

(27)

CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH.

O.A. 685/89

New Delhi this the 21st day of April, 1994.

Shri Justice V.S. Malimath, Chairman.

Shri P.T. Thiruvengadam, Member(A).

Prem Baboo,  
S/o Shri Vishamber Dayal,  
R/o M-621, Mangol Puri,  
Delhi. ...Petitioner.  
By Advocate Shri Shyam Moorjani.

Versus

1. Union of India through  
The Secretary,  
Ministry of Communications,  
Department of Post,  
Sanchar Bhawan,  
New Delhi.
2. Additional Post-Master General,  
Office of the Post Master General,  
Department of Post, Delhi Circle,  
New Delhi.
3. The Senior Superintendent,  
Air Mail Sorting Division,  
Indian Post and Telegraph Department,  
New Delhi.
4. Shri M.L. Sharma,  
Enquiry Officer/Superintendent,  
Circle Stamp Depot,  
Jhandewalan,  
New Delhi. ..Respondents.

By Ms Raj Kishori, Asstt. Supdt.(Courts), Deptt.  
Official.

ORDER (ORAL)

Shri Justice V.S. Malimath.

The petitioner, Shri Prem Baboo, was working as Sorting Assistant in the Postal Department. A disciplinary inquiry was held against him in the year 1984. The substance of the charge levelled against him is that he secured appointment as Sorting Assistant by making false representations about the marks he secured in the High School Examination and the division he secured and producing documents which are fabricating documents. The said inquiry

(62)

which was initiated in the year 1984 culminated in the order of dismissal being passed against him. The same was challenged in O.A. 462/86. That application was allowed on 11.3.1987 and the order of dismissal was quashed. Liberty was, however, reserved to hold a fresh inquiry in accordance with the law. The petitioner challenged the said order before the Supreme Court. The SLP was dismissed on 17.2.1988 as is clear from the order, Annexure A-2, obviously without notice to the respondents but directing that the inquiry should be completed within four months from the date of receipt of a copy of the order. Even before the order of the Supreme Court was passed, as aforesaid, the fresh chargesheet was served on 26.10.1987 as per Annexure A-3 and steps were taken to hold a regular inquiry. The charges having been denied by the petitioner, it became necessary to hold regular inquiry for which purpose an Inquiry Officer was appointed on 29.1.1988. The Inquiry Officer ultimately submitted his report holding the petitioner guilty of the charges levelled against him. The said findings were accepted by the disciplinary authority and he was dismissed from service by order dated 23.6.1988, Annexure A-21. The appeal against the said order was dismissed as per Annexure A-23, dated 28.10.1988. It is in this background that the petitioner has approached this Tribunal challenging the said orders.

2. Shri Shyam Moorjani, learned counsel for the petitioner, contended in the first instance that the entire disciplinary proceedings are vitiated on the ground that the Inquiry Officer Shri Sharma has shown procedural bias against him. It was,

therefore, urged that the petitioner did not have a fair opportunity of defending himself and effectively participating in the inquiry. Even before the inquiry was completed, the petitioner did make a request to the disciplinary authority to change the Inquiry Officer on the ground that Shri Sharma is shown procedural bias against him. The request was made as per Annexure A-7 dated 31.5.1988. The said request was examined and rejected by a considered order dated 03.6.1988, Annexure A-8. The disciplinary authority did not find any substance in the allegations of bias. That order was challenged by the petitioner before the Additional Post-Master General who also rejected the request of the petitioner by order dated 15.6.1988. We have perused the orders of the disciplinary authority as also the appellate authority. As both the orders are speaking orders giving reasons in support of not accepting the request of the petitioner to change the Inquiry Officer on the ground of allegations of bias, in our opinion, they have applied their mind and given cogent and satisfactory reasons in support of their orders. It is necessary to point out that it is not the case of the petitioner that there was any personal bias of the Inquiry Officer against him. He does not allege that he was on enemical terms with him or someone who was on enemical terms with him had tried to persuade and influence the Inquiry Officer to decide against the petitioner. The learned counsel for the petitioner, however, urged that the manner in which the inquiry was conducted shows that there

was procedural bias against the petitioner in the sense that he had made up his mind to hold the petitioner guilty and every step taken by him in the inquiry indicates the biased attitude of the Inquiry Officer. One fact that was highlighted was that the petitioner had asked for production of six documents which application was allowed. But only three documents were produced by the respondents. They took the stand that the remaining three documents are not readily available. It was urged that the Inquiry Officer ought to have compelled the production of the three documents as it is not their case that the three documents are not available or have been lost or mis-placed. The three documents the production of which the petitioner feels would have helped him to advance his case are:

(1) The register for the year 1977 regarding receipt of applications from the candidates seeking appointment.

(2) The notification issued by the PMG Delhi Circle and published in newspapers/periodicals inviting applications for the post, in question.

(3) The relevant file of the PMG's office in which the applications including that of SPS, so received, were dealt with approving the candidature of the SPS for appointment.

There is nothing to indicate that the petitioner made any further serious attempts to insist upon the production of these documents by convincing the Inquiry Officer that he would be greatly prejudiced and would not be in a position to proceed to defend himself if these documents were not made available to him. Such would have been the conduct of the petitioner had he felt that he would be handicapped

in his defence. The proceedings of the inquiry which have been summarised in the Inquiry Officer's report quite carefully and elaborately indicate the dates on which the case was listed before him from time to time. On almost all the occasions except a few the petitioner and his Defence Assistant were absent for one reason or the other. The evidence was, therefore, produced by the department and the inquiry concluded, the petitioner not being there to take the opportunity of producing the evidence in support of his case. No attempt seems to have been made to cross-examine the witnesses produced by the department. The primary evidence in regard to the charge levelled against the petitioner consisted of the Original Application form presented by the petitioner, the annexures to the same, namely, attested copies of the High School Certificate, High School Marks Sheet and the Character Certificate and the attestation form which the selected candidate was required to fill in before joining on duty. The documents which the petitioner complains were not furnished to him cannot be regarded/ such documents as the denial of which has caused prejudice to his defence. The register for the year 1977 regarding receipt of applications from the candidates seeking appointment may indicate that the petitioner's application was received which was duly processed and he was duly selected and appointed. So far as the notification inviting applications for the post, in question, is concerned, it will not in any manner advance the case of the petitioner. The only other document is the file of the Post-Master General's office in which the applications of the candidates including that of the petitioner were processed.

We fail to see how this would also advance the case of the petitioner. It is the admitted case of the petitioner that the respondents took note of the application form, attested copies of the marks sheets etc. when the petitioner was selected. They also took note of the subsequent attestation form which was filled in by him before joining duty. They had proceeded on the basis that whatever materials were before them were true and genuine documents and there was no occasion to doubt them. It was after a couple of years of appointment, they came to discover the fraud which is the subject matter of the charge levelled against him. Hence, it is not possible to take ~~that~~ the view that ~~the~~ failure on the part of the Inquiry Officer not to compel the authorities to produce these documents can be regarded as a circumstance showing procedural bias of the Inquiry officer against the petitioner. An other circumstance which was sought to be made use of is the fact that ex-parte inquiry came to be held against the petitioner even though the petitioner was sick and he had sent his applications for grant of leave on medical grounds. The Inquiry officer's report shows that he was not made aware of the petitioner seeking leave on medical grounds at the relevant points of time. He came to know about it only after the proceedings were held on the relevant dates. It was the duty of the petitioner if he was handicapped on account of his ailment to bring such facts to the notice of the Inquiry Officer and to seek adjournment of the inquiry to another date. It is not the case of the petitioner that he made such a request. Barring the first Medical Certificate,  all the other medical certificates have been taken

from the Private Medical Practitioner who has specifically stated that those certificates are not for court purposes. We find it is very difficult to understand the reason for such a reservation in the certificates. However, the Inquiry officer has said that the effect of such certificates is that these certificates cannot be relied upon in the court or quasi-judicial proceedings for getting exemptions from court attendance. He further said that the departmental inquiry is of quasi-judicial nature. Be that as it may, what is of substance of the matter is not so much as to who gave the medical certificate and from whom the petitioner took the treatment, but as to whether he brought these facts to the notice of the Inquiry Officer as and when the occasions arose. The petitioner always tried to shy away from the Inquiry Officer. The Inquiry officer repeatedly noted the conduct of the petitioner as an attempt of dilatoriness possibly hoping that if the dead-line of the four months is crossed without completion of the inquiry, during that period he may get the benefit of exonerating himself not on merits but on technical grounds. It is also said that the way in which the Inquiry Officer had cross-examined the witnesses indicates that he has been a judge and a prosecutor. It is necessary to point out that the petitioner not being present when the department produced the witnesses and examined them in support of their case, fairness required the Inquiry Officer to ask relevant questions to get the truth. It is not the law that the Inquiry Officer cannot ask any questions to a witness. He may not ask the questions when both the sides are effectively represented and cross-examine. The Inquiry Officer has a duty to ensure that truth comes out and if the examination and cross-examination has not helped

the truth to come out and the Inquiry Officers makes attempt to ask questions in this direction, we would not be justified in faulting the inquiry proceedings on that ground. None of the circumstances pressed into service, in our opinion, merit an inference that there was a reasonable apprehension in the mind of the petitioner that he would not get justice or a fair inquiry at the hands of the Inquiry Officer Shri Sharma. It is, therefore, not possible to accept the first contention of the learned counsel for the petitioner.

3. The second argument of the learned counsel for the petitioner is that the petitioner has been prejudiced in the matter of his defence by the non- production of the three documents. We have already discussed this aspect while dealing with the first point regarding bias. We have pointed out that the documents copies of which were not furnished to the petitioner are not such as to justify the inference that any prejudice has been caused to the petitioner by copies of the same not having been furnished to him. It is necessary to keep in mind that the primary charges levelled against the petitioner are in respect of the original application form, the attested copies of the marks sheets and the character certificate and the attestation form duly filled in by the petitioner after he was duly selected. Though the memo of charges does not contain all the particulars in this behalf, the details of imputations accompanying the same make it clear that in the application form itself the petitioner had stated that he had passed in first division securing 70% marks. He also furnished the marks secured in different subjects.   
the  
That/petitioner had only secured a 3rd division and

obtained 217 marks out of 500 marks is not disputed. The application form was accompanied by attested copies of the marks sheets which again shows the inflated marks indicating the total of 70% marks. It also shows that the petitioner has passed in first division. These are the materials which were produced by the petitioner himself. They are the basic materials. The other proceedings copies of which have been denied to the petitioner pertain to the manner in which they were examined, the manner in which they were processed and the manner in which the authorities acted on the same. It is an admitted fact that the respondents had believed the entry in the application form accompanied by the attested copies of the marks sheets and the character certificate and the entry in the attestation form. It is later that they discovered that a fraud has been committed by producing fabricating and bogus documents. We have, therefore, no hesitation in holding that failure to furnish copies of the three documents required by the petitioner did not cause any prejudice to the petitioner. Hence, there is no substance in the second contention.

4. It is urged that one Dhani Ram who was cited as a witness had not been examined in the case. The counsel for the petitioner is right in pointing out that Shri Dhani Ram was cited as a witness and was also an important witness. Dhani Ram is a person who had attested the High School Certificate and the marks-sheets as being true copies of the original certificate and the original marks-sheet. Dhani Ram has also given a statement as per Exhibit-6 to the effect that the signatures which are attributed to him on the attested copies of the High School certificate and the marks sheet are not his signatures. That statement of Shri

Dhani Ram, Exhibit-6 has been proved by the oral evidence of Shri R.S. Kardam. As the statement of Dhani Ram in this behalf has been duly proved, the department thought that it is unnecessary to examine him as a witness in this case. It is also interesting to note that the petitioner was not there and did not cross-examine the witness who proved the statement of Dhani Ram that the signatures on the attested copies are not that of Dhani Ram, obviously suggesting that they are forged signatures. Strict rules of evidence are not applicable to disciplinary inquiry. Hence, it was not obligatory to examine Dhani Ram as a witness as there was the previous statement which was duly proved by the evidence of Shri Kardam. The evidence already produced in the inquiry being sufficient and satisfactory to prove the charge levelled against the petitioner, failure to examine Dhani Ram cannot have the effect of vitiating the inquiry. Hence, it is not possible to accept the third contention either.

5. The last contention of the learned counsel for the petitioner is that the briefs of the department containing the summary of their arguments after the conclusion of the inquiry was not made available to enable him to give effective and satisfactory reply before the Inquiry Officer recorded his findings. The Inquiry Officer made his report on 21.6.1988. On 18.6.1988, the Inquiry Officer has recorded that he has received the written brief from the department and that copy of the same should be sent to the petitioner and that he should submit his reply on or before 21.6.1988. Ordinarily, one would have felt that the time given was too short, but then we cannot be unmindful of the order of the Supreme Court requiring completion of the Inquiry within a period of four months. The Inquiry

Officer felt that he has to complete the inquiry on or before 23.6.1988. Besides, it is necessary to point out that at every relevant point of time, the petitioner remained absent. If on 18.6.1988 the petitioner or his agent were present, there would not have been any difficulty at all. The petitioner knew that he had to be present on that date. He remained absent and the Inquiry Officer took the fair attitude of ensuring that it is despatched with utmost expedition to the petitioner. In the order of the appellate authority, this argument has been considered. He has noticed that the written brief of the department was sent by registered post to the petitioner to the address given by him and that it could not be served on him because the premises was locked. The appellate authority has taken the view that if the petitioner was not there in his house, at the address which had been given by him, he ought to have made proper arrangements for receipt of communications to him. If he has not done so, he cannot complain that he did not receive the written brief on or before 21.6.1988. The background of the case, therefore, shows that the conduct of the petitioner himself is unreasonable. Be that as it may, fairness requires that the petitioner should have an opportunity of knowing what is said against him. It is no more the law that if such an opportunity is not afforded, the only order that we ought to make is quashing of the order of dismissal and directing the opportunity being given by the Inquiring authority. As the matter has come before the Tribunal, it is open to us to examine what the petitioner has to say in reply to the written brief of the department. We, therefore, asked Shri Moorjani to make his submissions now that *✓ the petitioner has got in his possession and had enough*

time to understand and give his effective reply to the arguments in the written brief of the department. He submitted that apart from the arguments advanced which we have already discuseed, there is nothing more for the learned counsel for the petitioner to advance. As there is nothing more which merits examination and we are satisfied that on the material placed in the inquiry the charges have been satisfactorily proved and no other question survives for examination. The entire case is in a very narrow compass. The petitioner has made assertions firstly in the application form and secondly in the attestation form after selection that he had secured the inflated marks indicating that he had secured 70% marks though admittedly he did not secure such high marks. The attested copies of the High School Certificate and the Character Certificate also contain information about the inflated marks which the petitioner did not actually secure. It is the admitted case of the petitioner that he did not secure the marks which find place in the application form and the attested copies of the High School Certificate and the marks sheets and the attestation form. The only limited question for examination was whether it is the petitioner who presented these documents for obtaining appointment in his favour or not. All these documents have been produced and marked as Exhibit in the disciplinary inquiry after giving full opportunity to the petitioner to meet them. It is difficult to believe that all these documents have been implanted in the records to injure the rights of the petitioner. The petitioner has not made out the case that there is anybody interested who could have manipulated the records against him. It is difficult, in the circumstances, to draw the inference that these are not the

documents produced by the petitioner but were introduced in the records removing the original documents and statements presented by the petitioner. The circumstances are telltale and there is absolutely no scope for drawing such an inference. Failure on the part of the Inquiry officer to give adequate time to the petitioner to submit his arguments can not vitiate the proceedings as we have considered his arguments. There is another argument advanced by the learned counsel for the petitioner that the Inquiry Officer's report appears to have been kept ready and it was an idle formality of giving opportunity to the petitioner of submitting his arguments on the ground that the date fixed for submission of the report of the Inquiry Officer and the date on which the written brief was required to be submitted by the petitioner are the same, viz., 21.6.1988. If on 21.6.1988, the petitioner was required to submit written brief and if he had submitted one, the Inquiry officer could have examined the same and then prepared his report on the same date. No adverse inference, therefore, is possible. Our attention was, however, drawn to the fact that the copies of the written brief were received by the petitioner only on 25.6.1988 long after the Inquiry Officer submitted his report on 21.6.1988. We have already held that the petitioner has denied himself the opportunity of receiving the written brief in time. Secondly, we have ourselves considered all the arguments of the petitioner in this behalf and rejected them. Looked at from any angle, it is not possible to interfere with the decision of the disciplinary authority or the appellate authority.

6. For the reasons stated above, this petition fails and is dismissed. No costs.

P. T. Thiruvengadam

(P.T. Thiruvengadam)  
Member(A)

(V.S. Malimath)  
Chairman