

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 112/92 ~~12~~

DATE OF DECISION 13/04/1993

Sainulabdeen, M. Applicant (s)

Mr.M.R.Rajendran Nair Advocate for the Applicant (s)

Versus

Assistant Superintendent of Respondent (s)
Post Offices, Kollam Division,
Kollam & 2 others.

Mr.V.Krishnakumar, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. A.V.Haridasan, Judicial Member

The Hon'ble Mr. R.Rangarajan, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *ys*
2. To be referred to the Reporter or not? *m*
3. Whether their Lordships wish to see the fair copy of the Judgement? *m*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

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MR. R.RANGARAJAN, ADMINISTRATIVE MEMBER

In this application filed on 20.1.1992, the applicant has prayed that the Annexure-IV memo of the 1st respondent by which a penalty of dismissal from service was imposed on the applicant and the Annexure-V order of the 2nd respondent rejecting his appeal against the penalty of dismissal from service may be quashed and the respondents be directed to reinstate him in service with full backwages and other attendant benefits. The facts of the case can be briefly stated as follows:-

2. The applicant was working as Extra-Departmental Delivery Agent, Madathara Post Office. He was put-off duty with effect from 8.12.1989. It was at a time when a

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complaint was enquired into in respect of non-delivery of a letter. After the applicant was put-off duty, a news item with the caption "Postman Dismissed" in Mathrubhoomi Daily dated 29.12.1989, alleging that the dismissal was for non-payment of money order and other irregularities. The applicant was however reinstated on 18.5.1990. The applicant aggrieved by the appearance of news of his dismissal in the Mathrubhoomi Daily had also filed a suit against the Department for malicious prosecution. This he alleges led to the issue of the charge sheet for covering up the issue. A charge sheet was issued to the applicant under Rule 8 of the P&T ED Agents Conduct & Service Rules, 1964 on the allegation that -

- i) the applicant failed to deliver an unregistered letter under certificate of posting in October, 1989,
- ii) without actually paying the actual value of money order and obtaining thumb impression of the payee in presence of witnesses, treated an money order as paid in December 1989, and
- iii) he failed to deliver 2 letters entrusted to him in September 1990 and October 1990 to the respective addresses.

The applicant denied the charges as can be seen from Annexure-I. Thereafter an enquiry officer and presenting officer were appointed and the enquiry commenced on 25.2.1991. 14 witnesses were examined and 30 documents marked on behalf of prosecution and 5 documents produced by the applicant were examined. The enquiry report was submitted by the enquiry authority on 16.5.1991. The enquiry officer has held that charge No.(i) and (ii) were proved and charge No.(iii) was not proved. The applicant was asked to submit explanation, if any, on the enquiry

report which he did in his representation dated 3.6.1991. This explanation is marked as Annexure-III. The disciplinary authority has held that the article of charge No.(ii) only has been proved and awarded the penalty of dismissal from service vide Annexure-IV. The applicant submitted an appeal to the Senior Superintendent of Post Offices, Kollam Division, vide Annexure-V which was also rejected confirming the penalty vide Annexure-VI. Thus aggrieved by the dismissal order at Annexure-IV and the rejection order of his appeal at Annexure-VI, he has approached this Tribunal by filing this application.

3. As the charge on Article (ii) only was proved on the basis which only the punishment was awarded, the arguments was limited only to this charge, which was agreed by both sides.

4. In the enquiry report the enquiry officer has said that the charged ED Agent admitted that the value of the money order was paid to Smt. Sarada, daughter-in-law of the payee. In view of this, the signature of the payee, namely Smt. Sarada was not taken though she can sign in Tamil as per exhibit P.19. The argument of the charged ED Agent that there was no literate person available in the house related to Smt. Pappukutti Amma is not borne by facts. The ED Agent has taken signature of one Lal Singh in Exhibit P.22 on the plea that no literate witness was available in the residence of Pappukutti Amma. As per the enquiry officer's reasoning this exhibit P.22 can be accepted though the witness Shri Lal Singh, who signed this exhibit P.22 was not examined at the time of enquiry, as this witness had gone away somewhere at the material time of enquiry. The enquiry authority has further stated that the acceptance of



this evidence without examining him and cross-examining him by the accused during the enquiry is in order in view of the observation made by the Supreme Court in Central Bank of India Ltd. vs. Prakash Chand Jain (AIR 1969 SC 983) that the technical rules of evidence do not apply to domestic enquiry. Hence he concluded that the article of charge No.(ii) stands proved. While examining the enquiry report before awarding punishment, the disciplinary authority has analysed the various statements made by the complainant, his father, Lal Singh and the version of the charged ED Agent in connection with the payment of Rs.100/- sent by money order No.3284 dated 11/12/89. The money order though entrusted to the EDDA on 13.12.89, it was not paid on 13.12 and 14.12.1989 and was returned to the Post Office with the remarks 'Gone out'. The money order was entrusted on 15.12.89 and the EDDA treated the money order as paid on obtaining the thumb impression witnessed by Shri Lal Singh. In the statement made by Lal Singh on 24.1.90, he has admitted that the signature obtained in the paid signature as his own and that he has signed the voucher at the request of Shri Sainulabdeen, the EDDA who is his friend. He further stated in the statement that he had not actually witnessed the payment but believed the version of Shri Sainulabdeen. Though the accused argued that exhibit P.22 should not have been marked without having identified by the deponent, the disciplinary authority found nothing irregular in marking a document after having identified by a witness. In the instant case the SPS himself has stated in exhibit P.29 that exhibit P.9 money order was not paid to the payee in the presence of Shri Lal Singh though he has signed as witness in exhibit P.9. Thus he over-ruled the objection raised by the accused and held the charge as having proved. He has also observed that the amount was paid to the daughter of the payee is not brought out in the enquiry. The appellate authority has agreed with the

disciplinary authority. He further dismissed the connection between the news item which appeared in the Mathrubhoomi Daily as said earlier and the charge sheet as without any basis and he has endorsed those points in accepting the statement of Lal Singh by both the appellate authority and disciplinary authority. He further added that the appellant himself has admitted that the money was paid not to the payee but the payee's daughter. Thus, in his speaking order he has upheld that the charge no.(ii) has been proved and rejected the appeal.

5. The learned counsel for the applicant has argued that the issue of the charge sheet for non-payment of money order is to cover up the news item. The counsel further argued that in spite of the fact that the complainants had withdrawn their complaints saying that the same was preferred under mistake, the issue of charge sheet against the applicant under alleged violation of the provisions under Rule 121(4) of Chapter III of Postal Manual volume VI is illegal and arbitrary. He further adds that the charge is not proved because the statement of witness of Shri Lal Singh, Exhibit P.22, is taken behind the back of the applicant. It is further argued that when a witness is dropped without giving an opportunity to cross-examine the veracity of a statement by the accused, the action of the respondents in relying on the statement is arbitrary and irrational and the finding and decisions thereon are null and void for being violative of the principles of natural justice. He emphatically states that the statement of Lal Singh is not at all an evidence in the eye of law to hold the accused guilty. He further argues that the punishment

is not commensurate with the gravity of the offence especially to an EDDA who was working in the post since 1979 without giving a room for any complaint in the discharge of his duties.

6. The learned counsel for the respondents strenuously argued that the article of charge No.(ii) has been proved by the accused's own admission in that the accused has admitted and accepted his statement exhibit P.29 during the enquiry. He denies that the article was proved only by relying on the statement of Lal Singh. he further states that the subsequent withdrawal of the complaint has not materially affected the charge proved in the enquiry. He emphatically states that the authorities were under pressure to remove him from service is baseless and not supported by any evidence. The allegation that the charge sheet is as a result of the news item is no way proved by any evidence and the department is no way concerned with the veracity of some news item. The very fact that the enquiry authority had held him guilty in only 2 out of 3 charges and finally he was held guilty in only one charge goes to prove that the enquiry was held in a just and fair manner and by impartial witnesses. The counsel for the respondent further argues that the claim of the applicant for having paid the money to the payee's daughter is false as the payment was not witnessed by payee's daughter. Thus he states that the charge is proved by his own admission. The quoting of Rule 12(5) of Postal Manual Volume VI Part III by the applicant is only to confuse the legal position and is not relevant to the case as the payee is not 'Pardanashin'. He also denies the statement of the applicant of his blemishless service. The counsel states

that there were a number of complaints received against him while in service. He, therefore, concludes that the punishment imposed is fully justified in the circumstances of the case as the charges are fully established.

7. We heard the learned counsels of both sides. We have gone through the file in detail, have perused the pleadings and connected documents. The main plea of the applicant to quash the dismissal order is on the sole reason that the prime witness was not called for the enquiry and his deposition recorded in his presence at the time of enquiry. His further contention is that the absence of the crucial witness during the enquiry prevented him from cross examining him during the enquiry. Had this been done, he would have proved his innocence and also proved that he did obtain the signature of the witness when he actually took the thumb impression of the payee at the time of payment of money order. He further states that he followed the rule 121(4) of the Postal Manual Vol.VI which reads as below:-

"121(4). If the payee of a M.O. is illiterate, his thumb-impression, seal or other mark should be obtained on the receipt and acknowledgement in the presence of a resident witness who should be required to attest it with his signature."

As per this rule, he took the thumb impression of the payee but could not take the acknowledgement in the presence of a resident witness as those present at that time namely his daughter is illiterate. Hence he took the signature of Shri Lal Singh at the time of taking the thumb impression of the payee. Because he could not confront Shri Lal Singh, the main witness, he could not prove this. We are in full agreement with the fact that relying on a statement for coming to a conclusion in an enquiry like this without giving any opportunity for the applicant to cross-examine

the crucial witness is arbitrary. It is well settled by now that statements made by a person during preliminary investigation held behind the back of an employee facing the charge cannot be used as a substantive evidence unless the person who made the statement is subjected to cross-examination. In this case it is well established that Shri Lal Singh was not present during the enquiry and hence no opportunity was given to the applicant to cross examine him. Enquiring authority, disciplinary authority and the appellate authority depended only on the statement exhibit P.22 to substantiate their charges. This in our opinion is arbitrary and illegal.

8. The enquiry authority in his analysis of charge no.(ii) has misquoted the Supreme Court observation in the Central Bank of India vs. Prakash Chand Jain (AIR 1969 SC 983). In fact the Supreme Court has held in that case that the statement made behind the back of the person charged are not to be treated as substantive evidence. The relevant portion is extracted below:-

".... The principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom the enquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act. AIR 1964 SC 719 (722) & AIR 1964 SC 708, Rel. on."

It is also seen that Smt. Sarda to whom the applicant alleges to have paid the money was not examined as a witness. This in our opinion is a lapse on the enquiry.

9. The ^{father of} complainant has in the enquiry stated vide Exhibit P.21 that the complaint was lodged under a misunderstanding that two money orders were sent by the son of Smt. Pappu Kutty Amma from Sringeri whereas after enquiry with the sender of the M.O. it came to light that only one M.O. was sent and not two. Hence Sri gopalakrishnan Nair father of the complainant has stated that they have no more complaints in this regard. From the above exhibit it is seen that no ingredients of the charge has been established.

10. The counsel for the respondents has not touched the above objection in their statement. They only relied on the statement of Shri Lal Singh which we already held is inadmissible in evidence without examining that witness. The best evidence that could have been made available in this case has not been made available. Instead what was attempted was

only to create a suspicion. It is well settled by law that suspicion cannot be a substitute for a legal proof. Though in a disciplinary proceedings strict rules of evidence need not be insisted upon, it is not just to find a person guilty merely on a suspicion. In Union of India vs. H.C.Goel (AIR 1964 SC 364) the Honourable Supreme Court has observed -

".... Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said prupose, mere suspicion should not be allowed to take the place of proof in domestic enquiries. It may be noted that the technical rules which govern criminal trial in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty, scrupulous care must be taken that innocents are not punished, applies as much to regular trials as to disciplinary enquiries under statutory rules."

11. We are convinced that on the basis of the evidence adduced at the enquiry without safeguarding the interests of the applicant by not producing the crucial witness is ultra vires to the provisions of the Constitution. We, therefore, find that the findings of the disciplinary authority that the applicant is guilty of charges without legal evidence is perverse.

12. The appellate authority has also not taken notice of the fact that the important evidence was not produced at the time of the enquiry for cross examination. The appellate order is also, therefore, unsustainable.

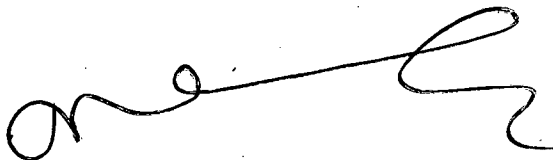
13. In the light of the above discussion, we find that the guilt of the applicant was not established at the enquiry and that the impugned orders are liable to be quashed.

14. In the result, the application is allowed. The impugned orders at Annexures-IV and VI are quashed. The

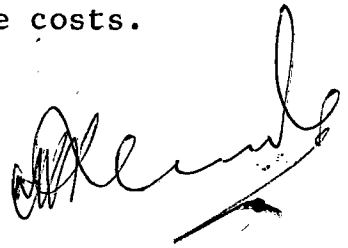
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respondents are directed to reinstate the applicant in service forthwith with all consequential benefits and to pay him full back wages for the period during which the applicant was kept out of service. The respondents are also directed to regularise the put-off period as per the extant rules of the department wherein a charged employee has been exonerated of the charges. The above directions should be complied with within a period of three months from the date of communication of this order.

15. There will be no order as to the costs.



(R.RANGARAJAN)
ADMINISTRATIVE MEMBER



(A.V.HARIDASAN)
JUDICIAL MEMBER

v/-