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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 739 OF 1988.
Tx. No.

DATE OF DECISION 14-8-1991.

Shri M.G. Koringa, Petitioner

Mr. D.M. Thakkar, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. P.M. Raval, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. S. Santhana Krishnan, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ys*
2. To be referred to the Reporter or not? *Ys*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

Shri M.G. Koringa,
"Kailash Nandan",
Behind Patel Boarding,
Morbi Road,
Rajkot - 360 004.

..... Applicant.

(Advocate: Mr.D.M.Thakkar)

Versus.

1. Union of India
(Notice to be served through
The Secretary,
Ministry of Communication,
New Delhi.)

2. Senior Superintendent of
Railway Mail Service,
"RJ" Division,
Rajkot.

3. The Director of Postal Services,
Rajkot Region,
Rajkot.

..... Respondents.

(Advocate: Mr. P.M. Raval)

J U D G M E N T

O.A.No. 739 OF 1988

Date: 14-8-1991.

Per: Hon'ble Mr.M.M.Singh, Administrative Member.

The applicant Postal employee was removed from service by order dated 18.11.1983 in a disciplinary inquiry held against him. The applicant challenged the order in a Regular Civil Suit filed in the Civil Court, Rajkot without exhausting the remedy of preferring appeal according to his service rules. The suit was transferred to this Tribunal when the Central Administrative Tribunal was established. It was registered as T.A. 1365/86 in this Bench. By a

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Bench order dated 20.6.1988, it was disposed of with direction that if the applicant files his appeal application within three weeks of the date of the order, it shall be disposed of by the appellate authority within a period of four months without raising the question of limitation. The appeal application was disposed of by the Director, Postal services, Rajkot region, Rajkot by order dated November 2, 1988 rejecting the application. The appellate order also stated that SRM Rajkot Division will issue suitable orders about the treatment and regularisation of the period of suspension of the applicant from 13.10.1983 to 18.11.1983. After the order of the appellate authority, the applicant filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 once again without exhausting the remedy of filing revision application available to him in the service rules.

2. We heard learned counsel Mr.D.M.Thakkar for the applicant. Nobody appeared for the respondents at the final hearing. However, the respondents had filed their written statement which we have taken into consideration. The respondents have averred that against the appellate order dated 2.11.1988 the available remedy of filing revision petition under Rule 29 of the CCS(CCA) Rules, 1965 was not exhausted by the applicant who filed a premature application in this Tribunal.

3. Rule 29 of the CCS(CCA) Rules (for short, the Rules) contains the provision for revision. Rule 29(3) provides that an application for revision shall be dealt with in the same manner as if it were an appeal under the Rules. Thus under this provision when a revision application is filed by a Government

servant against the appellate order, the same is required to be dealt with as if an appeal under the Rules. Though called revision application, the provisions of the rules in fact make it a second appeal application. As the remedy of filing revision application had not been exhausted by the applicant, the respondents' objection to the original application that the same is premature is validly taken. A wrong declaration came to be furnished in the application that the applicant availed of all the remedies available to him under the relevant Rules. Though it is filed in clear violation of provisions of Section 20 of the Administrative Tribunals Act, 1985, we proceed to decide the application as an absolutely exceptional case as the application was admitted by order dated 20.12.1988 of a Bench of this Tribunal and the authority of the Tribunal not completely barred even in such applications.

4. In para 7 of the application, the applicant has alleged that he was not supplied with the enquiry officer's report as required under the Rules. In reply to this para, the respondents have averred that the disciplinary authority had reproduced the enquiry report in his order and therefore no prejudice was caused to the applicant because of nonsupply of the inquiry officer's report. This reply is not acceptable.

5. Rule 17 of CCS(CCA) Rules provides that a copy of the report of the enquiry authority and a statement of findings of the disciplinary authority together with reasons for disagreement if any with the findings of the enquiry authority unless they have already been supplied to a delinquent should be supplied. Admittedly

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as seen from the averments of the respondents, copy of the Inquiry Officer's report was not supplied to the applicant at all resulting in noncompliance with the statutory rules which by itself is sufficient ground to allow the application. In addition, not furnishing copy of the enquiry report to delinquent before the issue of the final order has now been, in the judgment of the Supreme Court in Union of India & Ors. Vs. Mohmad Ramzan Khan, (1991(1)SCC 588),

held to be resulting in prejudice as the delinquents are thereby denied opportunity to make representation against it. The order of the disciplinary authority and of the appellate authority above referred have therefore to be set aside and quashed for these reasons. We hereby set them aside and quash them and direct respondent No.2 to implement the order within thirty days of receipt of its copy.

6. The respondents are at liberty to hold the inquiry again from the stage of the defect in the departmental enquiry.

7. There are no orders as to costs.


(S. Santhana Krishnan)
Judicial Member.

H. M. Singh
14/8/91
(M.M. Singh)
Admn. Member