

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 132/87

DATED FRIDAY THE THIRD DAY OF MARCH
ONE THOUSAND NINE HUNDRED AND EIGHTY NINE

PRESENT

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

&

HON'BLE SHRI G. SREEDHARAN NAIR, JUDICIAL MEMBER

A. P. Augustine

Applicant

Vs.

1. Union of India represented by
the Secretary to the Ministry of
Communications, New Delhi
2. The Sr. Superintendent of Post Offices,
Alwaye, Division, Alwaye-1 and
3. The Sub Divisional Inspector of Post
Offices, Muvattupuzha

Respondents

M/s. M. R. Rajendran Nair,
Mary Isabella S.D.,
P. V. Asha and
K. S. Ajayagosh

Counsel for the
applicant

Mr. P. V. Madhavan Nambiar, SCGSC

Counsel for the
respondents

O R D E R

Hon'ble Shri G. Sreedharan Nair

The applicant while working as Extra Departmental
Branch Post Master was put off duty by the second
respondent by the order dated 20.5.1981. Thereafter,
disciplinary proceedings were initiated against him
by the issue of a memorandum of charges dated 1.12.1981
for misconduct. The Disciplinary authority proposing
to conduct an enquiry appointed Enquiry Officer. ~~The~~

The report of the Enquiry Officer was received by the Disciplinary authority on 15.11.1982 on the strength of which the Disciplinary authority held that the charge is fully established and imposed upon the applicant the penalty of dismissal from service. As the appeal submitted by the applicant was of no avail, he has filed the present application to quash the order imposing the penalty. As the applicant has not been paid any allowance during the period while he was put off duty, he prays for a declaration that he is entitled to subsistence allowance. Since sub rule (3) of Rule 9 of the Extra Departmental Agents Conduct and Service Rule does not warrant payment of any such allowance, the applicant has also prayed for a declaration that the said sub rule is null and void.

2. In support of the relief of cancellation of the order imposing the penalty, various grounds have been urged by the applicant. It is urged that the order has been passed in violation of the principles of natural justice and in contravention of clause (2) of Article 311 of the Constitution of India in so far as the applicant has not been furnished with a copy of the report of the Enquiry Officer before the Disciplinary authority chooses to accept the same and pass the impugned order. There is also the plea that the charges are vague and that

the finding of the Enquiry Officer was not based on legal evidences.

3. A reply has been filed by the respondents traversing the various grounds urged in the application.

4. At the time of hearing, the counsel for the applicant invited our attention to the impugned order of the Disciplinary authority wherein he has stated that though the applicant has received the memorandum of charges on 5.12.1981, " no representation in reply to the memorandum of charges was received from him." It is seen that it was on that ground that the Disciplinary authority ordered the holding of an enquiry. The counsel for the applicant invited our attention to paragraph 3 of the reply filed

by the respondents wherein it is stated that on receipt of the memorandum of charges, the applicant did file a reply which was received by respondents on 23.1.1982. Copy of his statement has also been produced by the respondents along with their reply which is ext. R-2. From the said

statement, it is seen that the applicant had denied the charges and wanted to be heard in person, ^{and had requested} ~~as well as for~~

legal assistance. When the memorandum of charges was issued by the Disciplinary authority calling upon the applicant to show cause why Disciplinary proceedings shall not be initiated against him, when the applicant did submit his written explanation dening the charges and pointing out that there is no scope for the initiation

of such proceedings, the Disciplinary authority had to apply his mind and to arrive at a conclusion as to whether an enquiry is called for in the circumstances of the case. Since the Disciplinary authority has chosen to act in this case on the mistaken assumption that no such written representation has been filed by the applicant by way of answer to the memorandum of charges, the proceedings cannot be sustained.

5. The penalty that has been imposed on the applicant being removal from service, before the imposition of the same, the applicant had to be afforded reasonable opportunity of defending himself as enshrined under clause (2) of Article 311 of the Constitution of India.

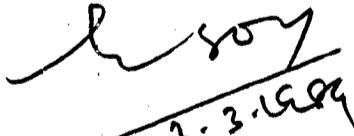
This Tribunal has held in a number of decisions that the non-furnishing of a copy of the report of the Enquiry Officer, before the Disciplinary authority imposes one of the three penalties contemplated under Article 311 of the Constitution of India, amounts to denial of the reasonable opportunity mandated by the Constitution and is violative of the principles of natural justice. A Full Bench of this Tribunal in the decision in Premnath Sharma's case has affirmed this view.

6. In view of the above, the order of the Disciplinary authority cannot be sustained. We quash the same as well as the order of the Appellate authority confirming it. We direct the disciplinary authority to take in to account

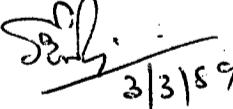
the written statement of defence submitted by the applicant on 22.1.1982 by way of answer to the memorandum of charges and after considering the various points raised therein to decide whether an enquiry is to be conducted at all in this case. In case he arrives at the conclusion that it is necessary to conduct an enquiry, if the Disciplinary authority himself does not conduct the same, a copy of the report of the Enquiry Officer shall be furnished to the applicant before the Disciplinary authority passes orders in the proceedings.

7. Though there is a prayer in the application for subsistence allowance from the date on which the applicant was put off duty, and for a declaration that sub rule(3) of Rule 9 of the Extra Departmental Agents' Conduct and Service Rules is void, ~~The Counsel for~~ the applicant did not want us to go into these reliefs in this application in the view that we have taken.

8. The application is disposed of as above.


(G. Sreedharan Nair)
3.3.1989

Judicial Member
3.3.1989


3.3.1989
(S. P. Mukerji)
Vice Chairman
3.3.1989

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