by the officer have been detailed. It is stated therein that after his return from temporary duty, he had preferred a temporary duty claim amounting to Rs.2535/- on 3.8.2010 for travel by train and the claim was submitted through his Controlling Officer, a copy of which is at Annexure R-4. Again, on 20.12.2010, after a lapse of four months, the applicant preferred a temporary duty claim amounting to Rs.5150/- for the same travel by road in a taxi. Again, the claim was submitted through his Controlling Officer, a copy of which is at Annexure R-5. Based on the observation of the Audit Authorities, a Board of Officers comprising Presiding Officer, two members and a representative of Principle Controller Defence Account Western Command was convened and the Board recommended necessary action to be initiated against the delinquent officer. A copy of the Board proceedings is at Annexure R-7.

5. The Additional Director General (Technical Examiner) approved the recommendation and the matter was referred to Discipline and Vigilance Wing

of Engineer-in-Chief and subsequently to the Ministry of Defence. The Central Vigilance Commission, when asked for its advice, stated that the case was ‘too petty’ in nature but recommended initiation of minor penalty proceedings against the officer. The relevant details are at Annexure R-9. The Disciplinary Authority, after careful consideration of the recommendations of the Board, issued a Charge Memorandum dated 25.4.2016 (Annexure R-10). The applicant submitted his Statement of Defence and also requested for appointment of an Inquiry Officer and Presiding Officer as per Annexure R-10. Finally, the Disciplinary Authority issued the impugned order dated 19.4.2017 ordering “Reduction to a lower stage in time-scale of pay by one stage for a period of three (03) years, without cumulative effect and not adversely affecting his pension.”

6. It is stated that the applicant was well within his right to apply for a presidential review which he had not resorted to and instead, he rushed to this Tribunal. It is further stated that the Disciplinary Authority was well in its right to refuse to conduct an Inquiry because for an imposition of minor penalty under Rule 16 of CCS (CC&A) Rules 1965, no Inquiry is mandatory.

7. The contentions made in the reply statement have been further reiterated by an additional reply statement filed on 3.8.2018.

8. The applicant filed a rejoinder submitting that the contention that the Inquiry is not mandatory for proceedings under Rule 16 of CCS (CC&A) Rules is not correct and since the applicant had made a formal request for an Inquiry, the Disciplinary Authority ought to have considered it before peremptorily dismissing his request. In fact, there is no mention about the request at all in the impugned order imposing punishment. He goes on to quote HWR Wade & CF Forsyth in “Administrative Law”, 7th Edition, part IV, Chapter 11, ‘Over Rigid Policies’, *“an authority can fail to give its mind to a case, and thus fail to exercise its discretion lawfully, by blindly following a policy laid down in advance. It is a fundamental rule for the exercise of discretionary power that discretion must be brought to bear on every case: each one must be considered on its own merits and decided as the public interest requires at the time.”*

9. One reason for not allowing the request for an Inquiry made by the applicant was it would have caused delay. But this argument is preposterous as the respondents initiated the proceedings more than 5 years after the alleged incident. The respondents have filed an additional reply statement further

disputing the contentions raised in the Original Application as well as in the rejoinder. In the matter of dispensing with the Inquiry, it is stated that the Disciplinary Authority is not expected to blindly follow the policy laid down but has the freedom to either accept or deny the request of the applicant. It is further stated that the applicant has never been denied any due promotion. His name has been considered in DPC along with other eligible candidates and it has been ordered that the promotion may be given effect to after the expiry of the currency of penalty.

10. Heard Mr.R.Sreeraj, learned counsel for the applicant and Mr.N.Anilkumar, SCGSC, learned counsel for the respondents and perused the records.

11. The core of the applicant's defense is that despite his having sought for an Inquiry in his Written Statement of Defense so that he could defend himself properly, this was denied to him. In fact, there is no mention about the consideration extended to him in the impugned order. In Government of India O.M No.11012/18/85-Estt(A) dated 28.10.1985, following is stated on the subject of holding an Inquiry when requested by the delinquent officer.

“ Holding of an Inquiry when requested by the delinquent : Instructions:- The Staff Side of the Committee of the National Council (JCM) set up to consider revision of CCS(CCA) Rules, 1965, had suggested that Rule 16(1) should be amended so as to provide for holding an Inquiry even for imposition of minor penalty, if the accused employee requested for such an Inquiry.

2. The above suggestion has been given a detailed consideration. Rule 16(1-A) of the CCS(CCA) Rules, 1965, provides for the holding of an Inquiry even when a minor penalty is to be imposed in the circumstances indicated therein. In other cases, where a minor penalty is to be imposed, Rule 16(1) *ibid* leaves it to the discretion of Disciplinary Authority to decide whether an Inquiry should be held or not. The implication of this rule is that, on receipt of representation of government servant concern of the imputations of misconduct or misbehaviour communicated to him, the disciplinary authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed Inquiry and form an opinion whether an Inquiry is necessary or not. In a case, where a delinquent government servant has asked for inspection of certain documents and cross examination of the prosecution witnesses, the disciplinary authority should naturally apply its mind more closely to the request and should not reject the request solely on the ground that an Inquiry is not mandatory. If the records indicate that, notwithstanding the points urged by the government servant, the disciplinary authority could, after due consideration, come to the conclusion that an Inquiry is not necessary, it should say so in writing indicating its reasons, instead of rejecting the request for holding Inquiry summarily without any indication that it is applied its mind to the request, as such an action could be constructed as denial of natural justice. “

12. Mr.R.Sreeraj, learned counsel for the applicant, in support of his contention, called to his assistance the judgment of the C.A.T Jabalpur Bench in ***Samir Kumar Ghosh v. Union of India and Others*** reported in **1987 3 ATC 950** wherein it was decided that “it was not entirely within the discretion of the

disciplinary authority to summarily reject the request of the petitioner claiming a full enquiry, under Rule 16(1)(b) of the CCS (CC&A) rules, 1965 without recording any reasons for the same.” Hon'ble High Court of Kerala in ***Kunhikannan Nambiar v. Government of Kerala*** reported in **2002(1) KLT 420** decided that “the chargesheeted employee shall be given reasonable opportunity to defend his case and what is reasonable opportunity has to be decided in the facts and circumstances of the case and not solely based on the quantum of penalty that might finally be imposed on the employee.”

13. On an examination of the order imposing punishment, there is no reference made to the request of the delinquent officer for an oral Inquiry sought. While an Inquiry is not mandatory as per the O.M referred to above, it was necessary on the part of the Disciplinary Authority to either agree or disagree with adequate request thereof and from this perspective the proceedings adopted against the applicant appears flawed.

14. The respondents have sought to justify their decision on the ground that it would have led to delay which they could not afford. But if time was indeed of the essence, they ought not to have waited from 2011 to 2016 for initiating action. The respondents have also tried to oppose the Original Application on

the ground that the applicant had not exhausted all available remedies for redressal of his grievances. However, it seen that the order of the Disciplinary Authority was a presidential order and all that remained for the applicant was to file a memoranda before the President which cannot be construed as a regularly available mode for redressal of grievances.

15. We do not wish to comment on the culpability of the officer at this stage or on the seriousness of his alleged misconduct. Based on the facts before us, we quash the impugned order at Annexure A-1 and remand the case back to the Disciplinary Authority to consider the case again from the point of receiving the Written Statement of Defence. The request, the applicant has made for an Inquiry shall be duly considered and whether accepted or not, the reason should be recorded when further proceedings are taken. In view of the long delay which has already taken place, we direct that the entire proceedings, either way, should be completed within three months on receipt of a copy of this order. The Original Application stands allowed to this extent. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures

Annexure A1 - True copy of the Order No.C-13011/8/2015/D(vig) dated 19.4.2017 issued by the 1st respondent

Annexure A2 - True copy of the Memorandum No.C-13011/8/2015/D(vig) dated 25.4.2016 issued by the 1st respondent

Annexure A3 - True copy of the Written Statement of Defense dated 2.8.2016 submitted by the applicant to the 1st respondent

Annexure A4 - True copy of the Order No.70001/SE/14/2017 dated 30.11.2017 issued by the 2nd respondent

Annexure R1 - True copy of the visit programme

Annexure R2 - True copy of the movement order

Annexure R3 - True copy of the letter No.TW-139/LL/Q/ADGTE dated 29.7.2010

Annexure R4 - True copy of the Temporary Duty claim

Annexure R5 - True copy of the claim preferred by official

Annexure R6 - True copy of the Principal Controller of Defence Account, Western Command

Annexure R7 - True copy of the copy of Board proceedings

Annexure R8 - True copy of the relevant noting sheet

Annexure R9 - True copy of the OM dated 6.4.2016

Annexure R10 - True copy of the reply dated 2.8.2016

Annexure R11 - True copy of the letter dated 6.4.2016

.