

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 446
T. A. No.

199 1

DATE OF DECISION 19-11-91

K. K. Chandra Bose _____ Applicant (s)

Mr. Sebastian Paul _____ Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
Secretary, Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi-1 and others

Mr. K. A. Cherian, ACGSC _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

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

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

This application is directed against the punishment imposed on the applicant pursuant to the disciplinary proceedings initiated against him in 1984.

2. While the applicant was working as Postal Assistant (Treasurer) at Chittur Sub Post Office, the second respondent initiated disciplinary proceedings against him. The original proposal to hold enquiry based on Annexure-E was dropped considering the explanation submitted by him. But fresh proceedings were initiated as per Annexure-H memorandum of charges dated 8.4.1985. The charges framed against him reads as follows:

"Article-I"

That the said Shri K. K. Chandra Bose while functioning as Treasurer, Chittur LSG PO during the period from 11.6.83 onwards, was deputed by the Sub Postmaster to the State Bank of Travancore, Chittur branch on 7.1.84 for drawing cash Rs. 10,000/- for the office, but he did not go to the bank or return the cheque and pass book given to him for the purpose, to the Sub Postmaster. Shri K. K. Chandra Bose by his above act exhibited lack of devotion to duty and conducted himself in a manner unbecoming of a Govt. servant and thereby violated Rule 3(1) (ii) and (iii) of CCS (Conduct) Rules 1964.

Article II

That during the aforesaid period and while functioning in the aforesaid post, Shri K.K. Chandra Bose who left the post office to draw cash from the State Bank of Travancore, Chittur branch on 7.1.84 did not return back to the office on that day or subsequently. He deserted duty and absconded with the Treasurer's keys of the cash chests. Shri Chandra Bose by his above act exhibited lack of devotion to duty and conducted in a manner unbecoming of a govt. servant and thereby violated Rule 3 (1) (ii) and (iii) of CCS (Conduct) Rules 1964 and provision of Rule 62 of ChapterI of P & T Manual Vol.III.

Article III

That Shri K. K. Chandra Bose while functioning in the aforesaid post and during the aforesaid period was responsible for shortage of Rs. Ten thousand only (Rs. 10,000/-) in the office cash held in his custody on 7.1.84 thereby violating Rule 30(e) of FHB Vol.II and showed lack of integrity breaching Rule 3(1)(i) of CCS (Conduct) Rules, 1964.

Article IV

That during the aforesaid period and while functioning in the aforesaid post, Shri K.K. Chandra Bose used Rs.200/- (Rs. two hundred only) being part of the cooperative dues collected from the P.O. staff and kept out of account in his custody for his personal purposes. Shri K. K. Chandra Bose by his above act has exhibited lack of integrity and conducted himself in a manner unbecoming of a Govt. servant and thereby violated Rule 3(1) (i), (ii) and (iii) of CCS (Conduct) Rules 1964."

3. *An*⁴ enquiry authority was appointed for conducting the enquiry. Simultaneously, a prosecution was also launched against the applicant in respect of the offence alleged to have been committed by him. The enquiry authority found the applicant

guilty of the charges and Annexure-J report dated 4.2.86 was submitted before the Disciplinary authority who accepted the same and imposed the punishment of compulsory retirement of the applicant from service w.e.f. 26.3.1986. Annexure-B is the punishment order. The order indicates that the copy of the enquiry report submitted by the Disciplinary authority was forwarded to the applicant along with the punishment order. The third respondent after reviewing the punishment order altered the punishment of compulsory retirement into dismissal from service. But on a revision filed by the applicant before the fourth respondent, the punishment imposed by the Disciplinary authority as per Annexure-B order was restored. Annexure-C is the order dated 24.4.87 passed by the Revisional authority. In the meantime, the criminal prosecution pending before the Session's Court, Palghat in Criminal Appeal No. 73/87 ended in acquittal. The judgment dated 7.3.88 has been produced as Annexure-K. After the judgment of the Criminal Court, the applicant submitted Annexure-L review petition before the fourth respondent who refused to entertain the same. Hence, he filed O.A. 529/88 which was finally heard and disposed as per Annexure-M judgment dated 30.10.89 with the following directions:

"Under the above circumstances, we feel that justice in this case will be served if we dispose of the petition with a direction to the applicant to submit within two weeks from the receipt of the

judgment a detailed review petition under Rule 29-A of the CCS (CCA) Rules 1965, raising all the grounds which are taken in this application and submit the same before the third respondent, who may in turn forward the same to the proper authority for the disposal of the same on merits as early as possible and at any rate within a period of three months from the receipt of the review petition."

4. However, Annexure-A order dated 12.12.90 was passed rejecting the review petition. Aggrieved by these orders at Annexure-A, B, C and D, the applicant has filed this Original Application under section 19 of the Administrative Tribunals' Act.

5. In the reply statement filed by the respondents they have denied the allegations and averments in the application. But they have admitted that the original punishment was imposed on the applicant by the Disciplinary Authority after carefully examining the enquiry report before passing the final order dated 26.3.86. The fact that the enquiry report was given to the applicant only along with the punishment order has not been specifically denied by the respondents.

6. When the case came up for final hearing, the only point stressed by the learned counsel before us is that the punishment order is vitiated on account of the violation of principles of natural justice because the copy of the enquiry report was not furnished to him before imposing the punishment as per Annexure-A order. He relied on the decision reported in Union of India & others v. Mohd. Ramzan Khan, AIR 1991 SC 471.

7. The learned counsel for the respondents submitted that at the time when the punishment order was imposed on 26.3.86 there was no obligation on the part of the

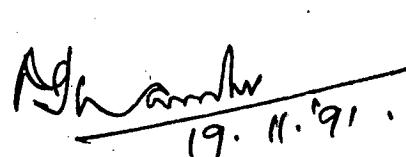
disciplinary authority under the rules to give a copy of the enquiry report in advance before imposing the punishment and this is a case which has already been decided before the decision rendered by the Supreme Court. According to the learned counsel there is no violation of principles of natural justice. He also attempted to support his arguments based on the observations of the Supreme Court in the aforesaid case.

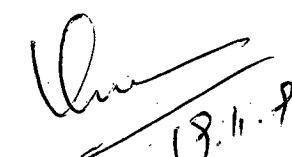
8. This Tribunal has considered identical contentions in O.A 745/89 and held that the observations made by the Supreme Court in the decision in M_{ohd.} Ramzan Khan's case that they "have prospective application and no punishment imposed shall be open to challenge on this ground" would only apply to cases of disciplinary proceedings completed and closed before the said decision. The pending cases can be disposed of by following the dictum laid down by the Supreme Court in this case. The decision of the Supreme Court itself was pronounced on 20.11.90 in a case of a disciplinary action, though finalised by the departmental authorities under the statute, which ^{is} ~~was~~ kept alive for being considered by the Supreme Court on account of filing appeal against the decision rendered in that case by the lower authorities. The court allowed the appeal with the observation that the disciplinary authority may ^{reverse} ~~reverse~~ or continue the proceedings in accordance with law from the stage of supplying of the enquiry report in cases where the dismissal or removal was the punishment. So this

dictum laid down by the Supreme Court would apply to all cases which are pending before the Court or Tribunal even when the decision was pronounced by the Supreme Court. Thus, the above observations of the Supreme Court cover only cases in which punishment orders have become final. In the instant case since the applicant has challenged the punishment order it cannot be said that the punishment has become final. In this view of the matter, we feel that there is no substance in the contention of the respondents that the observation of the Supreme Court in para 17 of the judgment applies to this case.

9. Accordingly, we reject the contentions of the respondents and allow the application to the extent of ~~above~~ directing the respondents to continue the enquiry from the stage of submission of the report of the enquiry officer. The applicant is also directed to be reinstated in service but the respondents have the freedom to pass appropriate orders if so advised for continuing the enquiry and place the applicant under suspension ^{only if he is found guilty} ~~if necessary~~. We make it clear that the claim of the applicant for back wages during the period when he was out of service will depend upon the final decision in the enquiry and the disciplinary proceedings.

10. The application is allowed to the extent indicated above. There will be no order as to costs.


19. 11. '91
(N. DHARMADAN)
JUDICIAL MEMBER


19. 11. '91
(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER