

(99)
(8)

Court No.1

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A.No.464 of 1987

Madan Kishore Srivastava Applicant

Versus

Union of India & Others Respondents

Hon.Mr.Justice Kamleshwar Nath, V.C.

Hon. Mr. K.Obayya, Member (A)

(By Hon.Mr.Justice K.Nath, V.C.)

Shri O.P.Gupta for the applicant.

Shri Shishir Kumar for the respondents.

This petition under Section 19 of the Administrative Tribunals Act, 1985 is for quashing an order dated 1.10.86, Annexure-4 as modified by the appellate order dated 31.3.87, Annexure-6 whereby the applicant was removed from the employment as Sub Postmaster, Post Office Munshipurwa, Kanpur after departmental disciplinary enquiry.

2. By a chargesheet dated 14.3.84, Annexure-1 enquiry was instituted on seven heads of charges concerning partly of misappropriation of license fee for renewal of licenses of T.V. sets and partly for using used stamps for renewal of some other license. The Inquiry Officer in his report dated 19.8.86, Annexure-3 found some of the charges proved. The disciplinary authority Shri O.N.Awasthi, Sr.Suptd. of Post Offices found one more charge proved and passed an order of dismissal of the applicant on 1.10.86 by Annexure-4. The applicant filed an appeal dated 27.10.86, Annexure-5. The appellate authority also found some of the charges proved but converted the punishment of dismissal into removal.

Jn

3. Several grounds have been raised by Shri O.P. Gupta, the learned counsel for the applicant in this case. It is urged that copy of the enquiry report, Annexure-3 was not furnished to the applicant before the disciplinary authority passed the dismissal order dated 1.10.86, Annexure-4 and therefore there is a violation of the principles of natural justice. It is not disputed that a copy of the enquiry report was not furnished. The settled law now is, as upheld by the Supreme Court in the latest decision of Union of India Vs. Mohd. Ramzan Khan and Others reported in Judgements Today 1990(4) SC 456 ~~holding~~ that supply of the copy of the enquiry report is a part of the Rule of natural justice and therefore failure to furnish a copy vitiates the punishment order. This petition succeeds on that simple ground.

4. The learned counsel for the applicant, however, urges that in view of other infirmities it will not be appropriate to remand the case for rehearing by the disciplinary authority and that the punishment should be totally quashed. It is urged that the Inspector who held the preliminary enquiry leading to the formulation of the charges namely B.P.Dixit, was prejudiced against the applicant. That is wholly immaterial. The proceedings of preliminary enquiry are irrelevant for the purposes of the regular departmental disciplinary enquiry unless some material of the preliminary enquiry is made use of in the course of the disciplinary enquiry; and in that event also the whole of the preliminary enquiry is not relevant, only so much

D

AP
13
(10)

- 3 -

of the material is relevant as is actually used in the disciplinary enquiry. There is nothing to show that any material of the preliminary enquiry was used. At any rate B.P.Dixit was examined as a witness for the Department as enquiry proceedings, even if he was prejudiced against the applicant it was wholly immaterial.

5. The next point urged is that disciplinary authority himself was prejudiced against the applicant. In para 6(x) of the application it is stated that the applicant had made a complaint against the disciplinary authority namely D.N.Awasthi on 10.8.86 in respect of which an enquiry was made and it was found that he had abused public funds. There is no specific denial of this allegation in the Counter Affidavit although in para 15 thereof it is stated that the allegation is "emphatically denied." Emphatic denial is not enough, denial should be specific. The copy of the complaint dated 10.8.86 is contained in the record. We notice that this complaint does not contain any specific allegation against D.N.Awasthi. There are allegation of improper purchases in the various post offices under the control of Sr.Suptd. of Post Offices; the closest statement regarding the Sr.Suptd. of Post Offices is that the complaints sent by the Sub Postmaster of the area to the Sr.Suptd. of Post Offices are removed from the record by the staff of the Sr.Suptd. of Post Offices. This is an allegation of misconduct of the staff and not of the Sr.Suptd. of Post Offices. We may mention that in the memo of appeal, Annexure-5, the applicant has

Q2

AP
11

- 4 -

referred to this very complaint. We are satisfied therefore that the allegation of bias of D.N. Awasthi against the applicant is wholly inadequate and does not prove bias.

6. The next point urged is that the persons who got the licenses renewed have not stated that the money was handed over to the applicant. That is a question of fact concerning appreciation of evidence and since we are inclined to remand the case to the disciplinary authority, we do not consider it appropriate to go into evidence and appreciate it ourselves.

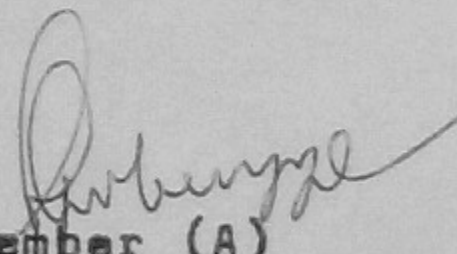
7. The learned counsel for the applicant next referred to para 6(xviii) of the application and says that relevant documents were not supplied or shown to the applicant "inasmuch as that the applicant was not given a copy of the preliminary enquiry report enabling him to defend himself". No other document has been detailed; the grievance, in this paragraph, — is confined to non supply of a copy of preliminary enquiry report ^{which} is not relevant. The learned counsel for the applicant refers to para 6(xix) in this context which mentions "that all the necessary documents were not inspected thoroughly during the preliminary enquiry". Whether the documents were inspected thoroughly or not during the preliminary enquiry is also not material for the purpose of disciplinary enquiry.


8. In view of the failure of the concerned authorities to furnish a copy of the enquiry report dated 19.8.86 contained in Annexure-3, the punishment

Q

orders must be quashed and the case must go back to the disciplinary authority. We are informed by the learned counsel for the applicant that Shri D.N.Awasthi is no longer Sr. Supdt. of Post Offices of the Division. It is expected therefore that the final orders in this case will be passed by some other competent authority other than D.N.Awasthi.

9. In the result, the impugned orders dated 1.10.86, Annexure-4 and 31.3.87, Annexure-6 are quashed. Since the applicant has already been furnished with a copy of the enquiry report alongwith the punishment order, it will not be necessary to furnish a copy thereof afresh. The applicant may make a representation regarding the enquiry report to the disciplinary authority within a period of one month from today whereupon the competent disciplinary authority shall consider the representation and the case as a whole on all the points which may be raised by the applicant and pass final orders in the disciplinary enquiry within a period of two months from the date of receipt of the applicant's representation. In the meantime, the applicant is reinstated to the old post and shall be paid wages. Parties shall bear their costs.


Member (A)


Vice Chairman

Dated the 20th Dec., 1990.

RKM