

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

DATE: 31.5.90

PRESENT

HON'BLE SHRI S. P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 118/89

C. R. Raju,

Applicant

Vs.

1. Sub Divisional Inspector of Post  
Offices, Muvattupuzha Sub  
Division, Muvattupuzha

2. Superintendent of Post Offices,  
Alwaye Division, Alwaye and

3. Union of India represented by  
its Secretary, Ministry of  
Communications, New Delhi

Respondents

M/s. O. V. Radhakrishnan,  
K. Radhamani Amma &  
Raju K. Mathew

Counsel for the  
applicant

Mr. V. Krishnakumar, ACGSC

Counsel for the  
respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

Glaring procedural error in the disciplinary  
enquiry against the applicant prompts us to interfere  
in this case. The applicant while working as Extra-  
Departmental Delivery Agent was put off duty by the  
second respondent on 19.8.1986 to take action under  
Rule 8 of the P & T Extra Departmental Agents (Conduct  
& Service) Rules 1964.

2. The charge against the applicant as disclosed in Ext. A-1 reads as follows:

"That the said Sri C. R. Raju while working as EDDA II Varapetty EDSO, treated as paid the MO No. 3627 dated 30.6.86 for Rs. 100/- of Jhansi P.O. payable to Smt. Lakshmy Amma, Ambalapurath, Elangavam, Varapetty without paying the amount to the said payee and the value of the MO was taken by him for his personal use. Thus he failed to maintain absolute integrity, devotion to duty and exhibited a conduct unbecoming of an ED Agent violating Rule 17 of P & T ED Agents (Conduct and Service) Rules, 1964."

3. Exts. A-2 and A-3 are the written briefs submitted by the Presenting Officer and the applicant respectively before the Enquiry Officer who submitted Ext. A-7 report dated 15.1.1988 with the finding which reads as follows:

" I find that the allegation levelled against Sri C. R. Raju, EDDA (put off) Varapetty are not brought home and the charge of temporary misappropriation of Govt. cash to the extent of Rs. 100/- is not established. That Sri C. R. Raju, charged EDA, while functioning as EDDA Varapetty EDSO failed to maintain absolute integrity, devotion to duty and exhibited a conduct unbecoming of an ED Agent violating Rule 17 of the P & T ED Agents (Conduct and Service) Rules 1964 in respect of S-1 money order for Rs. 100/- entrusted to him the cash on 9.7.86 is NOT PROVED."

4. Ext. A-4 is the order of the Disciplinary authority dated 25.2.1988 imposing the punishment of removal from service with immediate effect after disagreeing with the finding of the Enquiry officer referred to above. The operative portion is as follows:

"I am unable to agree with the findings of the Inquiry Officer that deposition by SW-2 does not prove that the EDA has misappropriated the value of S-1. SW-2 states that he is unable to say whether the value of the MO (S-1) was taken by the EDA. This does not mean that the EDA has not communicated the offence. Deposition by SW-2 clearly proves that the EDA had not paid the value of the MO(S-1) to the payee. S-5

was taken by him, where the EDA states that no witness was present at the time of payment of S-1. S-6 was also obtained by him. S-7 was recorded by him. Hence the deposition by SW-2 proves that the EDA has committed the offence for which the memo was issued.

As such I find that the charge framed against the EDA is sustained."

5. Ext. A-5 appeal filed against the order of punishment was disposed as per Ext. A-6. It reads as follows:

"This is an appeal preferred by Shri C. R. Raju EDDA (Removed from Service) at Varapetty EDSO on 19.4.88 against the order of removal from service by the Sub Divisional Inspector (Postal) Muvattupuzha Sub Division (Disciplinary Authority) in the Rule 8 Inquiry against Shri C. R. Raju, vide Memo No. Disc/1/88 dated 25.2.88.

I have examined the entire records pertaining to the Inquiry. It is found that the copy of the Inquiry Report was not given to the charged ED Agent. Nothing was heard from him before passing the final order of removal from service.

I, E. N. Sivaramakrishnan, Supdt. of Post Offices, Alwaye Division, Alwaye hereby direct the Disciplinary Authority to proceed the case afresh from the stage by giving a copy of the Inquiry Report."

6. Thereafter Ext. A-7 Report was given to the applicant with a covering letter Ext. A-7(a) to which the applicant submitted Ext. A-8 objection. The Disciplinary authority again passed Ext. A-9 order dated 8.9.1988, the very same order of removal from service with immediate effect after disagreeing with the finding of the Enquiry Officer without giving him an opportunity of being heard on the matter.

7. Raising this as a ground among other things the applicant filed an appeal Ext. A-12 which was

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rejected by the appellate authority as per Ext. A-13 without touching the crucial contention of the applicant that the order imposing punishment of removal from service is violative of the principles of natural justice because of the failure to give the applicant a notice by the Disciplinary authority when that authority chose to disagree with the Enquiry Officer's report and punish him as indicated above.

8. The applicant challenges Annexure A-9 and A-13. He further seeks for a direction to treat him as continuously in service notwithstanding these orders and pay full salary and all allowance from 19.8.86 to 8.9.1988.

9. The respondents in the counter affidavit stated that the applicant accepted his responsibility of the forged signature and credited the amount and tendered resignation as per letter dated 18.9.1986, but without accepting this the respondents conducted the enquiry after putting him off duty. After enquiry he was removed from service by order Ext. A-4 dated 25.2.88. The appellate authority without setting aside this order remitted the matter to the Disciplinary authority to continue the disciplinary proceedings from the stage of giving the copy of the enquiry report. Thus the appellate authority, according to the respondents did not set aside the order of punishment as a whole. But the respondents have virtually

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admitted that the Disciplinary authority had not given any notice to the applicant indicating the disagreement with the findings of the Enquiry Officer.

10. So the first prayer of the applicant can be straight away allowed on the implied admission of the respondents that the applicant was never notified about the disagreement of the Disciplinary authority with that of the finding of the Enquiry Officer who after taking evidence came to the definite conclusion that the charges against the applicant had not been proved. Under these situations it is necessary in the interest of fairness and equity to give the applicant an opportunity of being heard on the question of the punishment and proposal to deviate from the conclusion of the Enquiry Officer especially when he is waiting for a clean chit from the Disciplinary authority to enable him to join duty. The impugned order Ext. A-9 was passed without even telling him that the Enquiry Officer was not right in his conclusion on account of the reasons which weighed with the Disciplinary authority. This is unfair and violative of the principles of natural justice. This view is supported by the decisions of the Supreme Court in Narain Misra (1969(3) S.L.R 657) vs. State of Orissa. The Kerala High Court has also taken the same view after following the Supreme Court cases in Thobias Vs. State of Kerala 1987 (1) KLT 501 and held that when the enquiry officer's findings are

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favourable to the delinquent employee any dissent from such findings should be implemented only after giving the affected party an opportunity. Recently this Bench of the Tribunal in OA 259/88 (same bench) in identical case held as follows:

"By taking a unilateral decision behind the back of the applicant who was found to be not guilty on the first and third elements of the charge the Disciplinary Authority has violated the elementary principles of natural justice and the principle of reasonable opportunity enshirined under Article 311(2) of the Constitution of India."

A similar view was taken by the Jabalpur Bench of this Tribunal in Shanker Lal Vishwakarma V. Union of India and others, ATR 1986 (2) 577.

We follow the above rulings and we are inclined to quash Ext. A-9 and A-13.

11. Regarding the further relief of issuing direction to the respondents to treat the applicant as continuing in service with pay and all allowances, the argument of the learned counsel for the applicant is that when the appellate authority ~~xxxxxxxx~~ passed Ext. A-6 directing to proceed with the case afresh from the stage of giving a copy of enquiry report effectively there is setting aside of the original order Ext. A-4, of the Disciplinary authority and there is the relationship between employer and the employee and the applicant be deemed to be continuing in service and entitled to all consequential benefits. According to him the order

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putting him off duty lapsed with the orders of termination and it would not automatically revive when the order of remitting the case back to the Disciplinary authority for a fresh enquiry or even for continuing the original enquiry. The learned counsel placed reliance on the decision of the Orissa High Court reported in Ram Chandra Panigrahi Vs. Supdt. of Post Offices, Belasore Division, 1985 (1) SLR 81.

12. We think there is considerable force in the submission. The Disciplinary authority was directed by the appellate authority to proceed with the enquiry afresh from the stage of giving a copy of the enquiry report. So it is virtually a fresh enquiry and such an enquiry can be conducted by the Disciplinary authority only when this relationship of employer and employee continues. The above case cited by the learned counsel squarely applies to the facts of this case. It held on identical facts as follows:

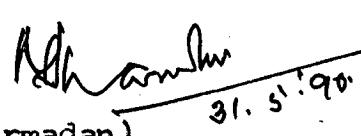
"The next question which comes up for consideration is whether the order of the appellate authority remitting the case for initiating de novo proceeding has the effect of setting aside the order of termination, even though such an order has not been expressly passed by the appellate authority. An order of termination puts an end to the relationship of employer and employee. The order by the appellate authority remitting the matter to the lower authority for fresh enquiry obviously presupposes continuance of the relationship of employer and employee necessarily. Therefore, the order of termination must be held to have been set aside by the appellate authority. A similar question arose for consideration before the Karnataka High Court in the case of M.R. Subramaniyam V. Madras Eng. Group and Centre, Bangalore, (1980) 1 Serv LR 123."

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13. In the light of the above decisions, we reject the contention of the respondents that when the case was remanded for fresh consideration from the stage of furnishing copy of the enquiry report, he can claim and enjoy the status which he has already enjoyed during the course of disciplinary proceedings and thereby he is not entitled for the consequential benefit. Admittedly there is no fresh put off order after the remand. Hence having regard to the facts and circumstances of this case we have to hold that the applicant is deemed to continue in service and he is entitled to all consequential benefits notwithstanding the impugned orders at Ext.A-9 and A-13.

14. In the result we quash Ext.A-9 and A-13 and hold that the applicant is entitled to be reinstated in service with all consequential benefits if he was not gainfully employed elsewhere while he was out of service. We make it clear that the Disciplinary Authority is free to take appropriate steps to continue the enquiry from the stage of submission of the report of Enquiry Officer in accordance with law after putting the applicant off duty and issuing notice indicating the reasons for disagreement from the findings of the Enquiry Officer.

15. The application is thus allowed, but without any order as to costs.

  
(N. Dharmadan)  
Member(Judicial)

31.5.90

  
(S.P. Mukerji)  
Vice Chairman

31.5.90