IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. ~~XXXXXX~~ 118 of 90 ~~XXXX~~

DATE OF DECISION 30.5.1991

P. SIMON _____ Applicant (s)

M/s.MK.Damodaran & CT Ravikumar _____ Advocate for the Applicant (s)

Versus

Union of India rep. by the Secretary to Min. of Communications, New Delhi. and 3 others _____ Respondent (s)

Shri TPM Ibrahim Khan ACGSC _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V. Krishnan, Member(Administrative)

The Hon'ble Mr. N. Dharmadan, Member(Judicial)

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? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

N. Dharmadan, M(J)

The applicant is challenging his removal from service pursuant to a disciplinary action initiated against him by the Postal Deptt. on the ground that he has committed the offence of non-delivery of postal articles and that he is not a fit person to be continued in the department.

2. While the applicant was working as Extra Departmental Delivery Agent (EDDA for short) at

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Thalicode Post Office he was served with Annexure-I chargememo as per order dated 30-7-88. It reads as follows:

> "....(i) That the said P. Simon, while functioning as EDDA, Tholicode EDSO, has failed to deliver 10 ordinary postal articles received at Tholicode EDSO and entrusted to him for delivery during the period from 23-12-1986 to 19-4-1988, and unauthorisidely detained these letters at his residence and thereby failed to maintain absolute integrity and devotion to duty, violating the provisions of Rule 17 of the P & T E.D. Agents' (Conduct and Service) Rules 1964...."

But the said charge memo was cancelled by Annexere-2 proceedings dated 28-2-89 because the authority who issued the charge memo was also the material witness. Then the applicant filed an appeal, before the Supdt. of Post Offices, against the order by which he was put off duty with ef-fect from 11-5-1988. This was rejected. But in the meantime, a fresh memo of charges Annexure-3 containing the same charge was issued to the applicant as if it is a corrective measure. One Shri P.M.K. Pillai was appointed as Enquiry Authority to enquire into charges levelled against him. The applicant submitted Annexure-4 representation before the Enquiry Officer requesting to furnish

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him the copies of the statements recorded from the witnesses in the preliminary enquiry. The applicant submitted that he was neither given any copy of the statement nor was he given an opportunity to scrutinise the relevant records relied on in the preliminary enquiry. The enquiry proceedings commenced on 11-5-89 and concluded on 29-6-89. The enquiry authority submitted his report Annexure-5 on 30-6-89, a copy of it was also served on the applicant along with the punishment order Annexure-6 dated 26-7-89 removing him from service with immediate effect. The applicant filed a detailed appeal memorandum, Annexure-7 which was dismissed by Annexure-8 order dated 19-9-89. The applicant is challenging Annexure-3,6 and8 and seeks a direction to reinstate him as EDDA with effect from 11-5-1988 with all consequential benefits.

3. The respondents stated in the reply affidavit that the applicant was put off duty, when it was found that he has committed the serious offence of retention of postal articles at his residence without delivering to the addressees, after conducting a fair and impartial

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enquiry. After completing the enquiry,the enquiry authority submitted the enquiry report finding the applicant guilty of the charges. The disciplinary authority after accepting the findings of the enquiry authority imposed the punishment of removal of the applicant from service. The appeal filed by him against the punishment order was duly considered and rejected by the appellate authority. The orders are legal and valid. Hence there is no merit in this application and it should be dismissed.

4. The learned counsel for the applicant made the following submissions: (a) The enquiry officer being a superior officer to the disciplinary authority in this case, it is likely that the disciplinary authority would not discharge his statutory duties fearlessly. He may be reluctant to disagree with his findings in case the enquiry officer finds the applicant guilty of charges. Hence the appointment of the enquiry officer is itself is illegal. (b) The applicant was not given a copy of the enquiry report before imposing the punishment of removal as held by the Supreme Court

in the latest case. The punishment is bad and vitiated in the light of this Supreme Court decision report in Union of India V. Mohammad Ramzan Khan, 1991(1)SLR 159.

5. Regarding the first contention the respondents have not given any satisfactory reason for appointing a superior officer for enquiry into the charges when equivalent or inferior officer are available in the department at the relevant time. But they have stated that Sri. P. Rajagopalan, who was originally appointed as the Enquiry Officer, was not able to proceed with enquiry dut to cancellation of the memo of charge at Annexure-1. It was cancelled because the authority who issued the charge memo was also a material witness and the matter was referred to the higher authorities of the department for issuing a fresh charge and appointment of a new enquiry authority. Accordingly, the department thought it fit to appoint Sri P.M.K. Pillai, ASPO, Trivandrum South Division as Enquiry Officer who was available for conducting the enquiry. This order was passed only after taking into account the facts and circumstances of this case. The appointment

of an Enquiry Officer in the particular case will depend upon the discretion of the department considering the facts and circumstances of each case. There is no rule or other provision which prohibits the appointment of an Enquiry Officer who is superior to the disciplinary authority. Normally an officer equivalent in rank or inferior in position would be appointed to enquire into the charges in a disciplinary case. But merely because the Enquiry Officer is a superior to the disciplinary authority, it cannot be presumed that the appointment is bad and that the disciplinary authority is reluctant to disagree with the findings and conclusions of the enquiry officer in the disciplinary enquiry proceedings. There is no basis for the applicant's apprehension. Such a contingency has not arisen in this case and the applicant has not been prejudiced because of the fact that the Enquiry Officer happend to be a superiod offier working above the disciplinary authority. Moreover, the applicant has not raised this question as a preliminary issue and objected the conduct of the enquiry by such a

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superior authority. After having participated in the enquiry without raising any objection he cannot now raise this question before this Tribunal. We are not prepared to entertain this technical plea at this stage. We are of the view that there is no merit in the first contention.

6. In answer to the next contention, the learned counsel for the respondents submitted in the course of the argument that it is clear from the impugned orders at Annexure 6 and 8 that this is a case of punishment imposed mainly on the applicant's admission of the guilt. It is true that there is an indication in the orders about the admission by the a applicant at the time of search in his house. It is not sure whether it was made after knowing fully all the charges against him. It is not seen whether the admission is with reference to the guilt or the offence committed by the applicant. However, this is a matter to be examined further by the competent authority. The Supreme Court has held in Channabasappa Basappa Happali V. State of Mysore, AIR 1972 SC 32 as follows:

> "...It was contended on the basis of the ruling reported in R. v. Durham Quarter Sessions: Ex parte Virgo, (1952(2)QBD 1) that on the facts admitted in the present

> case, a plea of guilty ought not to be entered upon the record and a plea of not guilty entered instead. Under the English Law, a plea of guilty has to be unequivocal and the court must ask the person and if the plea of guilty is qualified the court must not enter a plea of guilty but one of not guilty.."

The respondents have not specifically mentioned about the admission of the guilt and the effect thereof in the reply statement. Hence on the facts of the case we are not finally pronouncing as to whether there is a case of clear and unequivocal admissionof guilt so as to impose punishment relying the admission of the applicant. Of course, it can be relied on as an item of evidence with other evidence available in the case for finding the guilt against the applicant. In this view of the mat-ter we are not inclined to accept the contention of the learned counsel for the respondents that no useful purpose would be served by a remand and the applicant would not be benefitted by setting aside the impugned orders and remitting the matter to the lower authorities for fresh enquiry in the light of the latest decision of the Supreme Court. If in the light of his admission this case is remitted back in every probability this would be passed by the disciplinary authority and it would only be a futail exercise.

8. It is clear from the facts and circumstances of the case that the respondents have not given to the applicant a copy of the enquiry report before the punishment is imposed. It was given to the applicant only along with the punishment order. So the decision relied on by xxxxxxxxxxxxxxxxxxxxxxxx the learned counsel for the applicant squarely applies to the facts of this case and the application is to be allowed on that ground alone. Accordingly, we set aside the impugned orders of punishment namely Annexure-6 and 8 and remand the matter to the disciplinary authority for continuing the enquiry proceedings from the stage of submission of the enquiry report as if a copy of the Enquiry report has already been served on the applicant before the punishment as observed by the Supreme Court in the decision relied on by the learned counsel. We make it clear that the applicant shall be on put off duty pending the enquiry, which shall be completed by the respondent as expeditiously as possible at any rate within a period of 4 months from the date of receipt of the copy of the judgment.

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9. In the result the application is allowed to the extent indicated above. There will be no order as to costs.

30.5.91.

(N. DHARMADAN)
Member (Judicial)

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(N.V. KRISHNAN)
Member (Administrative)

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