

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 540/89
~~XXXXXX~~

199

DATE OF DECISION 17.7.1990

K.A.Sankaranarayanan & 11 Ors. Applicant (s)

M/s MR Rajendran Nair & _____ Advocate for the Applicant (s)
PV Asha
Versus

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

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

CORAM:

The Hon'ble Mr. N.V.Krishnan - Administrative Member
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? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *Yes*

JUDGEMENT

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

The applicants are employees of the Postal Department working in various offices at Ernakulam. Sr. The first respondent, Superintendent of Post Offices, Ernakulam on 6.9.1988 issued memos to the applicants proposing to take action under Rule 16 of the CCS(CCA) alleging that Rules, they participated in the demonstrations in front of the Senior Superintendent of Post Offices, Ernakulam staged by the members of the NFPTE Unions from 11.15 hours to 13.50 hours on 14.7.1988, shouted slogans and dislocated the work of the SSP's office and thereby behaved in a manner quite unbecoming of a

Government Servant. All of the applicants submitted the explanation denying charges and they requested that an enquiry may be held if the first respondent decided to proceed further. All the applicants have denied their participation in the strike and their presence at the place mentioned in the memo of charges. But the first respondent rejected explanations submitted by the applicants and by the impugned orders Annexure-III^A to III^K awarded to the applicants a penalty of with-holding the next increment of the applicants for a period of two years without cumulative effect. The applicants filed appeals to the second respondent. But the second respondent by the impugned orders Annexure-VA to VK dismissed the appeals and confirmed the orders of the Disciplinary Authority. Aggrieved by the impugned orders, the applicants have filed this application under Section 19 of the Administrative Tribunals Act, praying that the impugned orders may be quashed. It has been averred in the application that the impugned orders of the Disciplinary Authority were passed without due application of mind and that, they are vitiated on account of violation of the principles of natural justice, since the requests of the applicants for conducting an enquiry have been rejected without giving due consideration. It has also been alleged that the appellate orders are also vitiated for want of application of mind. The first respondent in the reply affidavit filed on behalf of the respondents has justified the impugned orders. The stand taken by the respondents is that as the

applicants have been found participating in the demonstration by a responsible officer, it was not necessary to conduct an enquiry as requested to by the applicants and that the refusal to conduct an enquiry did not amount to violation of principles of natural justice.

2. We have heard the arguments of the learned counsel on either side and have also perused carefully the documents produced.

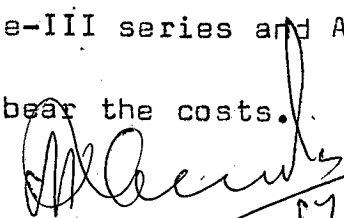
3. It is seen from the impugned orders of Annexure-III series that all the applicants have disputed their participation in the strike and have requested that, an enquiry may be held to find out that the truth about the allegation in the charge. When the very presence of the applicants at the alleged spot is denied, unless that fact is established by evidence, a valid conclusion cannot be arrived at that they have participated in the strike, and that they conducted themselves in a manner unbecoming of Government servants. If an act or omission which per se would be a misconduct is admitted and if some explanation is given, it is open for the competent authority to reject the explanation if found unsatisfactory, and to hold that the misconduct has been committed. But in this case since the allegation of the applicants' participation in the strike is denied, reaching

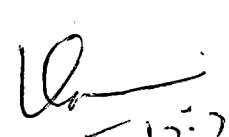
a conclusion rejecting that contention without conducting an enquiry cannot be justified. In the reply statement and in the appellate orders Annexure-V series it has been stated that the applicants were seen to have participated in the strike by a responsible officer. But in the memo issued to the applicants it had not been stated that a named responsible officer had seen the applicants participating that apart the applicant could still have impugned his statement in the strike. So the conclusion that the applicants participated in the strike was reached basing on the facts which were extraneous to what were mentioned in the memorandum of charges. The Disciplinary Authority in the impugned orders had not given any proper reason for not holding an enquiry as requested by the applicants. In the appellate orders, Annexure-V series, the Appellate Authority has stated that though the reason for not holding the enquiry has not been mentioned in the orders, the orders cannot be said to be vitiated. In Government instructions G.I., Deptt. of Pers. & Trng., OM No.11012/18/85-Est.(A), dated 28th October, 1985 it has been stated as follows:

"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 its 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."

In the impugned orders Annexure-III series, proper reasons for not holding the enquiry has not been stated. Administrative instructions are issued with a view that they should be strictly complied with. In this case, it is seen that the Disciplinary Authority has failed to follow the instructions referred above. The finding of the Appellate Authority that this failure did not vitiate the disciplinary orders does not appear to be correct. In our view, the Disciplinary Authority, the first respondent should have conducted an enquiry as requested by the applicants, since they have denied their participation in the alleged strike, and since the conclusion that they did so had been arrived at by the Disciplinary Authority basing on certain facts which did not form part of the statement of imputations attached to the memorandum of charges. Hence in our view, the impugned punishment orders and the orders of the Appellate Authority are unsustainable in law, since the principles of natural justice have been violated in concluding that the applicants were guilty of the charge without holding an enquiry as requested to by the applicants, and basing on facts extraneous to the averments made in the statement of imputations.

4. In the conspectus of facts and circumstances, we allow the application and quash the impugned orders, Annexure-III series and Annexure-V series. Parties are directed to bear the costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(N.V. KRISHNAN)
ADMINISTRATIVE MEMBER

17.7.1990