

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 534/92

Friday, this the 10th day of December 1993

Shri N.Dharmadan, Member (J)

Shri S.Kasipandian, Member(A)

Mathew Mathai,
Madathil House,
Anaparambil PO,
Thevalvady.

.. Applicant

By Advocate Shri M.R.Rajendran Nair

V/s

1. The Assistant Superintendent of
Post Offices, Tiruvalla Sub Division,
Tiruvalla.

2. The Superintendent of Post Offices,
Tiruvalla Division, Tirugalla.

3. The Chief Post Master General,
Kerala Circle, Trivandrum.

4. Union of India, rep. by
Secretary, Ministry of
Communications, New Delhi. .. Respondents

By Advocate Shri C.N.Radhakrishnan, ACGSC.

ORDER

N.DHARMADAN

Applicant while working as EDDA at Anaparambil North EDSO, a memo of charges dated 29.11.90 was served on the applicant with the following three charges:-

" (i) That the said Sri. Mathew Mathai while functioning as EDDA, Anaparambil North failed to make delivery of letters entrusted to him for delivery to the addressees, thereby failed to follow the provisions in Rule 701(1) & (2) of P&T Manual Vol. VI Part III and violated Rule 17 of the P&T Agents (C&S) Rules 1964 in showing absolute devotion to duty.

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.... 2/-

(ii) That the said Sri. Mathew Mathai while functioning as EDDA Anprambal north failed to render returns of the postal articles entrusted to him for delivery on 21.7.89 thereby failing to follow the provisions of rule 711(1) and (2) of P&T Manual Vol. VI Part III thereby violating rule 17 of the P&T ED Agents (C&S) Rules 1964 in showing devotion to duty,

(iii) That the said Sri. Mathew Mathai while functioning as EDDA Anaprambal North has been absent from duty w.e.f. 22.7.89 onwards and thus failed to maintain absolute devotion to duty contravening the provisions of Rule 17 of the P&T ED Agents (C&S) Rules 1964."

The applicant filed an objection denying the charges, but an enquiry was conducted. The Enquiry Officer found the applicant guilty of two of the charges. Regarding the third charge the finding was that the applicant was not guilty. Even in regard to charges 1 & 2 the applicant has a case that the letters referred to therein were not entrusted to the applicant by the proper authority for finding him guilty of the charges. Since two ED Agents were in-charge on the date, the applicant cannot be found responsible for the nondelivery of the entire letters. However, the disciplinary authority disagreed with the findings of the Enquiry Officer regarding the third charge and found him guilty in respect of that charge also. Accordingly, a grave punishment of removal from service has been imposed on the applicant as per the impugned order, Annexure-II, dated 25.9.90. The applicant filed Annexure-III appeal challenging the penalty as also the findings. He contended that he is entitled to a notice before imposing the serious punishment of removal, after disagreeing with the findings of the Enquiry authority regarding the third charge. Since there is irregularity in procedure according to the applicant, the removal order cannot be sustained. The appeal was disposed of by the appellate authority as per Annexure-IV dated 1.3.91. The disciplinary authority's order was confirmed. The question of failure to issue notice to the applicant after disagreement regarding the third charge was discussed and the law in this subject was not applied by the appellate authority

while disposing of the appeal. A subsequent order, Annexure-V, was passed by the Chief Postmaster General by which the orders of penalty were confirmed.

2. The learned counsel for the applicant raised two grounds viz. (i) There is no sufficient evidence to prove ~~the~~ the charges. The Enquiry Officer has found the applicant not guilty of the third charge. But without any material to sustain the charges the other authorities found the applicant guilty of all the charges. Since there is a procedural irregularity the entire proceedings are to be quashed, and (ii) The quantum of punishment does not commensurate with the gravity of the ~~offence~~ ~~alleged~~ by the authorities. Hence, the authorities ought not have imposed the severe punishment of removal having regard to the fact that the Enquiry Officer has not found the applicant guilty of all the charges.

3. When the case came up for hearing we asked a specific question to the learned counsel for the respondents whether the disciplinary authority or even the appellate authority has issued a notice to the applicant before imposing the punishment of removal from service after disagreeing with the findings of the Enquiry Officer regarding the third charge. The answer ~~was~~ in the negative. He sought to support the findings of the charges in regard to the other two charges but we are not inclined to go into ~~that~~ aspect at this stage since the procedural irregularities ~~persuade~~ ~~interference~~ by this Tribunal for a proper consideration of the grievances of the applicant in accordance with law.

4. It is a settled position that when the disciplinary authority disagrees with the enquiry authorities in regard to any of the charges for imposing the punishment, it is obligatory

on his part to issue notice to the delinquent employee before the imposition of punishment. We have considered this issue in M.D.Mathew vs. Union of India & Others (O.A.No.478/89) and observed as follows:-

"..... 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. This 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 OAK 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 of 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.' "

5. In this view of the matter, we are of the view that these impugned orders imposing the orders of removal from service of the applicant cannot be sustained. But, in the interest of justice, while quashing the impugned orders we remand the matter to the disciplinary authority for conducting a fresh enquiry and disposal of the matter in accordance with law, by following the procedural formalities, on the basis of the same charges.

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

S. [Signature]

(S.KASIPANDIAN)
MEMBER (A)

N.Dharmadan
10.12.93

(N.DHARMADAN)
MEMBER (J)

v/-