

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 79 of 1991
T.A. No.

199

DATE OF DECISION 10/9/93

<u>Tara Chand Sharma</u>	Petitioner
<u>S/Shri Sant Lal & Pradeep Kumar</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & others</u>	Respondent
<u>Shri P.P. Khurana</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. J.P. Sharma, Member (J)

The Hon'ble Mr. B.K. Singh, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(Hon'ble Shri B.K. Singh, Member-A)

Heard the learned counsel for the applicant and perused the record of this case. The learned counsel for the respondents filed his written arguments regarding removal of the applicant from service under the provision of Rule 9 (1) of E.D.O.s. (Conduct & Service) Rules 1964. The removal order was passed by the Senior Superintendent of Post Offices, Gurgaon Postal Division, Haryana, which is at Annexure A-I of the record.

2. The applicant was appointed as E.D.O.A. w.e.f. 5.3.82 and was posted in Nangal Sirohi Post Office under Narnaul Sub-Division. He was 'put off duty' by respondent No. 4, Shri Bahadur Singh, S.D.I. (P) vide memo No. A-6/EDDA dated 7.3.87. There were several representations addressed by the applicant to the authorities on the subject of recall of 'put off' duty orders. Copies of the same were also sent to

the Post Master General, Ambala and Director General of Posts, New Delhi. A charge sheet was served under Rule 8 of E.D.As (Conduct & Service) Rules 1964 vide memo No. A-6/EDDA dated 9.10.87 by S.D.I.(P) Shri Ram Singh Yadav, Sub-Post Master, Nuh, was appointed as Enquiry Officer, Shri Mahender Singh L.S.G. Postal Assistant, Kund, as presenting officer. The articles of charges contained the following accusations against the applicant :-

- (i) He returned Regd. letter No: 1932 dated 24.1.86 with the remark, "not known". This letter was to be delivered to Smt. Chameili Devi, Village and Post Sirohi.
- (ii) The Second charge related to wrong delivery of two letters dated 11.10.86 and 6.12.86. These letters were delivered to Mrs. Laxmi Narain, S/o Chajju Ram of Village Sirohi, when these were meant for Mr. Laxmi Narain, S/o Shri Daulat Ram, Nangal Sirohi who was an army jawan. This wrong delivery resulted in expiry of the validity of Railway pass meant for journey to his place of Posting and also resulting in lot of in-convenience and expenditure which he had to bear from his pocket. He also lodged a complaint with the Sub-Post Master on the back of the envelope itself. This was admitting during the course of departmental enquiry of the applicant.
- (iii) The third charge related to the return of FPO 959 Money Order No. 4252 dated

4.11.86 amounting to Rs. 300/- remitted to Smt. Santara Devi, Post and Village Nangal, Sirohi. He did not care to ascertain the correct address of the payee.

(iv) The 4th charge related to his unauthorised absence from duty on 5.1.1987.

(v) The 5th charge related to his indisciplined behaviour resulting in an altercation with the S.D.I.(P) in a drunken condition and also holding out a threat to kill him in the presence of Shri Om Prakash, Postal Assistant and Shri Ram Avtar, U.D.C., Main Post Office, Narnaul.

3. The applicant was asked to show cause against these charges. He submitted his show-cause on 6.1.88. The Show cause was not found satisfactory and a departmental enquiry was launched against him. A perusal of the record will show that the departmental proceedings were conducted in depth giving full opportunity to the applicant to defend himself. It took almost seven months to complete the proceedings. The Petitioner wanted a copy of the charge-sheet in Hindi and his request was acceded to by the Enquiry Officer and a Hindi version of the charge-sheet was given to him. He was permitted to cross-examine the witnesses during the course of enquiry. The Enquiry Officer recorded the evidence and submitted his report to respondent No. 3 i.e. Senior Superintendent of Post Offices, Gurgaon, Haryana.

4. In his report the Enquiry Officer did not find him guilty of fraud or lack of integrity but found him

2

guilty on 3 counts i.e. delivery of 2 letters to wrong persons on 11.10.86 and 8.12.86 showing dereliction of duty and negligence. This did cause inconvenience to any Army Jawan whose Railway Warrants expired as a result of wrong delivery. He had to undergo a journey from his residence to Army Cantt., Delhi on his own to get fresh passes issued for his return journey. This fact has been admitted by the applicant during the course of enquiry. It has also been admitted by him that he returned the Money order No. 4252 dated 4.11.86 amounting to Rs. 300/- meant for Smt. Santara Devi, Post and Village Nangal, Sirohi. The explanation given was found unsatisfactory because he stated that it was none of his job to find out the correct address of the payee if complete address is not furnished to him.

5. The charge of unauthorised absence was proved which the applicant tried to cover up on the plea of 'urgent domestic matter' and production of a certificate from Dr. R.N. Sharma to the effect that he needed rest for a day on account of pain in his body.

6. As regards the 5th charge of misbehaving with the S.D.I. (P) it has been admitted by the applicant during the course of departmental enquiry that there was an exchange of hot words on the basis of which a complaint was also lodged with the Police and that the altercation between him and S.D.I. (P) came to an end on the intervention of Sub-Post Master.

7. A careful perusal of the enquiry report will indicate that the Enquiry Officer did not find any malafide intention or fraud in returning the Money Order. But the applicant was found guilty on other counts and accordingly the report was submitted with clear findings to the Senior Superintendent of Posts Offices. The disciplinary authority considered the

(B)

gravity of the charges of delivery of 2 letters on two different dates to wrong persons, return of Money Order, unauthorised absence and misbehaviour with a superior officer & sufficient ground to warrant his removal from service. He had failed to maintain absolute devotion to duty as per Rules 17 of E.D.D.As (Conduct & Service) Rules 1964. It is also evident from a perusal of the record of the departmental proceedings that the applicant had not made any protest or grievance at any stage, full opportunity was denied to him to defend himself. There was no allegation of bias or malafides during the course of the departmental enquiry which started on 20.2.88 and concluded on 8.9.88. The applicant was permitted to cross-examine the witnesses produced by the presenting officer and the examination and the cross-examination, both form part of the evidence recorded by the Enquiry Officer. The applicant was also allowed to submit his briefs in writing on 3.9.88. A copy of the enquiry report was enclosed with the order of removal communicated to him.

8. The appellate authority agreed with the punishment inflicted on the applicant and rejected his appeal. Since the question of bias was never raised by the applicant during the departmental proceedings, he cannot be allowed to raise the same after his removal from service being barred by law of estoppel. The departmental proceedings were conducted under the departmental rules and procedures laid down in E.D.As (Conduct and Service) Rules 1964.

9. The learned counsel for the applicant argued that the 'put off duty' extended beyond a period of 120 days against the instructions contained in D.G.P & T, New Delhi order No. 151/3/81- Vig III dated 25.8.81. The instructions are of a general nature and what disciplinary proceedings

D. D. S. and C. J. J.

are launched for a major penalty the question of recalling 'put off duty' does not arise.

10. It was further argued that the S.D.I. (P) Narnaul appointed the E.O. and P.O. vide his order dated 10.10.87 simultaneously with issuing of the charge-sheet dated 9.10.87. The E.D.As (Conduct and Service) Rules do not provide for representation after the charge-sheet has been served. Once a charge-sheet is served, appointment of an Enquiry Officer and presenting Officer is a must and if it is done simultaneously there is no irregularity or infirmity involved rather it helps in expeditious disposal of disciplinary proceedings which is a time consuming affair.

11. The learned counsel for the applicant has referred to the malice of facts and law and has cited the following case law :-

(i) Shri Rahman Vs. State of Assam 1986 (2) ATR 69 C.A.T., G.H.

(ii) S.D. Rai Guru Vs. Union of India 1990 (2) ATR 402 C.A.T., Cuttack.

These judgments have not taken into consideration what prof. S.A. De. Smith has stated in his treatise on 'Judicial Review of Administrative Action'. The case law on the point is thin but on principle it would be seen that where a report or determination lacking final effect may nevertheless have a serious judicial effect on the legally-protected interests of individuals (e.g. when it is a necessary pre-requisite of a final order), the person making the report or decision must not be affected by interest or likelihood of malice. In this case S.D.I.(P) who ordered the applicant to be 'put off duty' under provision of Rule 9 (1) of E.D.As (Conduct and Service) Rules 1964, was in no position to influence E.O. or P.O. once they were appointed.



Once the enquiry was launched, he was also in no position to influence his superior officer i.e. Senior Superintendent of Post Offices of Director Postal Services under whom he works. The charges of malice can not be extended to Senior Superintendent of Posts who is disciplinary authority or to Director Postal Services who is appellate authority. This charge this is baseless.

12. As regards the arguments of the learned counsel for the applicant that a copy of the enquiry report was not supplied to the applicant and this denial of a vital document vitiated the enquiry, the learned counsel for the respondents has argued that there was no question of supplying a copy of the enquiry report because E.O.As are not holders of the post nor are they regular employee of Government and the applicant's case is governed by E.O.As (Conduct and Service) Rules 1964, under which there is no provision for supplying the copy of the Enquiry report at the stage suggested by learned counsel for the respondents.

13. It may be worthwhile adding that the present case is not covered by the judgment of Hon'ble Supreme Court Page 571 of 1991 S.C. comprising Chief Justice Rangnath Mishra, Mrs. Justice P.B. Sawant and Mr. Justice Ramaswamy in the matter of Ramzan Ali Khan Vs. Union of India where the principles of natural justice were widened to include supply of a copy of Enquiry Report to the delinquent employee, so that he is not disadvantaged in the defence. In the present case the removal order was passed on 13.12.88 (Annexure A-1). Thus the arguments of the learned counsel for the applicant have no legs to stand.

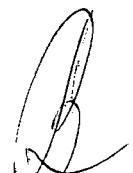
14. Learned counsel for the respondents referred to the order of dismissal passed by a Superior authority i.e. Senior Superintendent of Post Offices as incompetent.

This is totally wrong. S.D.I.(P) was a complainant in this case and also one who appointed Enquiry Officer and Presenting Officer and as such he though the disciplinary authority became an interested party and there was a likelihood of bias or malice affecting his judgment. A Superior Officer is fully competent to pass an order which a Junior Officer in the same hierarchy can pass. There is no infirmity at all. Ministers and Secretaries pass order in the name of the President when the latter even does not know what orders are being passed. If an appellate authority becomes a disciplinary authority as in this case, the Director Postal Services had to become appellate authority. The Senior Superintendent of Post Offices who was the disciplinary authority in this case in the interest of justice and fair play played the role of disciplinary authority and considered the Enquiry Report, the evidence, documents, and findings of Enquiry Officer and finally passed the punishment order on 30.11.88 agreeing with the findings of the Enquiry Officer that he was not guilty of fraud or lack of integrity but was guilty ~~was~~ of wrong delivery of two letters on two dates, return of money-order, unauthorised absence and misbehaviour with a Superior Officer. He took his independent decision about quantum of punishment.

15. As regards unauthorised absence and the production of a medical certificate as referred to by learned counsel for the applicant it has been pointed out by respondents that E.O.O.s are not governed by the provision of Rule 19 of the CCS Leave Rules 1972. The applicant remained absent without information and to cover it up, he produced a medical certificate. In their service conditions there is no provision to avail of leave on any ground without providing a substitute in order to avoid dislocation in delivery of letters and money-orders. The case of Shri Bihari Lal, Assistant Post Master, Fazilka Vs. Union of India & others as cited by the learned counsel for the applicant is not applicable in this case as APM is governed by CCS (Leave) 1972.

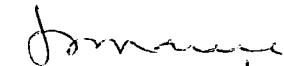
16. The learned counsel for the applicant raised the question of payment of Salary and allowances during 'put off period'. It was pointed out by the learned counsel for the respondents in his written arguments that E.D.As are not entitled for any payment of Salary or allowances for the 'put off duty period' under Rule 9 (3) of P & T E.D.As (Conduct and Service) Rules 1964. There was no malafide intention in keeping the E.D.A. on "put off duty" beyond 120 days.

17. Thus it would be evident that there are no infirmities and latches in the Enquiry Report or in the findings that the conclusions arrived at to the effect that the applicant was guilty of negligence, misbehaviour and dereliction of duties and was also a Shirker of responsibilities and duties assigned to him. In spite of the fact that the applicant was not a Government servant nor a holder of the post, protection under Article 311(4) was given to him. Neither the proceedings are flawed nor is there any scope to question the findings which entailed the order of removal inflicted on the applicant. Accordingly the application is dismissed as devoid of any merit. There will be no order as to costs.


(B.K. SINGH)
MEMBER (A)

NEW DELHI

DATED: /10/93


(J.P. SHARMA) 10/9/93
MEMBER (J)