

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 573/90
XXXXXX

199

DATE OF DECISION 10.2.92

V.P.Gopalakrishnan Kartha

Applicant (s)

Mr.K.R.B.Kaimal

Advocate for the Applicant (s)

Versus

The Union of India, represented by the
Secretary to Govt., Ministry of Communications, Respondent (s)
Department of Posts, New Delhi and 3 others

Mr.A.A.Abul Hassan,ACGSC

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 5th July 1990 the applicant who has been working as Extra Departmental Delivery Agent under the Superintendent of Post Offices, Changnacherry has challenged the impugned order of punishment dated 26.11.1987 at Annexure A1 dismissing him from service, the appellate order dated 8.6.88 at Annexure A2 confirming the order of punishment and the order dated 5.6.90 at Annexure A3 rejecting his petition and has prayed that the respondents be directed to reinstate the applicant with continuity of service and full back wages. The brief facts of the case are as follows.

2. While the applicant was working as EDDA at Anikkad East Post Office he was placed under put off duty with effect from 11.2.86 and on 25.8.1986 he was chargesheeted for (1) fraudulently collecting a sum of Rs.24/- from Shri James Pottanickal against a registered letter from USA bearing No. 070403551 and Kochi

22

Foreign Post No.000969 addressed to Fr.Thomas Pottanickal (brother of Shri James Pottanickal who received the parcel from the applicant) on 3.2.86 and for (2) fraudulent short payment of Rs.135/- of Kottayam MO No. 960 dated 11.9.85 for Rs.270/- P/to Shri K.J.Mathew, Kizhakkethazhe Anikad East on 14.9.85. The respondents have admitted that the enquiry authority in its report held that the first charge is proved, but gave the benefit of doubt in the second charge. The disciplinary authority, admittedly, differing with the enquiry authority on the second charge and holding that both the charges are proved, dismissed the applicant by the impugned order at Annexure A1 dated 26.11.1987. It is admitted that the copy of the enquiry report was given only with the order of dismissal. His appeal and revision petitions were also rejected by the impugned orders at Annexures A2 and A3. The applicant has challenged the impugned orders as violative of Articles 14, 16 and 21 of the Constitution and the findings as perverse and not supported by legal evidence. The main witness, i.e, the complainant in charge No.1 who was cited in the charge was not produced during the course of enquiry but his brother who admits that he had forged his brother's signature and received the letter from the applicant was produced. As regards the second charge, the only irregularity that he had committed was that he did not obtain the signature of witnesses for payment. ^{states that he} He had paid the full amount to the addressee.

3. The respondents have given a detailed analysis of the various witnesses to substantiate the finding.

4. Having heard the learned counsel for both the parties and gone through the documents, we find that the disciplinary proceedings suffer from two fatal flaws as discussed below.

5. Firstly, the disciplinary authority before finally disagreeing with the finding of the enquiry authority on the second charge ^{that} ~~as~~ the same is not established beyond doubt and concluding that the second

52

charge also is proved, did not give any chance to the applicant to give his side of the picture. This conclusion adverse to the applicant was taken completely behind his back especially when he had succeeded to persuading the enquiry officer to hold that the second charge is not fully established. This is *prima facie* violative of the principle of natural justice. In *Narain Misra vs. State of Orissa*, (1969) 3 SLR 657, it was held by the Hon'ble Supreme Court that if the enquiry officer exonerates the charged officer of some charge but the disciplinary authority disagrees with him and takes a decision adverse to the charged officer, the charged officer must be given a notice before the disciplinary authority concludes against him.

6. Secondly even if the disciplinary authority had not disagreed with the enquiry officer it was incumbent upon him to give a copy of the enquiry report to the applicant before making up his mind on the findings given by the enquiry officer. It was held by the Hon'ble Supreme Court in *Union of India and others vs. Mohd. Ramzan Khan*, Judgment Today, 1990(4)SC 456 that a copy of the enquiry report must be given to the delinquent officer before the disciplinary authority makes up his mind on the enquiry report. If it is not done there will be violation of the principle of natural justice.

7. In the above light, on the basis of the admitted facts and rulings of the Supreme Court, we find that the impugned order of punishment is violative of the principle of natural justice and accordingly Articles 14 and 16 of the Constitution. The appellate and revisional orders at Annexures A2 and A3 confirming the punishment order also are therefore, unconstitutional.

8. In the facts and circumstances we allow the application, set aside the impugned orders at Annexures A1, A2 and A3 and direct that the applicant should be reinstated in service from the date of

his removal with all consequential benefits. The respondents, however, will be at liberty to initiate de novo proceedings from the stage of submission of enquiry report to the disciplinary authority, if so advised and in accordance with law. There will be no order as to costs.



(A.V.HARIDASAN)
JUDICIAL MEMBER



(S.P.MUKERJI)
VICE CHAIRMAN

n.j.j