IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 531/89 199
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DATE OF DECISION 31.7.1990

K.K.Narayanan & Another — Applicant (s)

M/s MR Rajendran Nair & PV Ashe — Advocate for the Applicant (s)

Versus

Sr.Supdt. of Post Offices, Ernakulam & 2 others — Respondent (s)

Mr.TPM Ibrahim Khan — Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan - 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

(Mr.A.V.Haridasan, Judicial Member)

The applicants 1 and 2 working as Postman and Postal Assistant respectively were served with similar memos dated 6.9.1988 by the 1st respondent proposing to take action against them under Rule 16 of the CCS (CCA) Rules 1965(herein after referred to as Rules). The charges levelled against each of them were that each of them unauthorisedly and deliberately kept union posters/placards in the office premises and failed to obey instructions to remove them and that they misused special casual leave granted on 28.7.1988 in connection with union working committee meeting, and participated

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in the demonstrations held by the NFPTE union and shouted slogans and caused dislocation to the functioning of the divisional office and they have thus behaved in a manner unbecoming of Government servants violating Rule 3(i)(iii). The applicants submitted explanations denying the allegations that they placed placards and posters, that they disobeyed any instructions to remove them and stating that the posters were brought by the members of the union who participated in the Dharna, that they had taken the placards/posters when they left, that the applicants have utilised the casual leave for attending the committee meeting from morning till evening, and that they had not caused any dislocation to the functioning of the office. They had pleaded that the proposed action may be dropped and had claimed that incase further action was contemplated as they had denied the charges enquiry may be held to find out the truth. The first respondent who is the disciplinary authority rejected the explanation held that there was no necessity to hold an enquiry and that both the applicants were guilty of the two charges levelled against them and awarded to the applicants 1 and 2 punishment of withholding of next one increments for a period of three years without cumulative effect by orders Annexure-III and III A dated 17.10.1988. Aggrieved by these orders the applicants filed appeals before the second respondent putting forth various grounds including that the statement of imputations

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/really do not spell out any misconduct and that the request for holding an enquiry has been rejected by the Disciplinary Authority without application of mind. The second respondent by two orders Annexures- V. and V.Adated 31.5.1985 rejected the contentions raised by the applicants in their appeals and upheld the finding of the Disciplinary Authority that the applicants 1 and 2 were guilty of the charges, but reduced the punishment of withholding of increments to two years. The applicants have challenged these orders of the Disciplinary Authority and the Appellate Authority on the grounds that the charges do not constitute misconducts, that the Disciplinary Authority has without giving any reason and without applying its mind, turned down the demand of the applicants for an enquiry under Rule 16(1)b, that the Disciplinary Authority has relied on extraneous matters to find the applicants guilty and that both the authorities have not considered the plea of the applicants properly among other grounds.

2. In the reply statement filed on behalf of the respondents Shri TPM Ibrahim Khan, Standing Counsel for the department of Posts has tried to justify the orders on the grounds that conducting an enquiry was neither necessary nor practicable and that exhibiting placards in the office premises are objectionable behaviour.

3. We have heard the arguments of the counsel on either side and have also perused with care the records. The two

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charges levelled against both the applicants are exactly similar, charge number one in the case of both the applicants is that they on 7.4.1988 displaced union posters/placards in the office premises and did not obey the instruction to remove them, offending Rule 3(i)(iii) of the Conduct Rules and the second charge is that on 28.7.1988 they misused special casual leave granted to enable them to participate in the meeting of the union working committee by participating in the demonstration held by the members of the NFPTE union in front of the SSPO's office, Ernakulam from 17.15 to 17.40 hours and that they shouted slogans and caused dislocation of work in the office. The applicants have denied both these charges. They have disputed the allegation that they placed placards/posters and that they shouted slogans causing dislocation of work and demanded an enquiry incase the Disciplinary Authority deciding to proceed with the disciplinary action, since the specific allegations against the applicants/overt acts of which would according to the imputations on the charges constitute misconducts have been catagorically denied by them xxxxxxxxx and as they had demanded that an enquiry should be held, the Disciplinary Authority should have held an enquiry. If an act or omission which would per se be a misconduct is admitted and if some explanation is offered by the delinquent the Disciplinary Authority may reject the explanations if found unsatisfactory and hold that the misconduct has been committed. But when specific allegations are denied and disputed, and an enquiry is demanded

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the Disciplinary Authority should hold an enquiry or if the authority is of the opinion that it can take a decision even without holding an enquiry, the Disciplinary Authority is bound to state the reason for rejecting the request for holding an enquiry. In Government of India's instructions G.I Deptt. of Pers. & Trng., OM No.11012/18/85 EST(4) dated 28th December, 1985, it has been stated:

> "If the records indicate that, notwithstanding the points urged by the Government servant, the disciplinary authority could, after due consideration, come to the conclusion that an enquiry is not necessary it should say so, in writing indicating the reasons, instead of rejecting the request for holding inquiry summarily without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice."

The above instruction has not been followed by the Disciplinary Authority in this case. In the impugned orders Annexures-III and III A, the demand for enquiry has been dismissed with the following cryptic remarks:

> "He had demanded an enquiry under Rule 16(1)b of the CCS(CCA) Rules 1965. But I find no necessity for such an enquiry in this case."

The reason why an enquiry is not necessary has not been stated. It is regrettable that senior officers like the first respond should fail to follow such instructions of the Government as above which are issued for their guidance. We are of the view that, the Disciplinary Authority should have held an enquiry in the circumstances of the case, or at least given a proper reason for reaching the conclusion that enquiry

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is not necessary. The refusal to do so, has resulted in denial of natural justice to the applicants. The orders of the Disciplinary Authority are therefore, vitiated and illegal. In the appeal memoranda the applicants have clearly taken a ground that the rejection of the request for enquiry in the circumstances of the case without even stating reason for doing so has vitiated the proceedings. The Government instructions quoted above also had been mentioned in the appeal memoranda. The Appellate Authority has in both the orders Annexures-V and V.A stated that the Disciplinary Authority has applied his mind to the request and that as the action taken was in the context of a direct action by trade unionists conducting an enquiry was impracticable and that he also agreed with the Disciplinary Authority that enquiry was not necessary. It is incorrect to say that the Disciplinary Authority has applied his mind to the request for holding an enquiry before rejecting it because if that be true, it should have stated the reason why it decided that enquiry was not necessary. Application of mind should find expression in the order by stating reason. In the absence of that, it was improper on the part of the Appellate Authority to agree with the decision of the Disciplinary Authority. It appears that the Appellate Authority also has ignored the Government instructions inspite of the fact that it was specifically mentioned in the appeal memoranda. Therefore, we are of the view that the appellate orders are also unsustainable. The impugned orders Annexures-III, III.A, V and V.A have therefore to be quashed.

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4. In the result we quash and set aside the impugned orders Annexures-III,and III A of the first respondent and V and VA of the second respondent. There is no order as to costs.

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(A.V.HARIDASAN)
JUDICIAL MEMBER

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(S.P.MUKERJI)
VICE CHAIRMAN

31.7.1990