

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. No. 120 of  
T.A. No. 1990

DATE OF DECISION

31/12/91

N. Chandrika \_\_\_\_\_ Applicant (s)

Mr. Thomas Chazhukkaran \_\_\_\_\_ Advocate for the Applicant (s)

Versus

Supdt. of Post Offices, \_\_\_\_\_ Respondent (s)  
Alleppey Division, Alleppey & 2 others

Mr. V. Krishna Kumar, AGSC \_\_\_\_\_ 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? *VS*
2. To be referred to the Reporter or not? *NO*
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

(Mr AV Haridasan, Judicial Member)

The applicant, Ex-Extra Departmental Sub Post Mistress (EDSPM), Arattupuzha has filed this application praying that the order dated 29.2.1988 at Annexure-A-II of the 1st respondent imposing on her a punishment of removal from service and the order dated 26.9.1988 at Annexure-III of the second respondent dismissing her appeal against the order of the 1st respondent and the order dated 14.6.1989 at Annexure-AIV of the third respondent, refusing to interfere with the orders passed by the respondents 1&2 may be quashed and the respondents be directed to reinstate her in service w.e.f. 29.2.1988 with full back wages.

2- A short summary of the facts necessary for the disposal of this application is given below. While the applicant was working as EDSPM, Arattupuzha, she was put off duty w.e.f. 10.1.1986. A charge sheet containing 3 heads of charges was issued to her. The charge No.1 related to non-credit of Rs.799.60 tendered for deposit in the R.D. account by the MPKBY Agent on 17.10.1985 till 28.10.1985. The second charge related to failure on the part of the applicant to credit a sum of Rs.1173.70 tendered by the MPKBY Agent on 17.8.1985 till 24.8.1985 and the third charge related to failure on the part of the applicant to account for a deposit of Rs.75.00 made on 8.4.1985 and a withdrawal of Rs.75.00 on 9.4.1985 in the S/B Account No.780271. Though the applicant in her written explanation to the charges denied guilt, an inquiry was held. In the inquiry, the Inquiry Authority came to the conclusion that the charges 1&3 were not proved and the second charge alone was established. The Disciplinary Authority, the first respondent without furnishing to the applicant a copy of the Inquiry Report and without giving the applicant an opportunity to make her representation in regard to the evidence at the inquiry and the finding of the Inquiry Authority, by his order dated 29.2.1988 at Annexure-A-II disagreed with the finding of the Inquiry Authority/charge's No.II/has been established and held that the charges I&II have been proved. He therefore passed the impugned order at Annexure-A-II holding that the applicant is guilty of the charges I&II and imposing

on the applicant a penalty of removal from service. Aggrieved by this order, the applicant preferred an appeal to the second respondent contending that none of the charges has been established and that she has been denied reasonable opportunity to defend her case. These contentions did not find at the hands of the Appellate Authority who by the order dated 26.9.1988 at Annexure-A-III upheld the decision of the first respondent and dismissed the appeal. Therefore the applicant filed a review petition before the third respondent challenging the decisions of the Disciplinary as well as the Appellate Authorities. She had inter-alia contended that the failure on the part of the Disciplinary Authority to give her a copy of the Inquiry Report and an opportunity to make her representation especially, when the Disciplinary Authority had disagreed with the finding of the Inquiry Authority that the charge No.1 has not been established has vitiating the order of the Disciplinary Authority as the applicant has been denied a reasonable opportunity to defend her case. The third respondent in his order dated 14.6.1989 at Annexure-A-IV rejected the plea of the applicant and confirmed the decisions of the authorities. It is aggrieved by these orders at Annexures-A-II, A-III and that the applicant has filed this application under Section 19 of the Administrative Tribunals Act.

3. The respondents in the reply statement have contended that the impugned orders at Annexure-A-II, A-III and A-IV were fully justified as the applicant has been given a fair and

reasonable opportunity to defend her case that the findings were based on cogent and convincing evidence and that in passing the orders, the authorities have complied with the principles of natural justice. According to the respondents, the applicant ~~therefore~~, is not entitled to the reliefs claimed.

4. We have carefully gone through the pleadings and the documents on record. We have also heard at length the arguments advanced by the learned counsel on either side.

5. Though the applicant has contended that the principles of natural justice have been violated in holding the inquiry, no irregularity in the procedure adopted by the Inquiry Authority has been brought to our notice. But we find that the Disciplinary Authority before taking a decision regarding the guilt of the applicant basing on the Inquiry Report, did not give the applicant a copy of the Inquiry Report and an opportunity to make her representation regarding the acceptability of the evidence adduced at the inquiry and the reasonableness of the findings arrived at by the Inquiry Authority. It is a case where the Inquiry Authority found that the charges 1&3 have not been established and that the charge No.2 alone has been proved while the Disciplinary Authority has disagreed with the finding of the Inquiry Authority that the charge No.1 has not been established and has held that charges 1&2 have been proved. In a case where the Disciplinary Authority <sup>advise to the applicant</sup> disagrees

with the <sup>favorable</sup> finding of the Inquiry Authority, it is incumbent on the Disciplinary Authority to give a notice of his intention to do so to the applicant and an opportunity to her to make her representation. In Narayan Misra V. State of Orissa, 1969 SLR(3), 657, it has been held that if the Disciplinary Authority disagrees with the finding of the Inquiry Authority to the detriment of the delinquent Government servant, the Disciplinary Authority is bound to give to the delinquent a notice and an opportunity to make his representation and that the failure to do so <sup>would</sup> ~~vitiate~~ the proceedings for non-compliance of the principles of natural justice. Even if the Disciplinary Authority agrees with the finding of the inquiry authority before taking a decision regarding the guilt of the delinquent, it is bound to give the applicant a copy of the Inquiry Report and an opportunity to make representation in regard to the evidence at the inquiry. In / Mohd. Ramzankhan, 1990(2) SCALE, 1094, the Supreme Court has held that non-supply of the copy of the Inquiry Report and the denial of an opportunity to the delinquent to make his representation before the Disciplinary Authority concludes that the delinquent is guilty, is violative of the principles of natural justice enshrined in Article 311(2) of the Constitution. Though this ground was not specifically taken in the application, the learned counsel for the applicant argued that this being a question of law, he will be justified in raising this argument. We are of the view that whether the denial of an opportunity to make representation basing on the inquiry report to the Disciplinary Authority would amount to non-compliance / the

principles of natural justice is a question of law which can be agitated even without a pleading. Further, we notice that the applicant has taken this ground in her review application filed before the third respondent. Inasmuch as the fact that a copy of the Inquiry Report was not supplied to the applicant and she was not given an opportunity to make her representation before the Disciplinary Authority decided that she was guilty of the charges, is not disputed and as this fact is evident from the impugned orders Annexure-A II. On the strength of the authorities cited above, we are of the view that reasonable opportunity has not been given to the applicant to defend her case and that for this reason, the impugned orders at Annexure-A II, A-III and A-IV are vitiated and that the applicant is bound to succeed on that ground.

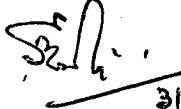
6. In the result, the impugned orders at Annexure-A.II, A.III and A.IV of the Disciplinary Authority, Appellate Authority and Revisional Authority are set aside. The respondents are directed to reinstate the applicant into service forthwith and to pay her pay and allowances during the period between the date of her removal from service by Annexure-A.II order and the date of her reinstatement within a period of two months from the date of communication of this order. As the misconduct <sup>on</sup> to which the applicant is charge sheeted is of serious nature, we direct the respondents

to recommence the disciplinary proceedings from the stage of giving the applicant an opportunity to make her representation in regard to the report of the Inquiry Authority and to pass final order in the proceedings after receiving the representation of the applicant. Now that a copy of the Inquiry Report has been furnished to the applicant alongwith Annexure-A.II order, the applicant is directed to make her representation putting forth her contentions to the first respondent within a period of one month from the date of communication of this order. We also direct the first respondent to pass final order in the disciplinary proceedings *denovo*, considering the representation, if any, made by the applicant within a period of two months from the date of receipt of such representation. The question of payment of allowances for the period during which the applicant was put off duty till the date of removal from service <sup>and</sup> ~~of~~ the regularisation of the above period should also be decided by the disciplinary authority. After giving due notice to the applicant in accordance with law. There is no order as to costs.

  
(A.V.HARIDASAN)

JUDICIAL MEMBER

31.12.91

  
(S.P.MUKERJI)

VICE CHAIRMAN

trs