

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.587/92.

Date of decision: 27.8.1993.

Ms. R Felsi ..Applicant
Shri GP Mohanachandran ..Advocate for applicant.

Versus

1. Superintendent of Post Offices, Trivandrum **South Division.**
2. Senior Superintendent of Post Offices, Trivandrum North Division, Trivandrum.
3. Director of Postal Services (HQ), O/o the Chief Post Master General, Trivandrum.
4. Union of India, Secretary, Ministry of Communications, New Delhi.

..Respondents.

Shri George Joseph, ACGSC for respondents.

C O R A M

The Hon'ble Mr Justice Chettur Sankaran Nair, Vice Chairman
and
The Hon'ble Mr R Rangarajan, Administrative Member

J U D G E M E N T

R. Rangarajan, A.M.

Applicant, who was a Postal Assistant, having been aggrieved by the order of punishment of compulsory retirement (Annexure A8) of the disciplinary authority and confirmation of the same by the appellate authority by Annexure A10 order, has approached this Tribunal for quashing Annexure A8 and A10 orders and for a direction to reinstate her in service with all consequential benefits including arrears of salary.

2. Applicant was issued with a charge-sheet for imposing a major penalty for misconduct of fraudulent withdrawal of a sum of Rs.210.00 on 31.5.1980 from S.B. Account No.761590 and thereby failing to maintain absolute integrity and devotion to duty and also acting

contd.

in a manner unbecoming of a Government servant and this violated Rule 3(1)(i), (ii) and (iii) of CCS (Conduct) Rules, 1964. An inquiry was held and on the basis of the findings of the inquiry, the applicant was dismissed from service by the disciplinary authority, which was later modified to that of compulsory retirement by revision order. This punishment of compulsory retirement was challenged by the applicant before this Tribunal filing OA 250/90 which was disposed of by order dated 21.12.1990 setting aside the punishment order as a copy of the inquiry report was not supplied to her, thus denying an opportunity to defend her case. It was further directed that disciplinary proceedings may be started denovo from the stage of supplying the inquiry officer's report to the delinquent Government servant and to proceed further with the proceedings. The disciplinary authority was also directed to pass orders as to how to treat the period of suspension after the final order is passed. In obedience to the directions of the Tribunal, the delinquent employee was supplied with a copy of the inquiry report and the disciplinary authority passed final orders on 20.3.91 (Annexure A8) compulsorily retiring the applicant from service and also treating the period of suspension from 11.7.80 to her date of compulsory retirement as deemed suspension. This order of the disciplinary authority was confirmed by the appellate authority by order dated 29.11.1991 (Annexure A10). Against these orders at Annexure A8 and A10, she has filed this application with the above prayers.

3. When the case was heard, learned counsel for applicant strenuously argued bringing out the various lacunae in the conduct of the inquiry and prayed for quashing the impugned orders. We asked the learned counsel for

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the respondents to put forward his arguments, if any, supporting the punishment orders and rebutting the arguments of the learned counsel for applicant on the basis of the evidence adduced at the time of inquiry. We even gave liberty to the learned counsel for the respondents to read out from the various documents the relevant portions which may strengthen his argument, if he so desired, so that he could eventually argue his case without difficulty. But he only submitted that the respondents relied on the evidence of PW-5 and wanted adjournment of the hearing without submitting anything further. Though we encouraged him once again to come out with his argument, he did not do so. This has made us to carefully go through the records produced before us and to come to a fair and just decision.

4. Learned counsel for applicant sharply focused on five vital issues, namely:-

(i) That the whole inquiry report is based on the statement of Shri K Mani, Postal Assistant (PW-5), at Ex P.8. Shri Mani, the then SPM, Kanjiramkulam Post Office, being an accomplice, his statement (Ex P.8) cannot be totally relied on;

(ii) Non-supply of copies of two documents relied upon by the inquiry authority, namely, the old pass book in respect of S/B Account No.761590 and SB-7 dated 27.5.80 of the same account;

(iii) The inquiry authority built up his case around the answers given by the delinquent instead of drawing any conclusion from the statements of other witnesses also;

(iv) Bias on the part of the inquiry officer from the very beginning had an adverse effect on the conduct of the inquiry; and

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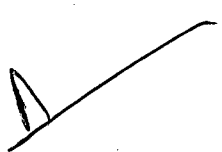
(v) No personal hearing was afforded to the applicant before disposing of her appeal.

5. We have looked into each of these issues carefully taking due note of the submission by the applicant, both written and oral, and also the submission of the respondents in the reply statement as well as various documents produced before us. We have also gone through the entire records relating to the disciplinary proceedings produced before us and studied the inquiry report in detail.

6. The allegation that the inquiry authority has relied heavily on Ex P.8 statement of Shri Mani, the then SPM (PW-5) appeals to our mind. Applicant would submit that PW-5 was the SPM and he was the official responsible to authorise withdrawal of money from S/B Accounts. He has to verify the signature of the account holder, cross check the entries with the pass book and put his initials before authorising payment. But in the instant case, for the reasons mentioned by him (we are not going to its merits), he had failed to do so. Now, he makes out a case that the account holder had not withdrawn money, thereby shifting his responsibility on to the applicant.

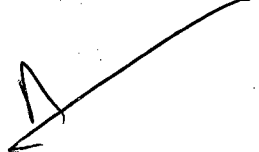
7. Smt G. Jagathamma, the account holder has in her statement at Ex P.1, categorically denied having withdrawn any money on 31.5.1980 and stated that the signature on the withdrawal slip was not her signature. Then, the question arises as to who could have withdrawn the money. The Ex P.8 statement of PW-5, Shri Mani, cannot be taken at its face value. In his deposition, he had stated that the transaction made on 31.5.1980 was not entered in the pass book. If it was so, how he could authorise payment without making corresponding

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entries in the pass book, is difficult to understand. This is a procedure admittedly known to him. He further submits that the signature in the withdrawal slip is similar to that of the applicant's hand-writing. But he did not specifically state that the signature was that of the applicant. The Ex P.8 statement of PW-5 was recorded after one year of the transaction. How he remembered that this particular pass book was not produced before him on that particular day while making withdrawal is not stated. We have our own doubts, when he states that he went out for some purpose, while he is aware of the rules and regulations for approving withdrawals, without making entries in the pass book. There is force in the argument of the learned counsel for applicant that to rely upon the statement of PW-5 is not justifiable ~~as he is~~ also in the position of a suspect. PW-5 was not questioned at all by the inquiry officer in detail as can be seen from the inquiry report. There were also other independent witnesses, who are employees of the same Post Office where the transaction took place. But they were not examined at all nor any statement was obtained from them in this connection. All these lead us to believe that relying on the statement of PW-5, was a clear violation of the rules and ethics and his statement cannot be relied upon in arriving at a conclusion that the applicant is guilty.

8. Applicant would also submit that the signature could have been verified by an expert during the course of inquiry. This request appears to be reasonable, but this was not allowed as the Department felt that "the difference in the signature is too obvious to be missed by even an expert and corroborating evidence is clinching". This attitude of the Department is not consistent with requirements of natural justice.

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Verification of signature by an expert could have, perhaps, resolved the issue in a clinching way. This, in our opinion, is a lapse on the part of the authorities and an illegality.

9. Coming to the next point raised by the learned counsel for applicant that copies of the two documents were not supplied to the delinquent on the plea that the relevancy of the documents has not been cited by the charged employee and also for the reason that the documents called for were not relevant to the article of charge. Counsel would submit that this has vitiated the inquiry. These two documents were available with the disciplinary authority and we see no reason for not supplying them, even though he considered it not necessary. Refusal to supply these documents, when they were readily available with the authorities is not warranted. We feel, enough opportunity was not afforded to the applicant to substantiate her contentions.

10. Learned counsel for applicant argued that the inquiry authority built up his case around the answers given by the delinquent. Going through the enquiry proceedings, we see that there is substance in this argument. We find that questions were put mostly to the applicant and there was no worthwhile cross-examination of PW-5, on whose statement the whole case was decided. In the order of the disciplinary authority compulsorily retiring the applicant from service, and in the order of the appellate authority the contentions of the applicant have been rejected casually stating that she should have protested at that time itself, which she failed to do. The issues should have been gone into by the disciplinary authority and also the appellate authority by scrutinising the inquiry report to see whether this contention merits consideration. Instead of doing so,

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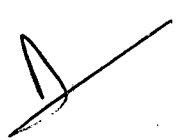
they have dismissed the contentions on very hyper-technical grounds. As indicated earlier, the evidence especially of PW-5 is very scanty and there is force in the submission of the applicant that the inquiry officer mainly relied on her answers to draw inferences against her.

11. Then, there is alleged bias on the part of the inquiry officer. When such an allegation was made, it should have been considered in detail and a reply to the accused either upholding or rejecting the allegation, should have been given. We do not see from Annexure A8 and A10 that any such reply was given to her. It is stated that this petition was disposed of. When bias is complained of and when this complaint was not taken in its proper perspective, in our opinion, there is a failure of justice.

12. Now, coming to the question of personal hearing, even though there was no specific request from the applicant for a personal hearing, the appellate authority is not required to invite an appellant for personal hearing. But an opportunity must be available and such an opportunity can be granted by notifying the date of hearing. Such an opportunity is a part of the appellate process (Ramachander's case--AIR 1986 SC 113). There is negation of natural justice on this score also.

13. In the conspectus of facts and circumstances of the case, we are convinced that the inquiry is vitiated by violation of natural justice. As the applicant is approaching this Tribunal for the second time, our judicial conscience does not allow us to remit the case back to the authorities for a fresh inquiry or reconsideration of their earlier punishment orders. The orders

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at Annexure A8 and A10 are only to be set aside. Accordingly, we do so and direct the respondents to reinstate the applicant in service with consequential benefits as directed by us in the following paragraph.

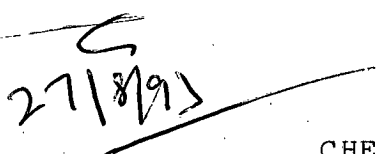
14. Now, the question that arises for consideration is in regard to the regularisation of the period of suspension from 11.7.80 to the date of her reinstatement in view of quashing of the orders at Annexure A8 and A10. It has been stated in the reply statement that the period of suspension has to be regularised only if the official is exonerated. Learned counsel for applicant had left it to us to decide the question of regularisation and its consequential benefits.

15. Since we have directed to reinstate the applicant in service by quashing the order of the disciplinary authority as well as the appellate authority, we direct the respondents to pay the applicant full salary and allowances for a period of three years preceding the date of reinstatement, after adjusting subsistence allowance, if any, paid to her.

16. Above directions will be complied within three months from today. The application is disposed of. No costs.

Dated the 27th August, 1993.


R RANGARAJAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

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LIST OF ANNEXURES:

Annexure A8 : Copy of order No.SSP/INQ dated
20.3.1991 issued by the 2nd
respondent.

Annexure A10 : Copy of order No.ST/B-22/91 dated
29.11.91 issued by the 3rd
respondent.

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