

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

4th October, 1993

CORAM:

THE HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
THE HON'BLE MR.R.RANGARAJAN, ADMINISTRATIVE MEMBER

O.A.143/92

P.M.Komala .. Applicant
Mr.M.Balakrishna Pillai .. Advocate for the Applicant

vs.

1. Union of India
Through the Secretary,
Ministry of Communication,
New Delhi.
 2. Regional Director of Postal Services,
Central Region,
Kochi.
 3. Senior Superintendent of Post Offices,
Kottayam Division,
Kottayam. .. Respondents
- Mr.George Joseph,ACGSC .. Advocate for the Respondents

JUDGMENT

CHETTUR SANKARAN NAIR(J),VICE CHAIRMAN:

Applicant challenges Annexure-XV order, dismissing her from service, confirmed in appeal by Annexure-I order.

2. While functioning as Extra Departmental Sub. Post Master, Brahnamangalam, applicant was charged under two counts, - for unauthorisedly engaging one G.V.Menon in her place, and for withdrawing certain amounts from savings bank accounts, forging the depositor's signature and misappropriating the amount for herself. An enquiry was held and applicant was ordered to be dismissed by Annexure-VII order. She appealed against that. By Annexure-VIII order, the appellate authority found that:

"... charges levelled against the appellant except the unauthorised absence on 13.11.86 are not substantiated."(emphasis supplied)

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However, invoking the powers under Rule 15(c)(iii) of the Extra Departmental Conduct and Service Rules, 1964, the appellate authority remitted the case to the disciplinary authority:

"... for obtaining the opinion of the Handwriting Expert about the genuineness or otherwise of the signatures of depositor ... and then initiate disciplinary action against the applicant as deemed fit and if warranted." (emphasis supplied)

The appellate authority did not order a de novo enquiry as she could have, by virtue of Rule 15. She conferred a discretion on the disciplinary authority to :

"...initiate disciplinary action against the applicant as deemed fit and if warranted."

Taking power from this direction, a fresh enquiry was held by the disciplinary authority and by Annexure-XV order, applicant was dismissed from service . An appeal was carried and that was dismissed by Annexure-1. Upon that, applicant has approached this Tribunal.

3. Learned counsel for applicant submitted that the disciplinary authority cannot hold a de novo enquiry, unless specifically empowered to do so, by the appellate authority. Referring to the grounds of appeal, quoted seriatim in Annexure-I, counsel submitted that the appellate authority without addressing herself to any of these, made an apology of her responsibilities by merely stating that 'the enquiry was in accordance with Article 311(2), that there was no prejudice to the applicant, that she was given every chance to go through the enquiry report'.

4. The first contention, is, that the disciplinary authority passed Annexure-XV without jurisdiction. That rule enables the appellate authority to remit a case to the disciplinary authority:

"... with such direction as it may deem fit in the circumstances of the case."

The expression 'may deem fit in the circumstances of the case' does not mean that the discretion to hold de novo enquiry is left to the disciplinary authority. As to whether there should be a de novo enquiry or not, is a matter which only the appellate authority could and should decide. The expression "with such other directions" refers to ancillary matters, like calling witnesses etc. That apart, where an authority fulfils its function, it becomes functus officio. It cannot repeat the exercise over and again, unless a power is conferred in that behalf by review, or by a direction from a superior forum. If the disciplinary authority were to hold a fresh enquiry, that could only be pursuant to directions issued by an appellate authority or revisional authority. No such direction was issued by the appellate authority. As we noticed earlier, a matter on which the appellate authority should have been taken a decision namely, whether there should be a de novo enquiry, was left to the disciplinary authority. There was, thus, an abdication of jurisdiction by the appellate authority and an usurpation of jurisdiction by the disciplinary authority. To recall the direction of the appellate authority, it was to:

"... initiate disciplinary action against the applicant as deemed fit and if warranted." (emphasis supplied)

5. That apart, though each ground raised in appeal was noticed in the appellate order, there is no discussion or consideration of any of those. The first ground in the appeal, noticed by the appellate authority, was whether disciplinary authority has power to order de novo enquiry, unless directed by appellate authority. We do not find any reference, much less discussion regarding this matter. The appellate authority only says:

"... I find that the enquiry held is in accordance with the provisions in Article 311(2) of the Constitution... nor is there anything prejudicial in the mind of the disciplinary authority... appellant was further given every chance to go through the enquiry report and represent ..."

We regret to say these are vague statements made without even bare application of mind to the facts. An order which is liable to judicial review

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must be supported by reasons. It is only then that the superior forum will be able to evaluate the reasons, that supported the conclusion and only that will reveal application of mind. The question is not whether an order is supportable by reasons, but whether it was supported by reasons in the mind of the authority, which made the order. As we noticed, the first ground was not even adverted to. The third ground:


"that the expert did not say that the suspected signatures were not put by the depositor".

could have been very easily met (if it could be) by referring to the evidence, or the enquiry report. There is nothing to suggest that the appellate authority read the evidence or the order of the disciplinary authority. Similarly, there is no consideration of the sixth ground, which is to the effect that a personal hearing or opportunity to challenge the findings of the enquiry officer was not given. We find nothing in the appellate order dealing with this. There was total non-application of mind, in passing the order. Order of the disciplinary authority lacks in jurisdiction, because there was no conferment of jurisdiction on the disciplinary authority. We quash Annexure-I and all proceedings leading thereto. After a decade of futile semantic exercises, we find no justification to remit the matter, projecting the litigation into a second decade. We order the applicant to be reinstated. Then comes the question of back wages. This is not merely a matter between the delinquent official and departmental officers. It is something which touches the tax payer and public exchequer also. Learned counsel for applicant was fair in submitting that there will be no justification for asking for entire back wages. In the totality of circumstances, we limit back wages to Rs.10,000/- (Rupees ten thousand only). This will be paid to the applicant within a month from today and she will be reinstated also within one month from today.

6. Application is allowed as aforesaid. Parties will suffer their costs.

Dated the 4th October, 1993.


R. RANGARAJAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

List of Annexures:

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| 1. | Annexure I | Order No. ST/7-4/91 dt. 21.6.91. |
| 2. | Annexure-VII | Order No. F4/3/86-87 dt. 24.11.88 |
| 3. | Annexure-VIII | Appellate order No.ST/7-34/89
dt.23.6.1989. |
| 4. | Annexure-XV | 2nd dismissal No.F4/3/86-87
dt. 22.11.1990. |

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