

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

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

478/89

100x

DATE OF DECISION

21.9.90

M.D Mathew

Applicant (s)

M/s. M.K Damodaran, C.T Ravi Advocate for the Applicant (s)
Kumar & K.S Saira Versus

Union of India represented by Respondent (s)
Secretary to the Ministry of Communications,
New Delhi and 2 others

Mr TPM Ibrahim Khan, 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? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

The applicant is challenging his removal from service, pursuant to the disciplinary proceedings by filing this application dated 23rd July, 1989 under Section 19 of the Administrative Tribunals Act, 1985.

2. The applicant while working as Extra Departmental Branch Post Master at Kampatti was put off duty on 30.10.1985 for initiating disciplinary proceedings against him. Annexure-I memorandum of charges was served on him. The three charges levelled against him are as follows:-

*Annexure I -Article I

*Shri M.D Mathew while functioning as ED BPM Kampatti detained FPO 611 MO No.1503 dated 12.8.85 for Rs.400/- received at the B.O. on 19.8.85 without issuing it to the EDDA for payment on the same day causing delay in payment of the MO to the payee in contravention of Rule 106 of Book of BO rules. It is therefore alleged that Shri M.D Mathew contravened the provisions of Rule 17 of P&T ED Agents (Conduct and Service) Rules 1964 by failing to maintain absolute integrity and devotion to duty.

Article II

Shri M.D Mathew while functioning as ED BPM Kampatty detained FPO 611 MO No.1503 dated 12.8.85 for Rs.400/- on 20.8.85 and 21.8.85 and Nilambur RS MO No.4483 dated 20.8.85 for Rs.100/- on 22.8.85 and 23.8.85 and 24.8.85 by falsifying the official records and thus failed to maintain absolute integrity and devotion to duty as required by him vide rule 16 of the P&T ED Agents (Conduct and Service) Rules, 1964.

Article III

That the said Sri M.D Mathew while working as ED BPM Kampatti accepted deposits amounting to Rs.290/- on many occasions after 16.5.85 from Sri K.V Baby, Kochukudiyil house, Kampatti, depositor of SB account No.1090078. The amounts so received were not credited into PO accounts. Thus Sri M.D Mathew failed to maintain absolute integrity and devotion to duty, contravening Rule 17 of P&T ED Agents (Conduct and Service) Rules, 1964."

3. After the enquiry the Annexure-II report was submitted by the enquiry authority in which the authority found that the charges No.1 and 2 are not proved. But with regard to the third charge, the finding was to the effect that out of the total amount of Rs.290/-, Rs.100/- was not taken on 28.10.85 even though the fact remains that he was keeping the passbook in his custody and had admitted that the amount of Rs.290/- entrusted to him was for depositing in the S.B Account. He has credited Rs.190/- due to Mr.K.V Baby on 30.10.85. The conclusion was that the third charge was proved "although not conclusively".

4. The disciplinary authority considered the Annexure-II report and disagreed with the findings and conclusions of the enquiry authority in regard to charges No.1 and 2 and held that they have been fully proved. In regard to charge No.3 also he disagreed with the findings of the enquiry authority after observing "what further proof is required to prove this Article of Charge conclusively is not known. By the admission of the BPM himself as stated by the Enquiry Officer, Article III

is proved beyond doubt". Therefore he has imposed the punishment of removal of the applicant with immediate effect as per Annexure-III proceedings dated 21.3.1988. The applicant filed Annexure-IV appeal before the Director of Postal Services, Calicut, which was rejected upholding the punishment by order Annexure-V dated 7.12.1988.

5. The applicant is challenging the aforesaid Annexures III and V in this application.

6. The learned counsel for the applicant raised before us the following contentions:-

- i) Since the disciplinary authority disagreed with the findings and conclusions of the Enquiry Officer, he should have given an opportunity to the applicant by issuing notice before imposing the punishment and passing Annexure-III order. The failure of the disciplinary authority makes the orders illegal and void.
- ii) A copy of the enquiry report has not been furnished to the applicant before passing Annexure-III order. This is a legal lacuna which vitiates the order.
- iii) Neither the copies of the statements recorded during the preliminary enquiry nor the preliminary enquiry report were furnished to the applicant. The failure of the authority to do so adversely affected the applicant and the whole proceedings are violative of the principles of natural justice.
- iv) The statement of the applicant alleged to have been recorded by PW 4 was not given to the applicant; so also the EDDA of Kampatti B.O has not been examined. The learned counsel also cited some of the decisions in support of his contentions.

6. In the view that we are taking in this case, it is unnecessary for us to go into all these grounds

and the decisions cited by the learned counsel for the applicant.

7. It has been admitted in para 5 of the counter affidavit that the "Disciplinary Authority after going through the entire records, disagreed with the findings of the inquiry authority and held all the three charges as proved. The applicant was ordered to be removed from service in SP, Tellicherry Memo No. F5/9/85 dated 21.3.88 which was delivered to the applicant on 26.3.88. The reasons for disagreement with the findings of the IO were detailed in the said memo". From this statement it is clear that the disciplinary authority has admittedly taken a hasty decision to impose punishment and he failed in giving an opportunity to the applicant for explaining his position especially when the disciplinary authority has disagreed with the findings and conclusions of the enquiry authority. The procedure adopted by him is illegal. The drastic punishment of removal from service should have been imposed after complying with the procedural formality of having given an opportunity of being heard to the applicant and satisfying that such a punishment is warranted in this case. Legal position on this subject is well-settled that when there is disagreement between the enquiry authority and the disciplinary authority with regard to the finding and conclusions to the disadvantage of the delinquent, before the imposition of punishment on the delinquent officer, he should be given an opportunity of being heard. Fairness requires such an opportunity to be given by the disciplinary authority. This Tribunal is consistently taking the view that such an opportunity has to be given to the delinquent Govt. employee in the interest of justice before the imposition of the punishment or passing

adverse orders in that behalf. In O.A.K 409/88 this bench has held as follows:-

"A more or less similar issue came up before the Supreme Court in the decision Narayan Misra Vs. State of Orissa, 1969 SLR 657. The court set aside the order. The relevant para proceeds as follows:

"In other words, the Conservator of Forests used against him the charges of which he was acquitted without warning him that he was going to use them. This is against all principles of fair play and natural justice. If the Conservator of Forests wanted to use them, he should have apprised him of his own attitude and given him an adequate opportunity. Since that opportunity was not given, the order of the Conservator of Forests modified by the State Government cannot be upheld. We accordingly set aside the order and remit the case to the Conservator of Forests for dealing with in accordance with law. If the Conservator of Forests wants to take into account the other two charges, he shall give proper notice to the appellant intimating to him that those charges would also be considered and afford him an opportunity of explaining them."

The observations in the full Bench decision in Premnath Sharma's case (1988(6)ATC 906) also lend support the above view. Hence on the first ground the applicant is entitled to succeed."

Same view has been taken by this bench in O.A.K 259/88 in which we have held as follows:-

"By taking a unilateral decision behind the back of the applicant who was found to be not guilty on the first and third elements of the charge, the Disciplinary Authority has violated the elementary principles of natural justice and the principle of reasonable opportunity enshrined under Article 311(2) of the Constitution of India".

8. In the light of the above principle we have to accept the first contention raised by the applicant and set aside the impugned orders and direct the respondents to reinstate the applicant with all service benefits except back wages which will depend upon the final decision to be taken by the respondents in case they deem it proper to conduct a fresh enquiry after following

the procedural formalities provided under law and also the circumstances as to whether the employer has employed any other person in place of the applicant during his absence and whether the applicant was gainfully employed elsewhere during the relevant time.

9. The application is thus allowed as indicated above. There will be no order as to costs.



(N.DHARMADAN)
JUDICIAL MEMBER

21.9.90



(N.V KRISHNAN)
ADMINISTRATIVE MEMBER

n.j.j