

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 80/91
~~WAXXEX~~

1991

DATE OF DECISION 7.2.1992

Smt. K.D. Mariam Applicant (S)

Shri M.K. Damodaran Advocate for the Applicant (S)

Versus

UOI (Secretary, Ministry of Communications) and 2 others Respondent (s)

Shri P. Sankarankutty Nair Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P. Mukerji - Vice Chairman
and

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 A.V. Haridasan, Judicial Member)

This application is directed against the order of the third respondent, the Superintendent of Post Offices, Tellicherry, dated 27.1.1989 (Annexure A-2) by which the applicant who was working as ED BPM, Edavaka, was removed from service with immediate effect and also the order dated 8.5.1990 of the second respondent, the Director of Postal Services (Annexure A-VII) by which the appeal filed by the applicant was rejected.

2. A short resume of facts necessary for the disposal of the application is as follows. On 17.3.1986 at about 1050 a.m., Shri M.V. Damodaran, SDI, Mananthavady Sub

Division along with three mail overseers entered the Edavaka Post Office of which the applicant was ED BPM. Immediately after they entered the office, the applicant went out and returned only at 1106 a.m. The SDI demanded a written statement ^{from the applicant} as to why she left the office. The applicant did not give any statement. The SDI made verification of savings accounts. The next day he again went to the Branch Post Office along with a Complaint Inspector and three Mail Overseers and demanded that the applicant should give a statement explaining the circumstances under which she left the office the previous day between 1050 a.m. and 1106 a.m. The applicant again did not give any such statement. On 19.3.1986, the SDI made a report to the Superintendent of Post Offices, Tellicherry, explaining these facts and also that there have been certain irregularities in regard to proper maintenance of SB accounts. The applicant was also put off duty by the SDI. She was thereafter served with a memorandum of charges containing three heads of charges. Charge number one was on the allegation that the applicant had, while functioning as ED BPM, Edavaka, failed to entrust M.O. No.472 of Manantoddy for Rs.481/- to the EDDA for payment from 15.7.1985 to 18.7.1985 as required under rule 106 of book of BO rules and thereby contravened rule 17 of P & T ED Agents (Conduct and Service) Rules, 1964 and had thereby failed to maintain absolute integrity and devotion to duty. Charge number two was on the allegation that the applicant had on 17.3.1986 absented from the office for a few minutes without sufficient reason immediately after the SDI, Manantoddy, visited the office and when the SDI asked for her statement explaining the

reason for the above said absence, she refused to give such a statement and had thereby failed to maintain absolute integrity and devotion to duty. The third article of charge was on the allegation that the applicant had, while functioning as ED, BPM, Edavaka, having accepted three deposits each towards RD A/c Nos. 52879 and 52663 on 11.3.1986 being the deposits for the months of February, March and April, 1986, credited only two deposits each in the above RD accounts and had, therefore, failed to maintain absolute integrity and devotion to duty as required under rule 17 of P&T ED Agents (Conduct and Service) Rules, 1964. As the applicant denied the charges in her written explanation, an enquiry was held. The enquiry authority found ^{that} the charges one and two were not proved and that the charge number three was proved but not conclusively. The third respondent, the disciplinary authority, without giving a copy of the enquiry report, and ~~an~~ an opportunity to the applicant to make her representation disagreeing with the findings of the enquiry authority, held that all the charges were proved and imposed upon the applicant the punishment of removal from service by the impugned order at Annexure A2. Though this order of removal from service was served on the applicant on 4.2.1989, the applicant filed an appeal to the second respondent only on 29.12.1989. She had, along with the appeal memorandum (a copy of which is at Annexure III) filed an application (a copy of which is at Annexure V) for condonation of the delay in filing the appeal on the ground that during the period between service of the impugned order and the date on which the appeal was submitted, she was mentally and physically sick and distressed. She had

also sent a medical certificate from Dr. Krishnakumar of the District Headquarters Hospital, Manantoddy (Annexure VI) wherein the doctor had certified that the applicant was under his treatment from 10.1.1989 onwards for Lambago & Sciatica and also anxiety neurosis and that she was advised not to take heavy work and journeys till the symptoms subsided and that she continued to be under his treatment. This certificate was issued on 28th December, 1989. The second respondent, however, by the impugned order at Annexure VII held that the applicant did not furnish any valid reason for the belated submission of the appeal and, therefore, rejected the appeal as time barred without going into the merits of the case. It is in these circumstances that the applicant has filed this application under Section 19 of the Administrative Tribunals Act. The main grounds on which the impugned orders are attacked are (a) the disciplinary authority has violated the principles of natural justice in holding the applicant guilty of the charges disagreeing with the findings of the enquiry authority without giving her a copy of the enquiry report and an opportunity to make her representation; (b) the finding that the applicant is guilty is absolutely perverse as the same is based on no evidence at all and (c) the appellate authority has not considered the grounds raised by the applicant in the appeal memorandum and the application for condonation of the delay and, therefore, the appellate order at Annexure VII is unsustainable.

3. The respondents have filed an affidavit in reply stating that the applicant is not entitled to any relief as the disciplinary authority as well as the appellate authority have disposed of the disciplinary proceedings and the appeal in accordance with the law after giving the applicant reasonable opportunity to defend her case.

4. We have carefully gone through the pleadings and documents and have also perused the proceedings of the enquiry made available by the learned counsel for the respondents. We have also heard the argument of the counsel for the parties.

5. The fact that a copy of the enquiry report was not furnished to the applicant and that she was not given an opportunity to make her representation before the disciplinary authority passed the impugned order at Annexure A2 holding the applicant guilty of all the charges disagreeing with the findings of the enquiry authority that charges one and two were not proved and that charge number three was proved but not conclusively, is not in dispute. The Hon'ble Supreme Court has in Union of India and others vs. Mohd. Ramzan Khan, 1990 (2) scale 1094, held that non-supply of a copy of the enquiry report and denial of an opportunity to make a representation to the delinquent Government servant before the disciplinary authority decides that the delinquent Government servant is guilty of the charges in a proceedings for imposing a major penalty amounts to violation of principles of natural justice enshrined in Article 311 of the Constitution. In this case, a copy of the enquiry report was not furnished to the applicant and so, we are of the view that this dictum applies to this case also and for that reason alone, the impugned order at Annexure A2 is required to be quashed. If a copy of the enquiry report is given to the delinquent Government servant before the disciplinary authority proceeds to decide the question whether the Government servant is guilty or not, the Government servant will get an opportunity to point out to the disciplinary authority the infirmities, if any, in the proceedings, the paucity of evidence etc.

It is more so in a case where the disciplinary authority has decided to disagree with the findings of the enquiry authority. Before deciding to disagree with the findings of the enquiry authority, in fairness, the disciplinary authority has to give notice of such intention to the delinquent Government servant. We are of the view that the disciplinary authority in this case has committed a serious error in not doing so and that this has resulted in total miscarriage of justice and deprival of reasonable opportunity to defend the case.

6. Going through the proceedings of the enquiry, the evidence recorded at the enquiry, the enquiry authority's report and the impugned order at Annexure II, we find that the disciplinary authority has without sufficient and cogent reasons concluded that the applicant is guilty of the charges. Regarding charge number one, the enquiry authority has for very good and valid reasons held that the charge has not been established by oral or documentary evidence. The charge is that the applicant did not entrust money order No.472 of Mananthavady dated 12.7.1985 for Rs.481/- to the EDDA for payment from 13.7.1985 to 18.7.1985. But the EDDA who was examined as PW11, had sworn that he had written some remarks on the M.O. form on 13.7.1985, 15.7.1985, 16.7.1985, 17.7.1985 and 18.7.1985 and that on 19.7.1985 he had remarked that the M.O. was payable at Elukunnam B.O. PW11 had also stated that he detained the M.O. for seven days as he was under the impression that the M.O. had to be kept for seven days before redirection. It was also noticed by the enquiry authority that there was not sufficient cash in the BPO for M.O. payment on 16.7.1985 to 19.7.1985. The details of the cash available and the liabilities have been extracted

in the report of the enquiry to show that sufficient cash was not there in the BPO to make the payment. It was in these circumstances that the enquiry authority held that charge number one was not proved. It is without any reference to the testimony of PW11, the EDDA, that the disciplinary authority ~~has~~ disagreed with the findings of the enquiry authority that the charge had not been proved. The disciplinary authority has in the impugned order (Annexure A2) observed as follows:-

"From the evidence adduced, it is amply clear that she has failed persistently to comply with the provisions of rule 106 of Book of BO rules according to which the MO and its cash were to be entrusted to the EDDA and the EDDA required to give his signature in acquittance noting the amount received in words and figures. This constituted lack of devotion to duty. Lack of integrity is also involved as even without entrusting the MOs with cash to the EDDA and without making any remark in the BO journal, she was knowingly recording false remarks in the daily accounts sent by her to AO which obviously was by way of an attempt to shield herself from being caught by the Account Office. One with a sense of honesty cannot resort to such practice. It therefore stands well proved that the BPO acted in contravention of rule 106 of Book of BO rules, and also displayed lack of integrity and devotion to duty violating rule 17 of ED Agents (Service & Conduct) rules 1964."

These observations of the disciplinary authority is not warranted from the evidence on record. Therefore, we

are of the view that this finding is absolutely perverse. Article number two in the memorandum of charge is based on the allegation that the applicant on 17.6.1986 absented from the office for a few minutes when the SDI and three mail overseers entered the office. The period of absence is about 16 minutes. The explanation submitted by the applicant is that as she was having a bad stomach disorder, she had to leave the office suddenly to attend to the call of nature as there was no facility for that in the Branch Post Office building. The witness number four, one of the mail overseers who accompanied the SDI, Shri M.V. Damodaran Nambiar (PW6) has sworn that while the applicant went out, she said to the SDI that she would go and come back soon. The alleged offence is that she refused to give a statement explaining the reason why she went out. The applicant is a young lady. The PW6 and mail overseers who visited the office were all men. If the applicant on account of shyness refrained from explaining that she went out to attend to the call of nature, that cannot be taken as a disobedience to the commands of a superior officer. Further, though the PW6 has complained that the applicant refused to give a statement, the PW6 had not issued any memo calling for explanation. Further, the conduct of PW6 in again visiting the office on the next day along with the Complaint

① her leaving the office the previous day *(h)* Inspector and three other mail overseers making ^a demand to the applicant to give a statement ^{and recording a} explaining the reasons for proceeding (exhibit C10) that the applicant refused to give a statement indicates that the PW6 was motivated by something more than ^{the} public interest in pursuing the matter further. The applicant has a case that the PW6 has been harassing her and behaving towards her in a manner not becoming of a male superior officer. The defence witness

examined on the side of the applicant has sworn that the Inspector was using threatening words towards the applicant. Further, in his report dated 19.3.1986 to the Superintendent of Post Offices (shown as S.No.4/C in the file relating to the enquiry proceedings at paragraph 6) the PW6, had stated as follows:-

"It was gathered that Smt. K.D. Mariyam, BPM, father and her boy friends contacted many depositors to take possession of pass books with the intent to obstruct our work and defeat the purpose of the drive."

The applicant is a married lady. The allegation that the applicant and her boy friends contacted depositors appears to be mischievous. A superior officer of dignity is not expected to use such words about a female subordinate. This discloses the attitude of the PW6 towards the applicant. On a careful and anxious consideration of the facts, circumstances and evidence available we are of the view that the conclusion arrived at by the enquiry authority that the charge number two was not established is the view that a reasonable person can arrive at and that the finding of the disciplinary authority to the contrary is absolutely perverse.

7. Now, coming to the last article of charge, the allegation that the applicant had received three deposits each towards RD A/c Nos. 52879 and 52663 on 11.3.1986 credited only two instalments each on that date and credited the last instalment of Rs.15/- only on 19.3.1986, the PW5 had sworn that he had personally handed over Rs.45/- on 11.3.1986 to the BPM. But PW12 Shri P. Sumithran, the EDDA, who collected the pass book from the depositor on 18.3.1986 has sworn that Rs.15/- was entrusted with him only on 18.3.1986 and that as

this amount was handed over to the BPM, (the applicant) on 19.3.1986, the amount was credited and the pass book was returned by him to the depositors on 19.3.1986. PW12 has not been declared as hostile. No reason has been given as to why his testimony cannot be accepted as true. It has also come out that a receipt was obtained by PW12 from one of the depositors on 19.3.1986 while the pass book was returned to the depositor. Taking note of all these evidence and circumstances, the enquiry authority has observed as follows:-

"The depositor of RD A/c No.52879 (PW2) has stated (vide C3) that her husband was making deposits. Depositor of RD A/C No.52663 (PW2) is an old lady. Her husband Shri Paulose is doing the transactions as per the statements (C1). According to Shri Paulose (PW5) he had personally handed over 3 deposits of Rs.45/- on 11.3.1986 and he was satisfied with the entries made in the pass books (page 8 of the proceedings dated 17.6.1988). But as per the evidence of Shri P. Sumithran former EDDA (PW12) who collected the PB from the depositor on 18.3.1986 an amount of Rs.15/- was entrusted to him for making deposit and this was handed over to the BO (page 4 of the proceedings dated 6.10.1988) the books after deposits were returned to the house of the depositors by him on 19.3.1986. He had also obtained a receipt from Mary Paulose (D1). The charged BPM has vide her statement given to the SDI stated that all the deposits were not given together. There were more people involved in this. Shri P. Paulose who is not the actual depositor,

Shri P. Sumithran, EDDA, Shri K.V. Mariyam, MPKBY Agent and the charged BPM. The PBs and the cash have passed through all these people, between 11/3 and 19.3.1986. In the absence of clear evidence that it was the BPM who misappropriated the money that too a paltry sum of Rs.15/- for 8 days, it is difficult to put the blame on the charged BPM and penalise her."

However, in the later part of the report, the enquiry authority has stated as follows:-

"in view of the evidence of Shri P. Paulose who has stated that 3 deposits were handed over to Smt. K.D. Mariyam personally on 11.3.1986 and also because of the involvement of the BPM by visiting the residence of the depositors on 19.3.1986 night along with Shri Sumithran, EDDA to hand over the PBs I am lead to believe that there is some truth in the allegation."

These two versions of the enquiry authority do not consistently go together. There is no dependable evidence to conclude that the amount of Rs.45/- handed over by the three depositors were paid to the applicant on 11.3.1986 especially when Shri Sumithran (PW.2) has categorically stated that the sum of Rs.15/- was entrusted to him on 18.3.1986 only. The receipt for the pass book was given to Shri Sumithran. This fact is evidenced by exhibit D1. Under these circumstances, it is not possible to conclude that the applicant had retained Rs.15/- from 11.3.1986 to 19.3.1986. It is well settled that a mere suspicion cannot be a substitute for truth even in a disciplinary proceedings. The enquiry authority

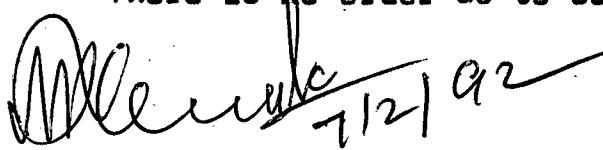
and the disciplinary authority have gone wrong in reaching the conclusion that the applicant has failed to credit the amount of Rs.15/- from 11.3.1986 to 19.3.1986 as there is no acceptable evidence to come to this conclusion. The finding on charge number three also is, therefore, perverse and unwarranted from the evidence on record.

8. It is seen that the applicant has in her appeal memorandum elaborately pointed out all these aspects. The appeal was not considered on merits by the second respondent for the reason that no valid reason for the delayed submission of the appeal was given by the applicant. It is seen that the applicant had, along with the appeal memorandum submitted an application for condonation of delay on the ground that she was physically and mentally unwell. It is also seen that a medical certificate from a medical officer of the District Hospital was attached to the application for condonation of delay to substantiate the case of the applicant that she was unwell during the period. The second respondent has not stated that the medical certificate cannot be relied upon. Therefore, the second respondent has failed to apply her mind to the facts mentioned in the application for condonation of delay and the supporting evidence. We are of the view that the second respondent should have condoned the delay and disposed of the appeal on merits. For that reason, we find that the order of the appellate authority at Annexure VII is liable to be quashed.

9. In the conspectus of facts and circumstances, we find that the impugned orders at Annexure 2 and Annexure VII are unjust, illegal and unsustainable. We, therefore, quash these orders. We also direct

the respondents to reinstate the applicant in service forthwith and to pay her full back wages for the period between the date of her removal from service till the date of reinstatement excepting the period between 4.2.1989 and 29.12.1989 because the filing of appeal was delayed during this period. The back wages as directed above should be paid to the applicant within a period of two months from the date of communication of this order.

10. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

R.A. 66/92 in
O. A. No. 80/91
XXXXXX

XXX

DATE OF DECISION 08.7.1992

The Superintendent of Post Applicant (s)
Offices, Tellicherry. & others.

Mr Sankaran Kutty Nair Advocate for the Applicant (s)

Versus

Mr K.D. Mariam, EDBP, Respondent (s)
Edavaka PO.

----- 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 ?
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 AV Haridasan, JM)

The respondents in the Original Application have filed this Review Application challenging the wisdom of the decision in the OA. The review is not sought on the ground that there is any error apparent on the face of records or that there is any other circumstance in the case justifying a review. On the other hand, the Review Applicants are raising arguments against the findings. If they strongly feel that the decision is wrong, the remedy open for them is an appeal and not a review.

Hence, the RA is dismissed by circulation.

AV Haridasan
(AV HARIDASAN)
JUDICIAL MEMBER

SP Mukerji
8.7.92
(SP MUKERJI)
VICE CHAIRMAN

28-1-93
(23)

CPC-15/93 in OA 80/91

Mrs Alexander Thomas for petitioner

Mr. P Santhanam Nair, ACHSE
takes notice on the CPC. He
seeks 10 days time to file a reply
List for further directions

on 15.2.93

Silki
(SPM)

ph

CAVH)

28-1-93

(30) Mr MK Damodaran
Mr PSK Nair

The statement has been filed by the respondents.
List the CPC for further hearing on 10.3.93.

RR

AVH

15.2.93

10-3-93
(23)

Mrs Alexander Thomas

Mr PSK Nair

At the request of the learned
Counsel for the petitioner, list for
further directions on 11.3.93 A/W

OA - 279/93

Silki
(SPM)

ph

CAVH)

10-3-93

CP(e) 15/93
in OA 80/91

(23) Mr. MK Damodaran
in ASK am

See in CP(e) for further
directions on 1-4-93.

D
RK

R
AVH

18/3/93 11/3/93

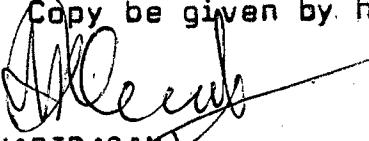
CP(C) 15/93

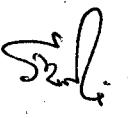
(14)

in OA 80/91 Mr. MK Damodaran
Mr. Namboothiry

At the request of the learned counsel for
the respondents who seeks sometime to verify whether
the petitioner has been appointed on the expiry of
one month's notice on 5.2.93 with the present incumbent.
We direct that the respondents shall report compliance
by 7.4.93 failing which we direct that Smt. G Radhamani,
Superintendent of Post Offices, Tellicherry Division
shall appear before us in person to explain why the
proceedings under the contempt of Courts Act be not
initiated against her.

Copy be given by hand.


(AV HARIDASAN)
Judicial Member

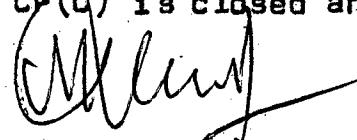

(SP MUKERJI)
Vice Chairman

1.4.93

27

Shri MK Damodaran for the applicant.
Shri MVS Namboothiri for the respondents.

The learned counsel for the respondents has produced a copy of a communication dated 1.4.1993 from the Superintendent of Post Offices stating that Smt KD Mariam has been reinstated with effect from the afternoon of 27.3.1993. A copy of the order regarding payment of backwages is also enclosed therewith. In the circumstances, the CP(D) is closed and notice discharged.

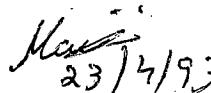

(AV Haridasan)
JM-II


(SP Mukerji)
VC

7.4.1993.

Received File No
F5/21/86-87
reg. Temporary
misappropriation
of cash by
ED BPM, Edavaka
of Deptt of
Post.

For Adv. M.V.S.
Namboothiri


23/4/93
Reg. No. 070.