

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 79/90
XXX XXX

199

DATE OF DECISION 31-10-1990

KK Sasidharan

Applicant (s)

M/s OV Radhakrishnan, K Radhamani Amma &

N Nagaresh

Advocate for the Applicant (s)

Versus

Sub Divisional Inspector of Post Offices, Cherukunnu & 4 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)

The applicant who was working as Extra Departmental Delivery Agent, Nallipara Branch Post Office in the Department of Posts has filed this application challenging the validity of the order dated 7.1.1988 at Annexure-A3 appointing the first respondent as the ad-hoc Disciplinary Authority, the order of the first respondent dated 15.9.1988 at Annexure-A4 removing the applicant from service and the order dated 17.2.1989 at Annexure-A7 dismissing his appeal against the Annexure-A4 order.

2. While working as Extra Departmental Delivery Agent, Nallipara Branch Post Office, by order dated 5.2.1987 of the

Sub Divisional Inspector of Post Offices, Taliparamba Sub Division, the applicant was put off duty pending inquiry into some misconduct under Rule 9 of the E.D. Agents (Conduct and Service) Rules, 1964. Thereafter, he was served with a charge memo dated 5.10.1987 alleging that he while acting as B.P.M., Nellipara on 17.4.1986 while Smt. Rosamma James was on leave, issued a forged receipt No.55 receiving Rs.309/- for issuing a money order in favour of Shri Narayanan Nair, Akkarayil Veedu, Mukkottuthara mis-appropriated, the amount without crediting the same to the Post Office account and that he has therefore, failed to maintain absolute integrity and devotion to duty and that he behaved in a manner unbecoming of an E.D. Agent violating Rule 17 of P&T E.D. Agents (Conduct & Service) Rules, 1964. The applicant in the reply statement denied guilt. But an inquiry was held. Though the Enquiry Authority concluded that the charge against the applicant had not been conclusively established the Disciplinary Authority disagreed with the finding of the Enquiry Authority and issued the impugned order at Annexure-A4 finding the applicant guilty and imposing on him a penalty of removal from service. Though the applicant filed an appeal before the second respondent, the same was dismissed vide Annexure-A7 order. Aggrieved by these orders, the applicant has filed this application. The main ground on which the applicant attacks these orders are that, the Annexure-A3 order appointing the first respondent as ad-hoc Disciplinary Authority is inoperative inasmuch as it was issued by a person below in rank to head of the Circle, that Annexure-A4 order of punishment is

vitiated since the Disciplinary Authority has failed to observe the principles of natural justice inasmuch as he had not before proceeding to find the applicant guilty basing on the evidence recorded at the Enquiry disagreeing with the Enquiry Officer's finding supplied a copy of the enquiry report to the applicant and not given an opportunity to him to make his representation against the evidence recorded at the inquiry, that the finding in the Annexure-A4 order that the applicant is guilty is perverse as the same is not warranted from the evidence on record and that the Annexure-A7 order is unsustainable because the grounds urged by the applicant in the Annexure-A6 appeal has not been properly considered and also because he was not given a personal hearing by the Appellate Authority. The applicant prays that as the order of put off duty has got merged with the order of removal on account of the infirmity in the Annexure-A4 order, the applicant is entitled to be reinstated in service and be paid full backwages right from the date on which he was put off duty.

3. In the reply statement, the respondents have justified the impugned orders on the ground that the Annexure-A3 order was actually passed by the Post Master General through the communicated by/Director of Vigilance that the inquiry has been properly and validly held and that the appeal has been considered and disposed of properly.

4. We have heard the arguments of the learned counsel on either side and have also carefully gone through the documents

produced. The impugned order Annexure-A3 is attacked on the ground that under Rule 3A of the P&T ED Agents(Conduct & Service) Rules 1964 only the Head of the Circle is entitled to issue an order appointing an ad-hoc Disciplinary Authority and that inasmuch as Annexure-A3 was not issued by the PMG, the same is not valid and operative. It has been contended by the respondents that the Annexure-A3 order was passed by the PMG who is the Head of the Circle though the same was communicated by Director of Vigilance. A reading of the order at Annexure-A3 itself would show that the order was passed by the PMG and the same was communicated by the Director, Vigilance. Therefore, there is no merit in the attack against the Annexure-A3 order appointing the first respondent as the Ad-hoc Disciplinary Authority.

5. The Annexure-A4 order has been attacked on different grounds of which the most important are that, a copy of the Enquiry Authority's report was not furnished to the applicant before the Disciplinary Authority proceeded to decide the question of his guilt disagreeing with the finding of the Enquiry Authority, that his guilt had not been conclusively established and that the finding of the Disciplinary Authority is perverse for want of evidence. It is an undisputed fact that a copy of the enquiry report was not furnished to the applicant before the first respondent decided that the applicant is guilty relying on the evidence recorded at the enquiry but disagreeing with the finding of the Enquiry Officer's report that the guilt of the applicant had not been established conclusively. In Narayan Misra V. State of Orissa, 1969 SLR, 657, the Supreme Court held that where the Enquiry Officer finds the delinquent official not guilty of some charges and guilty of others but the Punishing Authority differing with the Enquiry Officer holds the official guilty of charges from which he was exonerated by the Enquiry Officer and no notice or

opportunity was given to the delinquent official about the attitude of the Punishing Authority, there is violation of the rules of natural justice and fair play and the punishment order is to be set aside. In Premnath K Sharma V. Union of India reported in 1988(6) ATC, 904(Bom), this Tribunal has held that the non-supply of a copy of the enquiry report before entering a finding regarding guilt by the Disciplinary Authority would vitiate the proceedings from that stage as the non-supply and refusal to give the delinquent an opportunity to make his representation regarding the acceptability or otherwise of the report would amount to denial of reasonable opportunity enshrined in Article 311(2) of the Constitution of India. Though in an SLP the Supreme Court has stayed the operation of the order passed in Premnath K Sharma's case, the principle enunciated by the Larger Bench of the Tribunal is still binding on us. Therefore, we are of the view that the impugned order at Annexure-A4 inflicting on the applicant a punishment of removal from service is liable to be set aside on the ground that it is vitiated since the first respondent has failed to observe the principles of natural justice and to give the applicant a reasonable opportunity to defend himself by not giving a copy of the Enquiry Officer's report and an opportunity to make his representation regarding the acceptability or otherwise of the report especially when the first respondent disagreed with the finding of the Enquiry Authority that the charge against the applicant had not been conclusively established. In view of this finding since the matter will have to be remitted to the Disciplinary Authority for recommencing and completing the proceedings from the stage of receipt of Enquiry Authority's report, we are of the view that it is not necessary to go into the merits and demerits of the other contentions raised in the application.

6. In view of our finding in the foregoing paragraph, we have to set aside the impugned orders at Annexure-A4 and A7 also since /the Appellate Authority has failed to consider the question of non-supply of the Enquiry Authority's report. Now the only question that would remain for our consideration is whether the applicant has to be reinstated in service and if to/reinstated, from which date onwards he has to be paid backwages. The learned counsel for the applicant argued that if the impugned order of removal xxxx from service is set aside, the applicant would be entitled to full allowances from the date/he was put off duty because the interim order of put off duty had got lapsed, merged with and /the order of removal and that when the order of removal goes, the put off duty does not have any existence and that it cannot be revived again. On the other hand, the learned counsel for the respondents argued that even if the Annexure-A4 is to be set aside on the ground that reasonable opportunity had not been given to the applicant to make his defence since it would be open for the Tribunal to direct the inquiry to be recommenced, it is also legal for this Tribunal to pass an order that the applicant would be deemed to be under put off duty pending finalisation of the proceedings in continuation of the original order of put off duty. The learned counsel for the applicant invited our attention to various rulings of the High Court/Supreme Court and the Central Administrative Tribunal in support of his argument that once the order of removal is set aside, the put off duty which got merged with the removal cannot be revived and that as a consequence, full back wages from the date of original put off

should be given to the applicant. The learned counsel for the applicant referred us to the following rulings:

- 1) HL Mehra V. Union of India & others (AIR 1974 SC 1281)
- 2) Kavanoor Panchayat V. M Kunhikrishna Marar and others (1980(3) SLR V.25 page 745)
- 3) WB Correya V. The Deputy Managing Director(Tech) Indian Airlines(1982(2) SLR V.24 page 466)
- 4) Ram Chandra Panigrahi V. Superintendent of Post Offices, Balasore Division & others(1985(1) SLR V.38 page 81)
- 5) PM Rusamma V. Inspector of Post Offices, Muvattupuzha and others(1988) 7 ATC, 833).

Of these five cases, the first three relates to cases governed by the CCS(CCA) Rules and the last two relates to E.D. Agents (Conduct & Service) Rules. In all these cases, it has been held that since suspension or put off duty as the case may be got merged with the order of removal from service, the moment the order of removal from service is set aside, the suspension or put off duty as the case may be got merged with the order of removal and lapsed on the date of which the order of removal was passed/ by ordering a denovo inquiry/ cannot be automatically revived. In the cases governed by CCS(CCA) Rules by virtue of Clauses 3, 4 and 5 of Rule 10, if the conditions mentioned in these clauses are satisfied, the suspension can be deemed to have been continued. In the first three cases since the conditions mentioned in the above said clauses of Rule 10 were not found satisfied, it was held that the suspension could not be deemed to have continued. In Ramchandra Panigrahi V. Superintendent of Post Offices, Balasore and others

the Orissa High Court held:

"....we hold that the order dated 17th August 1977 (Annexure 7) remitting the case for initiating de novo proceeding had the effect of setting aside the order of removal passed against the petitioner on 5.10.1976. By that date the order putting the petitioner off duty has lapsed. The order that has lapsed will not revive ipso facto unless there is any provision in the Rules to that effect and we do not find any such provision in the Rules now under consideration. Accordingly, we reject the submission of Mr. Murthy, learned Standing Counsel appearing for the opposite parties, that the order putting the petitioner off duty continues to be in force.

6. In the ultimate analysis, therefore, the petitioner must be deemed to be continuing in service and will be entitled to all consequential benefits."

In PM Rusamma V. Inspector of Post Offices, Muvattupuzha and others where the appellate authority ... set aside the penalty of removal from service allowing the appeal and directed and when reinstatement of the applicant, / the claim of the applicant for full allowances during the period for which he was put off duty was rejected, the Madras Bench of the Tribunal held as follows:

"A regular Government servant under suspension is entitled to subsistence allowance as provided for under FR 53(1). As regards remuneration to be paid to him, during the period of suspension in a case where the Government servant who has been dismissed, removed or compulsorily retired is reinstated, it is provided for under FR 54, 54-A and 54-B. It may be because that Extra departmental employees cannot be equated with regular employees as they are only part-time employees that in sub-rule(3) of the Rules, it is provided that such an employee shall not be entitled to any allowance for the period for which he is put off duty. In a case where as a result of the enquiry, the employee is removed from service, but on appeal, the penalty is vacated and the employee is reinstated in service, can it be said that the employee is not entitled to the remuneration for the period he was put off duty? It is settled that when the penalty of removal from service is imposed, the order putting the employee off duty, merges with the order of removal, but that when the penalty of removal from service is set aside on appeal, the order putting the employee off duty does not automatically revive. As a result of the reinstatement, the penalty of removal from service having been held to be unsupportable and quashed on that ground, it is open to the employee to claim restitution of the benefits which he would have been entitled to had he continued in service. It follows that in such a case, it is open to the employee not only to claim the remuneration for the period he is kept out of service as

a result of the order of removal, but also for the period during which he was put off duty. This view has been recognised by the High Court of Kerala in K Saradamma V. Sr. Superintendent of Post Offices, it was held therein that the operation of sub-rule(3) of Rule 9 is only during the period an employee is actually under suspension and only for the limited purpose of defeating his claim for payment during that period and that it cannot defeat or control the effect of the subsequent declaration about the nullity of the termination. We are in respectful agreement with the pronouncement."

On the basis of the above referred decisions of the Supreme Court, High Courts and the Madras Bench of the Tribunal, we hold that the put off duty got merged with the removal and that it did not have any independent existence from the date on which the order of removal of service was passed and that once the removal from service is set aside, then the necessary consequence is that the applicant should be deemed to be in service. If he has been kept out of service, he has to be reinstated in service and paid back wages. But from what date onwards the incumbent is to be paid back wages? In all the cases cited before us, the entire proceedings have been set aside as vitiated and the incumbents have been directed to be reinstated with the difference that in some cases *denovo* proceedings are directed to be initiated. In the case on hand there is one difference. The entire disciplinary proceedings ^{which} culminated in Annexure-A4 order has not been set aside by us. We have held that the disciplinary proceedings against the applicant is vitiated from the stage of passing the impugned order removing the applicant from duty without giving him a copy of the Enquiry Officer's report before the Disciplinary Authority decided that the applicant is guilty.

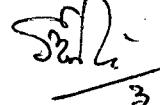
In other words, we had held that the disciplinary proceedings upto the stage when the Disciplinary Authority decided that the applicant is guilty without giving him a reasonable opportunity to represent about the acceptability of the evidence recorded at the inquiry is valid. Therefore, we find no reason why the put off duty upto that stage should vanish or should cease to have effect. We are not ordering a *denovo* inquiry from the inception. We only direct completion of the disciplinary proceedings after giving the applicant an opportunity to make his representation. So we are of the view that the interest of justice would be met in this case if the respondents are directed to reinstate the applicant forthwith and to pay him full allowances from the date on which he was removed from service.

7. In the result, in view of what is stated in the foregoing paragraphs, we allow the application in part, quash impugned orders Annexure-A4 and A7, direct the respondents to reinstate the applicant forthwith, to pay him full allowances from the date of his removal from service and to recommence the disciplinary proceedings against him from the stage after receipt of the Enquiry Authority's report. Now that a copy of the Enquiry Authority's report has been given to the applicant along with the impugned order at Annexure-A4 and since the reason for disagreement with the finding of the Enquiry Officer has been stated in the Annexure-A4 order, it will be sufficient if the applicant is given an opportunity to make his representation and an order in the disciplinary proceedings is passed, considering the representation, if any, made by the applicant within

the time to be specified in that behalf by the Disciplinary Authority. We also make it clear that if the Disciplinary Authority deems it necessary to put the applicant off duty again to facilitate the completion of the disciplinary proceedings, it will be open for it to do so after reinstating the applicant into service. The disciplinary proceedings should be completed within a period of three months from the date of receipt of this order. In the circumstances of the case, we do not make any order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER

31-X-90


(SP MUKERJI)
VICE CHAIRMAN

31-10-1990

trs

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

REVIEW APPLICATION NO.1/91 IN
ORIGINAL APPLICATION NO.79/90

The Sub Divisional Inspector
of Post Offices, Cherukunnu
Sub Division, Cannanore & Ors. --- Review applicant

-Vs-

K.K.Sasidharan --- Review respondent

Mr.TPM Ibrahim Khan,
Standing Counsel for Deptt. of Post --- Counsel for the Review
applicants

Mr.OV Radhakrishnan --- Counsel for the Review
respondents

O R D E R

(A.V.Haridasan, Judicial Member)

In our order dated 31.10.1990, we set aside the impugned order by which the applicant, an Extra Departmental Delivery Agent was removed from service, finding that the order was vitiated since before finding the applicant guilty, he was not given a copy of the enquiry report and an opportunity to make representation about the acceptability of the report. We also directed that the applicant should be reinstated in service and be paid back wages from the date of removal till the date of reinstatement. Now the respondents in the Original Application has filed this application for review of our order, deleting the direction to pay back wages. In this Review Application, the review applicants have not pointed out that any error apparent on the face of records or that any new material or fresh point of law warranting

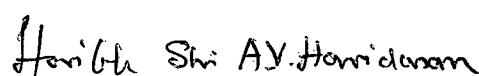
a review which could not be put-forth during the hearing of the Original Application have been brought to light. on But the ground that in some other cases while the disciplinary orders were set aside and completion of the proceedings from the stage of receipt of Enquiry Officer's report have been ordered, the Tribunal had not directed payment of full back wages, and that, if the department is to pay back wages, that would cause financial loss to the department, the applicants pray that the order may be reviewed deleting the direction to pay back wages.

In this case after considering the arguments put forth on either sides and discussing the case law on the point, we have decided that the respondents in the Review Application herein who is the applicant in the Original Application is entitled to pay back wages from the date of removal from service till the date of reinstatement. The Review Applicants are not entitled to challenge this finding and decision in the Review Application. In case they are aggrieved, their remedy is to challenge the order before the Hon'ble Supreme Court. Hence, the Review Application is liable to be rejected. If the Hon'ble Vice Chairman agrees, the Review Application may be dismissed by circulation.


(A.V. HARIDASAN)
JUDICIAL MEMBER

HON'BLE MRS.P.MUKERJI
VICE CHAIRMAN

I agree. We may pronounce the order in the open court.


Hon'ble Sir A.V. Haridasan


D.R.
10.1.91