

22-12-1987

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

No. OA 104/1987

K. Premakumari : Applicant

Versus

- |                                |   |             |
|--------------------------------|---|-------------|
| 1. Union of India represented  | X |             |
| by Secretary, Ministry of      | X |             |
| Communication, New Delhi.      | X |             |
|                                | X |             |
| 2. General Manager, Telecommu- | X |             |
| nications, Kerala, Trivandrum. | X | Respondents |
|                                | X |             |
| 3. District Manager, Tele-     | X |             |
| phones, Trivandrum.            | X |             |
|                                | X |             |
| 4. Divisional Engineer (Admi-  | X |             |
| nistration), Office of the     | X |             |
| District Manager, Telephones,  | X |             |
| Trivandrum.                    | X |             |

M/s P.V. Sreedharan Nair, S.P. Aravin- : Counsel for  
dakshan Pillai, K.G. Anil Babu, P.V.S. applicant.  
Sudheer.

Shri K. Karthikeya Panicker : Counsel for  
respondents.

CORAM:

Hon'ble Shri S.P. Mukerji, Administrative Member

Hon'ble Shri G. Sreedharan Nair, Judicial Member

ORDER

(Pronounced by Hon'ble Shri G. Sreedharan Nair)

The applicant while working as a Section Super-  
visor in the office of the Accounts Officer, Telephones  
(Revenue), Trivandrum was served with a Memorandum  
of charges on 21-6-1984, proposing to hold an enquiry  
against her under Rule 14 of CCS(CCA) Rules, 1965.

for short the Rules, for violation of clauses (i) and (iii) of sub rule (1) of Rule 3 of the CCS (Conduct) Rules, 1964. The allegation against her was that she submitted bogus L.T.C. claim and that the bill itself was not presented within the prescribed period. The applicant filed a written statement of defence. An enquiry was conducted. The enquiry officer found ~~that~~ the first charge as not proved. On the second, since the journey was completed on 10-1-1983 and as the bill was submitted only on 10-3-1983 it was held that on account of failure to submit the bill in time she has not shown devotion to duty and thereby violated clause (ii) of sub rule 1 of Rule 3 of CCS(Conduct) Rule, 1964. However the disciplinary authority found ~~that~~ the first charge also proved and imposed the penalty of compulsory retirement and also ordered that the L.T.C. advance paid to her be adjusted against the dues to her from the Department. An appeal submitted by the applicant was ~~also~~ not of any avail. The applicant prays for quashing the order of penalty and for reinstatement. It is alleged that the finding of the enquiry officer was arrived at after a thorough examination of the entire records and full appreciation of the facts and circumstances, and that the disciplinary authority in disagreeing

with the same has not evaluated the findings, facts and circumstances in their proper perspective which has led to miscarriage of justice.

2. The respondents have filed a reply refuting the averments in the application and have stated that the decision of the disciplinary authority was arrived at in accordance with the law.

3. The main point that was stressed by the counsel of the applicant at the time of hearing was that before the disciplinary authority arrived at the conclusion different from the one of the enquiry officer the applicant should have been granted an opportunity of being heard, after furnishing to her a copy of the report of the enquiry officer. That such an opportunity was not given, and that the copy of the enquiry report was not furnished is not disputed by the respondents. In support of this plea reliance was placed by the counsel of the applicant on a decision of a Bench of this Tribunal to which one of us (Hon'ble G. Sreedharan Nair) was a party in K.S. Sekharan Kutty Vs. Senior Superintendent of Post Offices and others (decision dated 17-6-1987 in OA 844/86). In the aforesaid decision it has been held that when an employee is compulsorily retired by way of punishment after an enquiry in accordance with the Rules, holding that the employee is guilty of the charges levelled against \_\_\_\_\_

him, it amounts to removal from service so as to ~~protect~~ <sup>attract</sup> the principles of natural justice and the operation of clause (ii) of Article 311 of the Constitution. It was further held that even after the amendment of the said clause by the Constitution (42nd amendment) Act, 1976 reasonable opportunity of being heard in respect of the charges levelled against the employee has to be given, and that failure to do so will vitiate the proceedings.

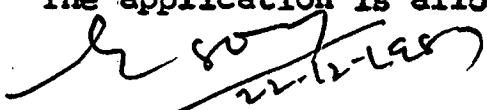
4. When the disciplinary authority himself does not conduct the enquiry, it is as his nominee that the enquiry is conducted by the enquiry officer. In such a case the material on which the disciplinary authority arrives at the conclusion is by way of the report of the enquiry officer. It is open to the disciplinary authority to arrive at the same conclusion as that of the enquiry officer or to differ from the findings of the enquiry officer. In either case <sup>if</sup> ~~after~~ it is done without affording an opportunity to the employee of being heard on the report of the enquiry it would amount to denial of opportunity of being heard as envisaged under clause (ii) of Article 311 of the Constitution. If the disciplinary authority had issued a copy of the report of the enquiry officer to the applicant and had given him her an

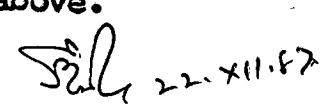
opportunity of being heard, the applicant could well have dissuaded the disciplinary authority from arriving at a different conclusion.

5. In the circumstances the order of the disciplinary authority and that of the appellate authority <sup>upheld,</sup> confirming the same cannot be ~~held~~, and the matter has to be remitted for fresh disposal. It was submitted by the counsel of the applicant that in the circumstances of the case a direction may be given that the matter will be reconsidered after appointment of an ad hoc disciplinary authority other than the third respondent. We are of the view that the submission deserves acceptance.

6. In the result we quash the order of the third respondent dated 21-2-1986 as confirmed by the order of the second respondent dated 26-12-1986. We direct the second respondent to appoint an ad hoc disciplinary authority other than the particular officer who <sup>passed</sup> the impugned order dated 21-2-1986 to consider the report of the enquiry officer (copy of which is at Annexure III) after affording an opportunity to the applicant of being heard. The proceedings shall be completed expeditiously, and at any rate within a period of three months from the date of receipt of a copy of this order.

7. The application is allowed as above.

  
(G. Sreedharan Nair)  
Judicial Member  
22-12-1987

  
(S.P. Mukerji)  
Administrative Member  
22-12-1987

Index : YES / 