

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WP(C) .No. 35210 of 2009 (S)

AGAINST THE ORDER/JUDGMENT IN OA 1311/1999 of CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH DATED 15-07-2009

PETITIONER:

V.K.ARAVINDAKSHAN, AGED 67 YEARS
S/O.VELAYUDHAN, EX WELDER, CIFNET
RESIDING AT GIRIJA RAJ NIVAS, CHIRAKKAL
CHILAVANOOR, KADAVANTRA, KOCHI 682 020.

BY ADVS.SRI.M.R.HARIRAJ
SRI.SURAJ.S
SRI.P.A.KUMARAN

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT OF INDIA
MINISTRY OF AGRICULTURE, DEPARTMENT OF ANIMAL
HUSBANDRY AND DAIRYING, NEW DELHI-1

2. JOINT SECRETARY TO GOVERNMENT OF INDIA
APPELLATE AUTHORITY, MINISTRY OF AGRICULTURE
DEPARTMENT OF ANIMAL HUSBANDRY AND DAIRYING
NEW DELHI-1

3. DIRECTOR,CENTRAL INSTITUTE OF FISHERIES
NAUTICAL AND ENGINEERING TRAINING, DEWANS ROAD
COCHIN-16.

4. ADMINISTRATIVE OFFICER
CIFNET, DEWANS ROAD, COCHIN-16.

R1 TO 4 BY ADV. SRI.T.P.M.IBRAHIM KHAN,ASST.S.G OF INDIA
R1 & 2 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT P1 : TRUE COPY OF the AMENDED ORIGINAL APPLICATION NO.1311/1999 ON THE FILES OF the CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH, ALONG WITH the ANNEXURES

EXT P2 : TRUE COPY OF the COPY OF THE REPLY STATEMENT FILED BY the RESPONDENTS ALONG WITH ITS ANNEXURES IN OA 1311/1999

EXT P3 : TRUE COPY OF the REJOINDER FILED BY THE APPLICANT IN OA 1311/1999 WITH ANNEXURES

EXT P4 : TRUE COPY OF the ADDITIONAL REPLY STATEMENT FILED BY the RESPONDENTS ALONG WITH the ANNEXURES IN OA 1311/1999

EXT P5 : TRUE COPY OF the REPLY STATEMENT TO THE AMENDED OA 1311/1999

EXT P6 : TRUE COPY OF THE ARGUMENT NOTES SUBMITTED BY THE PETITIONER IN OA 1311/1999

EXT P7 : TRUE COPY OF the ARGUMENT NOTES SUBMITTED BY the RESPONDENTS IN OA 1311/1999

EXT P8 : TRUE COPY OF THE FINAL ORDER DATED 15.07.2009 IN OA 1311/1999 OF CAT ERNAKULAM BENCH

RESPONDENTS' EXHIBITS: NIL

True Copy /

P.A to Judge

**P.R.RAMACHANDRA MENON &
SUNIL THOMAS, JJ.**

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W.P(C).No.35210 of 2009

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Dated this the 6th day of August, 2015

JUDGMENT

P.R.Ramachandra Menon, J.

Challenge is against the order dated 15.07.2009 passed by the Central Administrative Tribunal, Ernakulam in O.A.No.1311 of 1999, whereby the order passed by the departmental authority on culmination of the disciplinary proceedings, awarding punishment of compulsory retirement, was held as correct and sustainable, holding that the same did not warrant any interference.

2. The sequence of events narrated in the writ petition shows that the petitioner herein, while working as a Welder in the department, was proceeded against and a charge memo was issued on 18.02.1983 mainly on two grounds; firstly that, he had left the work place much before the completion of working hours and secondly, that he had pursued an act with intent to cheat the Government through a false LTC claim.

3. A domestic enquiry was ordered and after completion of the enquiry, the enquiry officer found the petitioner/delinquent employee guilty for the charges levelled against him, based on which, punishment of 'compulsory retirement' was ordered. The

matter was took up in appeal, which however did not turn to be fruitful. This made the petitioner to pursue the remedy by way of review, where also the request was declined. Met with the circumstance, petitioner approached this Court by filing O.P.No.9238 of 1983, which was subsequently transferred to a Tribunal, where it was renumbered as TAK-676 of 1987. After considering the merits involved, interference was declined and the O.A was dismissed.

4. Much later, the petitioner preferred a representation before the concerned Minister, pursuant to which, Annexure-A6 order came to be passed, whereby it was observed that the punishment imposed upon the employee concerned was rather 'disproportionate' and further that the enquiry had necessarily to be conducted through an enquiry officer who was well aware of the local language. Based on the said order passed by the Minister, Annexure-A6 was issued on 6th May, 1992 for causing the matter to be reconsidered. Pursuant to the said proceeding, the matter was reconsidered by the concerned authority, but allegedly, without proper application of mind, the disciplinary authority confirmed the earlier order dated 10.10.1996. Since the appeal preferred against the said order came to be dismissed on 11.05.1999, petitioner

approached the Tribunal again by filing O.A.No.1311 of 1999. The said O.A. originally came to be allowed as per order dated 08.03.2001. A review petition was preferred therefrom, which came to be dismissed on 25.06.2001. This was sought to be challenged by the department by filing a writ petition before this Court. The orders under challenge were set aside and the matter was remitted to the Tribunal on 15.02.2005. The S.L.P. preferred by the petitioner against the verdict passed by this Court was dismissed by the Apex Court on 28.11.2008. Finally, the O.A. came to be considered and dismissed by the Tribunal as per order dated 15.07.2009, which is sought to be challenged by filing the present petition, raising various grounds, particularly contending that the enquiry had to be conducted by an officer who was well versed in Malayalam and that non-compliance with the said stipulation has resulted in much adverse consequences to the petitioner.

5. In the course of the proceedings, this Court required the learned counsel for the petitioner to produce a copy of the earlier verdict passed by the Tribunal, to ascertain whether this aspect which was sought to be pressed before this Court was raised earlier or considered by the Tribunal. This was more so in view of the submission made across the Bar that this aspect was never a

subject matter of consideration at any point of time. Today, when the matter is taken up for further consideration, a copy of the verdict passed by the Tribunal on 23.08.1989 in T.A.K.676 of 1989 has been produced by the learned counsel and submitted that the same was raised by the petitioner earlier. The petitioner was being represented by another lawyer at that point of time and that the learned counsel was not aware of the correct position nor was having a copy of the verdict passed earlier.

6. It is worthwhile to refer to the nature of the pleadings set forth and the contentions raised before the Tribunal, the crux of which have been extracted in paragraph 8 of the verdict passed in the said case, which is reproduced below:

“The four main grounds urged by the learned counsel for the petitioner before us at the time of the argument are as follows:-

i) The petitioner was not afforded sufficient facility for defending the case by appointing an experienced defence assistant of his choice.

ii) The request of the petitioner to produce relevant documents namely, the LTC claims of M/s.M Swaminathan, Director, CIFNET, Cochin and K.K.Ponnappan, TAD, CIFNET, Cochin, was not allowed and this caused serious prejudice to the petitioner;

iii) The request of the petitioner to appoint an Enquiry Officer who knows Malayalam was not granted;

iv) The petitioner was under suspension from the date of charge, but no subsistence allowance was given to him during the period of enquiry."

From the above, it is seen that there was a specific prayer from the part of the petitioner to appoint an enquiry officer who knew Malayalam and this aspect was considered by the Tribunal in the succeeding paragraphs of the verdict therein.

7. The 'first point' raised was considered in paragraphs 9 and 10, while the 'second point' raised was dealt with in paragraphs 11, 12 and 13. The 'third point' with regard to the claim for appointment of an enquiry officer who knew Malayalam. It has been observed by the Tribunal in paragraph 14 that the case projected before the Tribunal was not liable to be entertained under any circumstance. The reasoning given by the Tribunal, as it appears in paragraph 14 reads as follows:

"14. Coming to the third charge pertaining to the language problem, we think there is no substance in the contention because on a perusal of the file, it is seen that all the correspondence right from the very beginning

and all letters sent by the petitioner are in English. Apart from that he has not raised this issue as a preliminary question and pursued the matter either before the enquiry authority or before the appellate authority or revisional authorities. So he cannot now urge this ground to the disadvantage of the respondents and we are not inclined to accept the same.”

8. After hearing and after going through the materials as above, this Court finds that the issue now sought to be projected before this Court in the present writ petition was virtually the subject matter considered by the Tribunal way back in 1987 itself, when the verdict was passed in TA K - 676/87 (OP.9238/83), as early as on 23rd August 1989. The said verdict has attained finality and as such, the concerned Minister could not have sit in appeal on the verdict passed by the Tribunal.

The writ petition is devoid of any merit and it is dismissed accordingly.

Sd/-

P.R.RAMACHANDRA MENON
Judge

Sd/-

SUNIL THOMAS
Judge

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