

CENTRAL ADMINISTRATIVE TRIBUNAL**ERNAKULAM BENCH****Original Application No.180/00941/2017**

Mondaly, this the 25th day of November, 2019

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

Hon'ble Mr. Ashish Kalia, Judicial Member

K.Haridas, aged 64 years

Son of the late P.K.Krishna Paniker

Joint Assistant Director (Audi) (Compulsorily Retired)

Internal Audit Party No.1

Central Reserve Police Force, Chennai 600 065

Residing at Harimandiram, Karippur

Malayankeezhu (P.O), Thiruvananthapuram – 695 571 **Applicant**

(By Advocate – Mr.Millu Dandapani)

V e r s u s

1. Union of India, represented by the Secretary to Government of India
Ministry of Home Affairs, North Block
New Delhi – 110 001
2. The Director General, Directorate General
Central Reserve Police Force, Block No.1
CGO Complex, Lodhi Road, New Delhi – 110 003

3. The Deputy Inspector General of Police
 Group Centre, Central Reserve Police Force
 Talegaon, Pune, Maharashtra – 410 507 **Respondents**
(By Advocate – Mr.K.C.Muraleedharan,ACGSC)

This Original Application having been heard and reserved for orders on 20.11.2019, the Tribunal on 25.11.2019 delivered the following:

ORDER

Per: Mr.E.K.Bharat Bhushan, Administrative Member

Original Application No.287/2015 is filed by Mr.K.Haridas, Joint Assistant Director (Audit)(Compulsorily retired), Internal Audit Party No.1, Central Reserve Police Force, Chennai, aggrieved by the disciplinary proceedings initiated against him and subsequent punishment of compulsory retirement imposed upon him. The reliefs sought for in the Original Application are as follows:

“a. Quash Annexure A1 order dated 13.12.2010 issued by the 2nd respondent, Annexure A2 Charge Memo dated 14.4.2011 issued by the 2nd respondent, Annexure A6 order dated 19.9.2012 issued by the 2nd respondent and Annexure A12 order dated 22.8.2017 issued by the first respondent.

b. Declare that the applicant is not guilty of the allegations leveled against him by upholding the view in Annexure A3 Inquiry

Report and entitled to be duly retired on superannuation from service on 31.12.2012 with all service benefits.

c. Direct the respondents to regularize the service and retirement of the applicant and to disburse him his pay and allowances and retiral benefits by treating his retirement to be one on superannuation.

d. To grant such other reliefs as may be prayed for and the court may deem fit to grant, and

e. Grant the cost of this Original Application.”

2. Applicant had joined service as Lower Division Clerk during 1971 and after obtaining regular promotions, had come up to the rank of Joint Assistant Director in 2007. He was compulsorily retired from that rank. The brief facts of the case are as under:

3. When he was working as Assistant Director (Audit) IAP-1, CRPF, Chennai in the year 2010, on an official visit to Pune, he had requested the services of a Barber for massaging his body as he was suffering from painful swellings due to advanced Osteo Arthritis. The Barber, so provided, massaged him on 23.11.2010, 25.11.2010 and 27.11.2010. To his shock and dismay, he came to be served with an order of suspension dated 13.12.2010 (Annexure A-1) placing him under suspension w.e.f 17.12.2010. A copy of the Memo of Charges issued to him is at Annexure A-2 in which it has been alleged that the applicant had attempted to have unnatural sex with two Barbers on two different occasions

after asking for their services for body massage. The applicant submits that the facts as alleged were completely untrue. In the subsequent Inquiry conducted as per Rule 14 of CCS(CCA) Rules, 1965, the Inquiry Officer came to the conclusion that the allegations levelled against the applicant were not proved (Annexure A-3). However, the Disciplinary Authority chose not to agree with the Inquiry Report and a Disagreement Note was served on the applicant as at Annexure A-4. Annexure A-5 representation submitted by the applicant in reply to the Disagreement Note was rejected by the Disciplinary Authority and the penalty of compulsory retirement was imposed upon him (Annexure A-6). Applicant preferred an appeal to respondent no.1 as seen at Annexure A-7. Meanwhile, during the pendency of consideration of the appeal, the applicant had attained the age of superannuation and retired from service on 31.12.2012.

4. Aggrieved by the proceedings, the applicant approached this Tribunal through O.A 511 of 2013 which was allowed by Annexure A-8 order on the ground that the Disciplinary Authority imposing the punishment as well as the Appellate Authority who had rejected the appeal were one and the same. The 1st respondent was directed to hear the appeal afresh within a period of two months from the date of receipt of a copy of that order (Annexure A-9). Respondents challenged the same before the Hon'ble High Court, but the appeal

was dismissed by the Hon'ble High Court giving two more months' time for complying with the order of this Tribunal (Annexure A-10). When the applicant was called for hearing by the first respondent, he was under medical rest and submitted his argument note/representation dated 21.5.2017 as per Annexure A-11. However, the appeal preferred by the applicant came to be rejected vide Annexure A-12 order dated 22.8.2017. Hence he has approached this Tribunal again with the present O.A.

5. As grounds, applicant submits that the Appellate Authority's order at Annexure A-12 is a mechanical reproduction of the Disciplinary Authority's orders. The first respondent has merely paraphrased the contentions of the applicant with an intention to decline the same. It suffers for want of independent consideration of the contentions of the applicant and the Appellate Authority's order appears to have been formulated with a preconceived notion about the guilt of the applicant. No weightage has been given to the findings of the Inquiry Officer who ruled that the charges against the applicant were not proved. There is no case that the conclusions of the Inquiry Officer were perverse. This leads one to conclude that the first respondent is guilty of non-application of mind in rejecting the appeal filed by the applicant. The applicant had made serious charges against Shri.Randeep Dutta,DIG of the Station, where

the alleged incident had occurred and merely stating that Shri.Randeep Dutta has been exonerated by Presidential order, does not disprove the allegations made by the applicant. No credit has been given by the first respondent to the long and unblemished service record of the applicant.

6. The applicant maintains that there is adequate evidence brought in to show that he was suffering from skin disease during the days when these incidents are alleged to have occurred. While the order at Annexure A-12 acknowledges the submission of OPD slip dated 23.11.2010, no further inference appears to have been withdrawn on the claim made by the applicant regarding his physical condition. Applicant also maintains that the punishment imposed upon him has been totally disproportionate to the alleged misdemeanour. He relies on the decision in *B.C.Chaturvedi v. Union of India* (1995) 6 SCC 749; *Ranjit Thakur v. Union of India* (1987) 4 SCC 611 and *S.R.Tewari v. Union of India* (2013) 6 SCC 602 rendered by the Honourable Supreme Court with regard to disproportionate punishment. He also relies on the dictum in *Sadanandan Nair v. Central Bank of India* 2000(2) KLT SN 31 of the Hon'ble High Court of Kerala wherein it has been held that punishments are to be tempered with compassion.

7. Respondents have filed a detailed reply statement where the nature of the misbehaviour indulged in by the applicant has been described. The action was based on complaints lodged by two personnel who were deputed for massaging the applicant and the applicant was placed under suspension. The suspension order was revoked as per Annexure R-6 and a major penalty proceeding was drawn up vide Annexure R7. Applicant submitted Written Defence Statement denying all charges and after examination of the same, an Inquiry was ordered. The Inquiry Officer held that Charge in Article –I levelled against the applicant stands 'Not proved'. On obtaining the report of the Inquiry, the Disciplinary Authority disagreed with the conclusion on various grounds which are narrated in the Disagreement Note at Annexure A-4. That authority held the Charges against the applicant as 'Proved' on the principle of preponderance of probability. The representation submitted by the applicant was considered and rejected as no new facts were brought out in that representation. Major penalty of 'Compulsory Retirement' was imposed upon the applicant vide Annexures R-13 and R-14 orders. When his appeal to respondent no.1 came to be rejected as per MHA UO note dated 6.2.2013, the applicant filed O.A 511/2013 which allowed by this Tribunal setting aside Annexure A-8 order of the Appellate Authority with a direction to the Authority to analyse the evidence and circumstances independently, objectively and dispassionately within two months. In compliance with the direction of this Tribunal, which was upheld by

the Hon'ble High Court, the Appeal Authority which is named the first respondent, considered the appeal petition filed by the applicant and after due consideration of the entire case, rejected the appeal confirming the punishment imposed by the Disciplinary Authority.

8. Respondents submitted that the applicant was guilty of a very serious misdemeanour which is worthy of the major punishment which was imposed upon the applicant. The misconduct committed by him mentioned in the Charge Memorandum was proved on the basis of circumstantial evidence and statements of the personnel whom he tried to take advantage of. Absence of eye witnesses was not a mitigating factor as such acts as alleged are committed surreptitiously. It is mentioned that the applicant, using his senior position, had maneuvered matters in such a way that he was alone with the Barber(s) on both occasions and had propositioned them for an obscene act. The contention regarding the applicant's skin complaint is merely an excuse to justify his nefarious act. He was not suffering from any serious diseases.

9. Heard Mrs. Sumathi Dandapani, Senior Advocate on behalf of the applicant and Mrs. Deepa representing Mr. K. C. Muraleedharan, learned ACGSC on behalf of the respondents and perused all documents.

10. This is the second round of litigation. At the first instance, when the applicant had approached this Tribunal, the O.A had been allowed with a direction to the first respondent to consider the applicant's appeal afresh and dispose of the same within two months. Accordingly, respondent no.1 considered the appeal afresh and the same was rejected on the ground that it was devoid of any merit and re-consideration/modification of penalty already imposed upon the applicant was ruled out.

11. All procedures and legal formalities associated with imposition of punishment under CCS (CCA) Rules, 1965 were scupulously followed in the case. The suspension imposed upon the applicant was reviewed by the Review Committee as per the DoP&T O.M on the subject. After a preliminary inquiry was conducted, it was decided to initiate major penalty proceedings considering the seriousness of the charge. In the formal Inquiry, the charges were declared as 'not proved'. However, after examining the Inquiry Report, statements of witnesses and other documents, the Disciplinary Authority tentatively disagreed with the Inquiry Report and re-examined the case after obtaining the views of the applicant on the nature of disagreement. Finally, the Disciplinary Authority came to the conclusion that the charges are 'proved' on the principle of preponderance of probability and decided to impose punishment of 'compulsory

retirement'. Then again, as per the directions of this Tribunal in O.A 511/2013, the first respondent considered the case in detail and upheld the decision of imposing upon the applicant compulsory retirement.

12. In a case involving disciplinary action, the scope of judicial interference has been limited by various judgments of the Hon'ble Apex Court. In the case of ***State Bank of India v. Samarendra Kishore Endow*** (1994(1) SLR 516), the Supreme Court ruled that a High Court or Tribunal has no power to substitute its own discretion to that of the authority concerned. It reads:

"On the question of punishment, learned Counsel for the respondent submitted that the punishment awarded is excessive and that lesser punishment would meet the ends of justice. It may be noticed that the imposition of appropriate punishment is within the discretion and judgment of the disciplinary authority. It may be open to the appellate authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reason that the jurisdiction of that Tribunal is similar to the powers of the High Court under Article 226. The power under Article 226 is one of judicial review. It "is not an appeal from a decision, but a review of the manner in which the decision was made." In other words the power of judicial review is meant "to ensure that the individual receives fair treatment and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the Court".

Thus, the role of the Tribunal in a disciplinary matter is limited to the extent of examining whether all procedural requirements have been met and whether principles of natural justice have been adhered to.

13. On an examination of the facts before us, it is seen that the respondents have taken care to meet all requirements as per CCS(CCA) Rules in the matter of imposition of major penalty as well as the Office Memoranda issued by DoP&T from time to time. Every opportunity has been afforded to the applicant to defend his side and these opportunities have been fully utilised by him. The disagreement expressed by the Disciplinary Authority over the conclusions of the Inquiry Officer is within the prerogative of that authority. Thus, the principles of natural justice have been followed scupulously in the case.

14. The applicant has raised another argument that the punishment meted out to him is disproportionate to the alleged misconduct. We do not agree with him here. The Apex Court in certain orders referred in the Original Application by the applicant has indeed stated that a Tribunal or a Court, if at all they choose to interfere in a disciplinary case can consider whether the punishment meted out to an alleged offender is out of proportion with the misconduct cited. In the case at hand, the applicant has been accused of a very serious misdemeanour amounting to a depraved act on two occasions, soliciting unnatural sex from two low ranked personnel who were under his power. It is difficult to imagine a worse behaviour from an officer who is visiting an Armed Unit for audit. The Disciplinary as well as Appellate Authority, after due consideration, have come

to the conclusion that the charges are proved. Facts being so, we do not agree with the contention of the applicant that the punishment order is disproportionate to the act that he is accused of. Under the circumstances, the Original Application is dismissed as devoid of merit. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

Annexure A1 - True copy of the order No. D.IX/50/2010-CRC dated 13.12.2010 issued by the 2nd respondent.

Annexure A2 - True copy of the Memo No. D/IX/50-2010-CRC dated 14.04.2011 issued by the 2nd respondent.

Annexure A3 - True copy of the Enquiry Report dated 17.03.2010.

Annexure A4 - True copy of the Letter No.D.IX-50/2010-CRC dated 01-07-2012 issued by the 2nd respondent.

Annexure A5 - True copy of the representation dated 25-07-2012 submitted by the applicant to the 2nd respondent.

Annexure A6 - True copy of the order No. D.IX.50/2009-CRC dated 19.09.2012 issued by the 2nd respondent.

Annexure A7 - True copy of the appeal dated 10-11-2012 submitted by the applicant to the 1st respondent.

Annexure A8 - True copy of the Order No. D.IX/50/2010-CRC dated 21-02-2013 issued by the 2nd respondent.

Annexure A9 - True copy of the final order dated 21-01-2016 of this Tribunal in O.A. No. 511 of 2013.

Annexure A10 - True copy of the judgement dated 18.10.2016 in OP (CAT) No. 269 of 2016 of the Honourable High Court.

Annexure A11 - True copy of the representation dated 21.05.2017 submitted by the applicant to the 1st respondent.

Annexure A12 - True copy of the order F. No.D.IX-50/10-CRC dated 22.08.2017 issued by the 1st respondent.

Annexure R1 - Order No. D-IX-50/2010-CRC dated 13.12.2010.

Annexure R2 - Order dated 24.01.2011.

Annexure R3 - Order dated 14.03.2011.

Annexure R4 - Order dated 02.09.2011.

Annexure R5 - Order dated 17.02.2012.

Annexure R6 - Dte. Genl.CRPF order dated 24.08.12.

Annexure R7 - Memorandum No-IX-50/2010-CRC dated 14.04.2011.

Annexure R8 - Application dated 10.05.2011.

Annexure R9 - Presidential Order dated 23.08.2011

Annexure R10 - Presidential Order dated 04.10.2011.

Annexure R11 - The report of IO along with tentative reasons for disagreement of Disciplinary Authority.

Annexure R12 - Representation dated 25.07.2012.

Annexure R 13 - Order dated 19.09.2012

Annexure R14 - Order dated 10.10.12

Annexure R15 - Order dated 21.02.2013.

Annexure R16 - Order No. D. IX-50/10-CRC dated 22.08.2017.

Annexure A13 - The photocopy of the slip issued from the hospital for outpatient bearing No. 2925/10 dated 23.11.2010 and 8.12.2010 with the seal.

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