

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 122/90

XXXNox

XXX

DATE OF DECISION 25-6-1990

P.J. Sebastian

Applicant (s)

Mr MR Rajendran Nair

Advocate for the Applicant (s)

Versus

The Senior Superintendent of Post Offices, RMS, Ernakulam & 3 others

Mr TPM Ibrahimkhan

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. M.Y.Priolkar, Administrative Member

&

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

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *N*
3. Whether their Lordships wish to see the fair copy of the Judgement? *N*
4. To be circulated to all Benches of the Tribunal? *N*

JUDGEMENT

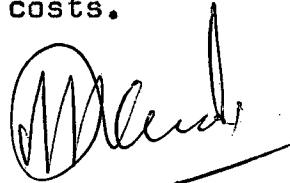
(Shri AV Haridasan, Judicial Member)

The applicant a Group 'D' employee in the Postal Department was removed from service after conducting an enquiry for certain alleged misconduct. The Annexure-IV is the order of the disciplinary authority. An appeal was filed but the appellate authority confirmed the order of dismissal. These two orders are challenged in this application. It has been inter alia alleged in the application that a copy of the Enquiry Authority's report was not furnished to the applicant before the disciplinary authority decided the question of the applicant's guilt basing on the report of the enquiry authority. Since the person who stakes the decision regarding

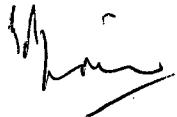
the guild or otherwise of a delinquent is the disciplinary authority, the principles of natural justice demand furnishing a copy of the Enquiry Officer's report to the delinquent and giving him an opportunity to make a representation against the acceptability of the findings. In this case, admittedly, this has not been done. In Premanath K Sharma V. Union of India (1988(3) SLJ(CAT), 449), the Larger Bench of the Tribunal has held that the non-supply of the Enquiry Officer's report before the disciplinary authority decides the question of guilt of the delinquent basing on the same vitiates the proceedings from that stage. The same view was taken in E.Bhashyam V. Union of India and others (1988(6) ATC, 963). The Supreme Court has in SLP filed against the judgement in Bhashyam's case approved the principles laid down but has referred the question for consideration by a Larger Bench of the Supreme Court. In view of the circumstances, we feel that the principles enunciated in Premnath K Sharma's case that the non-supply of the copy of the E.O's report before deciding on the question of guilt vitiates the proceedings since it violates the provisions of Article 311 of the Constitution of India still holds the field. In view of this view taken by us, we do not think it necessary to go into the other contentions raised in the application.

2. Since a copy of the E.O's report was not furnished to the applicant and since he was not given an opportunity to make representation against it before the disciplinary authority decided that the applicant was guilty following the dictum

in Premnath K Sharma's case, we hold that the disciplinary order at Annexure-IV is vitiated and we therefore quash the Annexure-IV order, the appellate order at Annexure-VII and the review order dated 29.3.1988 and direct the respondents to recommence the disciplinary proceedings from the stage of the receipt of the Enquiry Authority's report by the Disciplinary Authority. The disciplinary authority is directed to give a copy of the Enquiry Report to the applicant and to give him an opportunity to make his representation against the same. The enquiry should be proceeded with and completed within a period of three months from the date of communication of this order. For the purpose ^{of} enabling the respondents to complete the disciplinary proceedings the applicant will be deemed to be under suspension from the date of removal from service. There is no order as to costs.



(A.V.HARIDASAN)
JUDICIAL MEMBER



(M.Y.PRIOLKAR)
ADMINISTRATIVE MEMBER

25.6.1990

trs.

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

R.A.92/90 in OA 122/90

The Senior Superintendent
of RMS, Cochin

- Review Applicant/
Respondent in OA

P.J. Sebastian

- Review Respondent/
Applicant in OA

Mr.TPM Ibrahim Khan,ACGSC

- Counsel for the Review
Applicant

Mr.M.R.Rajendran Nair

- Counsel for the
Review Respondent

O R D E R

(Mr.A.V.Haridasan, Judicial Member)

In OA 122/90, the applicant has challenged the order of his removal from service and the appellate order. The application was resisted by the respondents (the review applicant). After hearing both the parties, by our order dated 25.6.1990 we held that the order of removal of the applicant from service was vitiated since the Disciplinary Authority had not given a copy of the enquiry officers report to the applicant before proceeding to decide that the applicant was guilty basing on the enquiry report and setting aside the order of removal, we directed the respondents to recommence the disciplinary proceedings from the stage of receipt of Enquiry Authority's report by the Disciplinary Authority. The Disciplinary Authority was directed to give a copy of the enquiry report to the applicant and to give him an opportunity to represent against the same. We further directed that for the purpose of enabling the respondents to complete the disciplinary proceedings, the applicant would be deemed to be under suspension from the date of removal from service. The respondents in the Original Application have filed this application praying that the order dated 25.6.1990 in the Original Application may be reviewed and the respondents may be permitted to proceed with the disciplinary proceedings against the original

applicant from the stage of supply of the enquiry report without any liability to pay subsistence allowance, and that our order may be modified to that extent. No error apparent on the face of records in our order dated 25.6.90 or no other valid reason for reviewing the order is seen averred in the application. It has been alleged in the application that, since the applicant had before the enquiry officer admitted his guilt and as the rules then prevailing did not warrant furnishing the copy of the enquiry report to the delinquent before the Disciplinary ^{proceeds} Authority to decide about the guilt of the delinquent, a direction for payment of arrears of ~~max~~ subsistence allowance was not warranted. It is also been stated that in OA 221/89 and OA 6/89 where this Tribunal has considered similar issues, though this Tribunal directed the respondents to reinstate the applicants, it was stated that the applicants would not be entitled to back wages. The respondents who are the review applicants have prayed that the order in OA 122/90 may be reviewed and the same may be modified dispensing with the liability of payment of arrears of subsistence allowance, as was ordered in the two Original Applications mentioned.

2. When an order of removal from service is set aside as illegal and unjustified, normally the incumbent will be entitled to back wages for the period during which he was kept out of employment. But taking into account various circumstances, it is open for the Tribunal to say that no back wages need be paid or that the back wages would be restricted or limited upto a particular time or extent. A Direction that the incumbent would be deemed to be under put off duty to facilitate completion of Disciplinary Proceedings is also one of the directions

that the Tribunal may make taking into consideration of the circumstances of the case. Any directions have so given would be depending on the circumstances of the particular case. The fact that in some cases it was held that backwages need not be paid is not a ground for review of the order in this case. The remedy of the review applicant ~~is~~ is, if aggrieved by the above said direction, is to challenge the same in a Special Leave Petition before the Hon'ble Supreme Court. Therefore, the review application has only to be dismissed without issuing notice to the original applicant. The application may therefore be dismissed if the Hon'ble Member(A) agrees by circulation.

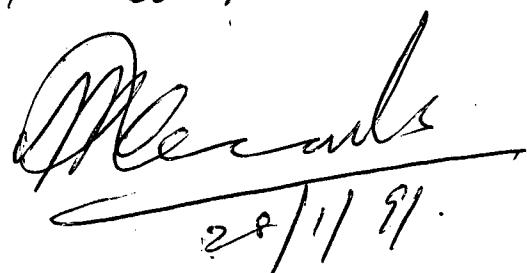


(A.V.Haridasan)
Judicial Member

I agree
M. Priyolkar
(MY PRIYOLKAR)
ADMINISTRATIVE MEMBER

order Review under Court

The Review application is dismissed without issuing notice to the applicant



28/11/91