IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 550/89 ~~XXXXX~~
~~XXXXXX~~No.

DATE OF DECISION 31-8-1990

NV Sivanandan — Applicant (s)

Mr Abraham Kurian — Advocate for the Applicant (s)

Versus

The Superintendent of Post Offices, Irinjalakuda & 3 others — Respondent (s)

Mr TPM Ibrahimkhan — Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV 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 AV Haridasan, Judicial Member)

This application is filed under Section 19 of the Administrative Tribunals Act against the order of the Director of Postal Services, Cochin on 31.3.1987(Annexure-II) dismissing the applicant from service and the order dated 18.7.1988 of the Post Master General, Kerala dismissing his appeal filed against the Annexure-II order and confirming the punishment of penalty of dismissal from service. The facts as averred in the application can be briefly stated as follows.

2. While the applicant was working as Sub Post Master, Edamuttom, Irinjalakuda Postal Division, he was served with a charge memo dated 4.9.1986 issued by the first respondent,

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the Superintendent of Post Offices proposing to held an enquiry against him under Rule 14 of CCS(CCA) Rules, 1965 containing two heads of charges alleging dishonest withdrawal amd misappropriation of money from Savings Bank Account and delay in crediting amounts in the S.B.Recurring Deposit amounts. The applicant did not submit any written submission of defence and was awaiting intimation regarding the proposed enquiry. While so, he received the impugned order dated 31.3.1987 at Annexure-II issued by the second respondent, the Director of Postal Services, Cochin Region(the higher Disciplinary Authority) dismissing him from service. A written statement of defence alleged to have been received by post from the applicant which the applicant denies to have sent and evidence alleged to have been collected.during a preliminary enquiry conducted behind the back of the applicant have been relied on by the second respondent to hold that the charges were proved. Contending that the applicant did not send any written statement admitting the guilt on 20.9.1989 or any other date as mentioned in the Annexure-II order and pointing out the defects and infirmities in the impugned order the applicant filed an appeal to the third respondent, the Post Master General. During the pendency of the appeal, the third respondent directed that the applicant's specimen writing and signature be taken for comparison by the Handwriting Expert with the handwriting in the alleged letter which had been received from the applicant admitting the guilt. The applicant replied to the third respondent stating that the proper course would be to remit the case to the Disciplinary Authority, if fresh

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evidence was required and also offering to give his specimen handwriting and signatures for the purpose of comparison if he would be given sufficient opportunity to cross-examine the Expert. But ultimately, by the impugned order at Annexure-VII dated 18.7.1988, the appeal was dismissed confirming the finding of the second respondent and the penalty imposed. The finding of the Appellate Authority based on inadmissible evidence of the socalled Expert that the written statement alleged to have been given by the applicant admitting the guilt was in his handwriting and that the decision of the Disciplinary Authority is correct is unsustainable in law and is liable to be set aside. Hence the applicant has filed this application praying that the Annexures-II and VII orders may be quashed and that the applicant may be deemed to have continued in duty from the date of his suspension i.e. from 5.3.1985. It has been averred in the application that the principles of natural justice have been violated in dismissing the applicant from service without giving him a reasonable opportunity to defend his case. It has further been averred that the second respondent has relied on statement obtained behind the back of the applicant in finding him guilty and that the third respondent has gone wrong in relying on the alleged opinion of the Expert without subjecting the Expert for xxxxx examination and giving the applicant an opportunity to cross-examine. The applicant has averred that for these reasons the impugned orders are unsustainable in law.

3. In the reply statement filed on behalf of the respondents the impugned orders have been justified on the ground that the

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applicant had admitted the guilt in the written statement of defence dated 20.9.1986, that the authenticity of this statement has been established by the report of the Handwriting Expert obtained by the Appellate Authority, the third respondent and that there is absolutely no denial of principles of natural justice to the applicant as is averred by him.

4. We have heard the arguments of the learned counsel on either side and have also perused the documents produced. The applicant was admittedly served with the memo of charges dated 4.9.1986 which contained two heads of charges alleging that he was guilty of misappropriation of money and delay in crediting the amounts in the S.B.Recurring. By the impugned order at Annexure-II, the applicant has been found guilty of the two charges mentioned in the charge memo and he has been awarded punishment of dismissal from service. It is seen mentioned in the impugned order at Annexure-II that no enquiry was conducted as the Superintendent of Post Offices, Irinjalakuda found it not necessary to hold a formal enquiry under the provisions of Rule 14 of the CCS(CCA) Rules, 1965 as the applicant had in his written statement of defence dated 20.9.1986 fully admitted in unambiguous terms the charge levelled against him and that after examination of the records of the case, he had expressed his finding that the charges stood proved against the applicant. The Superintendent of Post Offices, Irinjalakuda had referred the case to the second respondent, the higher Disciplinary Authority as the Superintendent of Post Offices, Irinjalakuda was not empowered to impose a

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major penalty on the applicant. The second respondent has gone through the records and entered finding on the two articles of charge. He has in the impugned order at Annexure-II discussed the various documents and evidence alleged to have been collected during the preliminary investigation and has come to the conclusion that the applicant is guilty of both the charges basing on the above evidence and also on the socalled admission of guilt. It is worthwhile to extract the words of the second respondent himself in Annexure-II:

> "In the light of the evidence disclosed by documents and the statements recorded during investigation in combination with the admission of guilt by the accused in defence statement dated 20-9-86, it is clearly established that the transactions in SB account No.770213 on 23-2-85 and 2-3-85 were made fraudulently by the accused and thus the article of charge No.1 has been proved beyond doubt by evidence on record."
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> "..... The admission of guilt of the charged government servant in the defence statement dated 20.9.86 coupled with the documentary evidence as discussed above goes to prove the article of charge 2 beyond any doubt."

It appears from the above statement in the impugned order Annexure-II that the second respondent found the applicant guilty on the basis of the evidence alleged to have been recorded at the preliminary enquiry and also on the basis of the admission contained in the written statement of defence alleged to have sent by the applicant. Sub rule 5(a) of Rule 14 of the CCS(CCA) Rules 1965 reads as follows:

> "On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary to do so, appoint under sub-rule (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 15."

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It is obvious from this clause in the rule that even in cases where all the charges have been admitted by the Government servant in his written statement of defence, the Disciplinary Authority shall record its finding on the charges after taking such evidence as it may think fit. If the Disciplinary Authority does deem it necessary to take any evidence at all, it is open for the authority to record his finding on the charges. But it is not permissible for the Disciplinary Authority to rely on any evidence collected behind the back of the Government servant. In this case, the second respondent has entered his findings on the two charges that the applicant was guilty not only on the basis of the alleged admission by the applicant but also on the basis of evidence recorded at the preliminary enquiry which is not permissible in law. Any evidence recorded behind the back of a person sought to be used against him, cannot be used against him unless that person is given an opportunity challenge the veracity of the statement by cross-examining the deponent. Further, before the Appellate Authority, the third respondent the applicant has raised a contention that he never sent any written statement on 20.9.1986 and that the averment in the impugned order at Annexure-II that he had sent a written statement admitting the charges is abolutely false. The Appellate Authority has rejected his contention on the basis of a report of an Handwriting Expert, that the Handwriting in the disputed written statement of defence was that of the applicant. The procedure adopted by the Appellate Authority is also erroneous because the applicant was not given an opportunity to

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cross-examine the Handwriting Expert who has allegedly given the opinion that the handwriting in the disputed written statement was that of the applicant. The Hon'ble Supreme Court has in M/s Bareilly Electricity Supply Co. Ltd V. The Workmen and others(1971(2) SCC 617) held as follows:

> "..... no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used."

In Central Bank of India Ltd. V. Prakash Chand Jain(AIR 1969 SC, 983) it was observed:

> ".....statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act."

Applying the dicta of the above rulings of the Supreme Court it can be seen that both the Disciplinary Authority and the Appellate Authority have gone wrong in relying on inadmissible evidence to arrive at the finding that the applicant is guilty of the charges. The Disciplinary Authority has placed reliance on evidence collected during the preliminary investigation without giving the applicant an opportunity to cross-examine the persons who allegedly gave the statement. It was on the basis of such evidence also coupled with the alleged admission of guilt in the disputed written statement of defence that the Disciplinary Authority found that the charges were proved. This finding obviously has been based on inadmissible materials. Similarly the finding of the Appellate Authority that the disputed written statement dated 20.9.1986 was really

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sent by the applicant is based on the report alleged to have been obtained from a Handwriting Expert. At this Handwriting Expert has not been offered for cross-examination by the applicant the alleged report cannot be relief on a substantive evidence. Therefore, the finding of the Appellate Authority that the disputed written statement was really sent by the applicant has to be set aside. The Appellate Authority has in the order at Annexure-VII stated that the Disciplinary Authority has gone wrong in placing reliance on documents and evidence collected during the preliminary investigation. But he has upheld the finding of the Disciplinary Authority on the ground that such a finding could be arrived at solely basing on the admission contained in the statement alleged to have been sent by the applicant on 20.9.1986. Since reliance is placed to find that the written statement was sent by the applicant on the report of the handwriting expert, which was to be held to be in admissible in evidence, there is absolutely no basis for the finding of the Appellate Authority that the finding of the Disciplinary Authority that the applicant is guilty of the two charges incorrect. Even though the respondents have in the reply statement stated that the written statement of defence dated 20.9.1986 admitting the guilt was received from the applicant and though the Disciplinary Authority and the Appellate Authority have placed reliance on this statement, it is curious to note that either this statement or the alleged report of the Handwriting Expert is not produced before us. Hence on a careful scrutiny of the entire evidence of record, we find that the impugned orders at Annexure-II and VII cannot be sustained.

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5. In the result in view of what is stated in the foregoing paragraphs, we hold that Annexure-II and Annexure-VII orders of the respondents 2 and 3 respectively are unsustainable in law and therefore we quash these orders. It follows that the applicant will have to be reinstated in service. But as the charges against the applicant are of very serious nature, we are of the view that the interest of justice requires granting liberty to the respondents to proceed with the disciplinary action in accordance with law on the basis of the memo of charges issued on 4.9.1986. The applicant should be given an opportunity to submit his written statement of defence. If the applicant denies the charges, an enquiry should be held giving him reasonable opportunity to defend himself. If he admits the charges provision of Rule 14(5)(a) inter alia be kept in view. For the purpose of completing the disciplinary proceedings, the respondents will be at liberty to place the applicant under suspension again. If the respondents decide to proceed with the disciplinary action, the same has to be completed in accordance with law and as far as possible within three months from the date of communication of this order. There is no order as to costs.

(AV HARIDASAN)
JUDICIAL MEMBER

31.8.90
(SP MUKERJI)
VICE CHAIRMAN

31-8-1990

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