

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 588/90
~~KAXXV6X~~

~~199~~

DATE OF DECISION 27.5.1991

S Madhusoodanan Applicant (s)

Mr Abraham Kurian Advocate for the Applicant (s)

Versus

The Sub Divisional Inspector of Respondent (s)
Post Offices, Attungal Sub Division,
Attungal-695101 and others

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

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

The Hon'ble Mr. N Dharmadan, 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

Shri NV Krishnan, A.M

The applicant was an Extra Departmental Delivery Agent (EDDA, for short) in the Mudapuram P.O in Attungal Sub Division. While so, complaints were received about the non-delivery of certain registered letters and packets received from abroad. He was, therefore, put off duty by the order dated 14.10.85 at Annexure-III. Thereafter, by the Memorandum dated 28.1.86 at Annexure IV, proceedings under Rule 8 of the P&T ED Agents (Conduct & Service) Rules 1964 were instituted against him by the Sub Divisional Inspector of Post Offices, Attungal Sub Division (Respondent-1) in respect of two charges as follows.

" Article-I

Shri S Madhusoodhanan, while working as EDDA Mudapuram EDSO on 30.10.84 delivered foreign registered packet No.8100 dated 11.10.84 addressed to Smt A Karthiayani Thettivila Veedu, Mudapuram to a wrong person named Smt Baby and showed the article as delivered to the correct addressee on 30.10.84 in PO records suppressing the wrong delivery. By the above act Shri S Madhusoodhanan has violated provisions of Rule 709 of P&T Manual Vol. VI pt.III and shown lack of integrity and devotion to duty violating provisions of Rule 17 of P&T ED Agents (C&S) Rules 1964.

Article-II

Shri S Madhusoodhanan, while working as EDDA Mudapuram EDSO on 17.12.84 caused loss before delivery of foreign registered packet No.8606 dated 29.11.84 issued to him for delivery and suppressed the fact of loss from the dept thereby violating Rules 709 and 710 of P&T Manual Vol. VI pt.III and showed lack of integrity and devotion to duty violating provisions of Rule 17 of P&T ED Agents (C&S) Rules 1964."

The applicant denied the charges in his reply dated 22.2.86. Thereupon, the 1st respondent appointed an Enquiry Officer by his Memo dated 31.5.86.

2 It would appear that while the enquiry was thus pending, the applicant complained of delay in completing the proceedings. Therefore, he was ordered to be reinstated in service with immediate effect by the 2nd respondent's memo dated 11.2.87 (Annexure-V).

It is submitted in para-3 of the counter affidavit that this was done as the enquiry could not be finalised in time but without prejudice to the final outcome of the enquiry.

3 The Enquiry Officer submitted his report on 15.9.88 (Annexure VI) holding the applicant guilty of

only the 1st Article of charge and not guilty of the 2nd Article of charge. This report, along with the connected enquiry papers were considered by Respondent-1 who passed the impugned final order dated 18.10.88 (Annexure-I). The Disciplinary Authority agreed with the findings of the Enquiry Officer and in respect of the 1st Article of charge which was found to be fully proved, the applicant was removed from service.

4 The applicant preferred an appeal before the Senior Superintendent of Post Offices, Trivandrum, Respondent-2 who rejected it by his order dated 26.7.89 (Annexure-II).

5 Aggrieved by the Annexure I and Annexure II orders, the applicant has filed this application praying to quash these orders and to reinstate him and pay him allowances for the period he has been kept out of duty.

6 Two important issues have been raised by the learned counsel for the applicant:-

(a) The Disciplinary Authority (i.e., Respondent-1) found him guilty of the first charge without giving him an opportunity to submit his representation in regard

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to the Enquiry Report and the findings reached by the Enquiry Officer.

(b) The two important witnesses in regard to the first charge are Smt Karthiyani, the addressee to whom the Regd. packet was not delivered and Smt Baby, the person to whom the said Regd. packet addressed to Smt Karthiyani was wrongly delivered on 30.10.84. Therefore, there is not only lack of evidence but denial of natural justice.

7 The respondents have filed a reply contending that the applicant is not entitled to any relief.

8 We have heard the learned counsel of both the parties and perused the records, including the record of the disciplinary proceedings, carefully. The learned counsel for the respondents could not explain why Smt Karthiyani and Smt. Baby listed in the Annexure IV Memorandum of charges as Witness No.1 and No.2 were not examined. He submitted that despite service, these witnesses did not turn up and hence the proceedings were continued by examining Complaints Inspector, Shri KS Nair, PW II who had recorded their statement in the preliminary enquiry. When we queried as to why the powers available for compelling the attendance of such witnesses were not exercised, the learned counsel for the respondents could not give a satisfactory

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reply. In regard to the other allegation, the learned counsel for the respondents admits that a copy of the Enquiry Officer's report was not given to the applicant in the first instance to enable him to submit a representation to the Disciplinary Authority in respect of that report for consideration by the Disciplinary Authority before he found the applicant guilty of the first charge.

9. In the circumstances, we have no doubt that the impugned orders of the Disciplinary Authority and the Appellate Authority at Annexure-I and Annexure-II have to be quashed on the simple ground that the proceedings have violated the principles of natural justice by denying an opportunity to the applicant to make a representation against the Enquiry Officer's report before he was found guilty by the Disciplinary Authority. This proposition does not admit of any debate in the light of the decision of the Supreme Court in Union of India V. Mohammed Ramzan Khan AIR 1991 Supreme Court- 471.

10. Therefore, this is a fit case where after quashing the impugned orders, the matter should be remanded to the Disciplinary Authority.

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11 However, the learned counsel for the applicant submits that he should not be **subjected** to a further agonising enquiry, as more than five years have already passed by after he was put off duty. A remand will necessarily mean more delay. That apart, the Department has no worthwhile evidence against him. As can be seen from Annexure IV, the 1st charge is that (i) on 30.10.84, the applicant delivered a foreign registered packet No.8100 dated 11.10.84 addressed to Smt Karthiyani, Thettivila Veedu, Mudapuram to a wrong person, namely, Smt Baby, (ii) he, nevertheless showed the article as having been delivered to the correct addressee on 30.10.84 in the records of the Post Office by suppressing the fact of wrong delivery, and (iii) even when informed about this mistake by Smt Baby, he asked her to keep quiet. The learned counsel for the applicant submits that it was, therefore, absolutely necessary to prove this charge by examining both Smt Karthiyani and Smt Baby in his presence after giving him an opportunity to cross examine them. This was not done. Instead, reliance has been placed on their statements recorded during preliminary enquiry by the Complaints Inspector Shri KS Nair who has been examined in the Departmental

Enquiry proceedings as PW II. Therefore, first-hand evidence has not been produced against him and he has been denied his right of cross examination. Therefore, the conclusion reached by the Enquiry Officer is on this defective basis. This has, however, been endorsed by the Disciplinary Authority and the Appellate Authority without applying their mind. The learned counsel submits that, for these reasons, the whole proceedings should be quashed finally and the applicant ordered to be reinstated. On the contrary, the learned counsel for the Department prayed that if the impugned orders are quashed, the case be remanded as the charge is serious.

12 On a perusal of the original record of the disciplinary proceedings, we find that one Shri VS Samuel, designating himself as PO and PRI(P), Trivandrum had addressed a letter dated 5.5.87 to the Respondent-1 in which he was asked to send a reply as to whether, as instructed earlier, the relevant provisions of the Departmental Enquiry Act have been invoked to summon the witnesses. To this, the Respondent-1 replied on 20.5.87 stating that he has referred the matter to Respondent-2 for invoking the provisions of Section 5

of the Departmental Enquiry (Enforcement of Attendance of witnesses & Production of Documents) Act, 1972 (Act No. 18 of 1972). The record does not show what happened thereafter.

13 Considering the difficulties in ensuring the presence of important witnesses, this enactment was passed. This Act clothes the Enquiry Authority with statutory powers under the Code of Civil Procedure to enforce attendance of witnesses and production of documents. The Enquiry Authority gets this power under that Act, ^u ~~if~~ he is either directly authorised by the Central Government in this behalf by the issue of a notification under Section 4(i) of that Act or if he is so authorised by any other authority on whom the powers of issuing such notification have been conferred by the Central Government under Section 4(2) of that Act. Obviously, the existence of this Act was known to the Respondents, but for reasons not explained, the presence of the two witnesses was, nevertheless, not ensured.

14 Another matter which has been totally ignored in the Enquiry Officer's Report is the statements ^u Exb.P9 and P10 stated to be given by the applicant to

the Complaint Inspector during the preliminary enquiry.

The said Complaint Inspector was examined as PW 2.

He has deposed that he had recorded the statement of the applicant on 11. 9.85 and 12.9.85. The statements were referred to in the Annexure IV statement of charges as documents at Sl.No. 4 & 5. They were introduced as Exbt.P9 and P10 in the Enquiry. The applicant ^{was} also given an opportunity to cross examine PW 2, the Complaint Inspector in regard to these statements.

The evidence of PW 2 in this regard and the applicant's statements at Exbt.P9 and P10 have not been considered in the Enquiry Officer's Report. The applicant has also not referred to these statements in the written brief submitted by him at the end of the enquiry. He has, however, raised therein a doubt as to how the receipt signed by Smt. Baby (Exbt.P2) in token of having received the Article RL 8100 on 30.10.84 bears the date stamp of 5.11.84.

15 For these reasons, we are satisfied that a perfunctory enquiry was conducted and important matters and evidence have neither been adverted to nor analysed. It is sad to notice that neither the Disciplinary Authority (Respondent-1) nor the Appellate Authority

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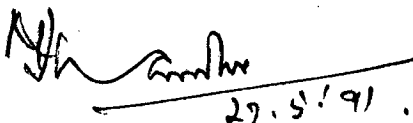
action to rectify
(Respondent-2) either noticed these shortcomings or took /
them. ~~xxxx~~ They have blindly accepted the Enquiry
Officer's Report.


16 In the circumstances, the question is whether
this case should be remanded for further enquiry or
closed finally. Two facts have to be noticed. Firstly,
the Departmental authorities have been extremely careless
in dealing with this enquiry. Secondly, the statement
of imputation in regard to the first article of charge,
which alone was held to be proved, does not allege that
the applicant delivered the registered packet No.8100
to Smt Baby out of dis-honest motives or to get any
monetary gain. The statement of Smt Baby recorded in the
preliminary enquiry also does not contain any such
allegation. Therefore, we are of the view that the
respondents do not deserve any concession in this regard
and hence the case has to be closed finally. At the same
time, the applicant cannot be held to be totally innocent,
particularly in the light of the Exbt.P9 and P10 statements,
which have not been demolished in cross examination of
PW 2.

17 Taking note of all these facts, we quash the
impugned Annexure I and Annexure-II orders and direct

the first respondent, the Sub Divisional Inspector of Post Offices, Attungal Sub Division, Attungal, to reinstate the applicant within 15 days from the date of receipt of this judgement. The applicant will, however, not be entitled to any allowance for the period he was put off from duty from 14.10.85 (Ann.III) till he was reinstated on 11.2.87 pending completion of the Disciplinary Enquiry (Annexure-V) and for the period he has been out of duty after removal by the Annexure-I order till he is now reinstated in accordance with the above directions. These periods will also not count for any other purpose.

18. The application is disposed of as above. No order as to costs.


27.5.91
(N.Dharmadan)
Judicial Member


27/5/91
(N.V.Krishnan)
Administrative Member

27.5.1991

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

RA No.46/91 in

O. A. No. 588/90
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DATE OF DECISION 9.9.91

S Madhusoodhanan - Review Applicant (s)

Mr Abraham Kurian Advocate for the ^{Review} Applicant (s)

Versus

The Sub Divisional Inspector of Post Offices, Attingal & others Respondent (s)

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

and

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? ✓
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JUDGEMENT

Shri NV Krishnan, A.M

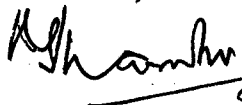
The original applicant has filed this review application.

We are of the view that this can be disposed of by circulation.


2 The review is sought in respect of the direction that
 ordered
though the applicant is to be reinstated, he would not be entitled
to any allowance for the period he was put off duty from 14.10.85
till he was reinstated on 11.2.87 pending completion of the
disciplinary enquiry and also for the period he was out of duty
after removal from service by the Annexure-I order till he is
reinstated in accordance with our orders.

3 We have seen the review application and the grounds
raised therein. The aforesaid direction was issued in the special

circumstances of the case and that direction does not call for any review. Evidently, the applicant has not made out any case for review of the original order. The review application is therefore, dismissed.


(N Dharmadan)
Judicial Member

9.9.91


(NV Krishnan)
Administrative Member

9.9.91