

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 29.3.1990

P R E S E N T

HON'BLE MR.S.P.MUKERJI - VICE CHAIRMAN

AND

HON'BLE MR.A.V.HARIDASAN - JUDICIAL MEMBER

ORIGINAL APPLICATION NO.151/89

V.N.Govindan - Applicant

Versus

1. Union of India rep. by
Secretary to Government,
Ministry of Communications.,
New Delhi.

2. The Sub Record Officer(LSG);
RMS 'EK' Division, Trichur.

3. S.Somasekharan,
Inspector RMS EK
1st Sub Division,
Cochin.

- Respondents

M/s MC Cherian & TA Rajan - Counsel for applicant

Mr.K.Narayanakurup,ACGSC - Counsel for respondents 1&2.

O R D E R

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

The applicant is an Extra Departmental Sweeper working under the Sub Record Officer, RMS 'EK' Division, Trichur. In ~~contemplation~~^{contemplation} of disciplinary proceedings, he was put off duty by order dated 2.3.1987. Thereafter a charge memo was issued to him ^{which} contained the following charges:

- i) That the said Shri Govindan while working as Sweeper in Trichur RMS/2 dated 28.2.1987 was in a state of intoxication and was unable to sweep.
- ii) That Shri V.N.Govindan while on duty as sweeper in Trichur RMS/2 lay on the sack in a state of intoxication and vomitted on the sack.

Though the applicant submitted his explanation denying the charges, an enquiry was held through the Inquiry Officer Shri S.Somasekharan, IRM, EK 1st Division, the third respondent. After completion of the enquiry, the Inquiry Officer held that the applicant was only partly guilty of the charges as there was no proof to prove that he was in a state of intoxication. Accepting the enquiry report, the second respondent by ^{the} order dated 7.3.1988 at Annexure-II imposed on the applicant a penalty of warning and also ordered that the period of put off duty would be treated as ~~diesnon~~ ^{diesnon}. The applicant ~~was~~ aggrieved by this punishment order, filed this application under Section 19 of the Administrative Tribunals Act, challenging the enquiry report and the order of punishment on various grounds. It has been contended that the finding of the Enquiry Officer that the applicant is guilty of parts of the charges is

perverse since there is absolutely no evidence warranting such a finding. It has further been contended that even if the finding is accepted in toto as the fact found does not amount to any misconduct, the punishment order giving him a warning is unsustainable and that in any event the decision to treat the period of put off duty as disson is unsustainable in law. In the reply statement filed on behalf of the respondents, it has been contended that the finding of the Enquiry Officer, accepted by the Disciplinary Authority is based on sufficient evidence, that the penalty of warning is not anyway prejudicial to the applicant, and that as the applicant has not filed any appeal against the order of put off duty or penalty as provided for in the Extra Departmental Agents Conduct and Service Rules, this Original Application is not maintainable.

2. We have heard the arguments of the learned counsel appearing on either side and have also gone through the records carefully. The respondents have contended that the application is not maintainable since the applicant has not filed an appeal against the order of penalty

...4...



and the order of put off duty in terms of the provisions contained in Rule 10 of the Service Rules for Extra Departmental Staff in Postal Department. Appeal lies against an order putting the employee off duty and also against the order imposing any penalty specified in Rule 7. But warning is not one of the penalties specified in Rule-7, During the pendency of the enquiry the Disciplinary Authority is competent to order putting the employee off duty. Therefore, it is not necessary for the applicant to file an appeal separately against the order of put off duty. Since no appeal is provided against the punishment of warning, we are of the view that it is open for the applicant to file this application challenging the punishment of warning and denial of allowances during the period of put off duty.

3. The learned counsel for the applicant argued that the finding of the Enquiry Authority which is accepted by the Disciplinary Authority, that the applicant is partly guilty of the articles of charges 1 and 2 is absolutely perverse as it is not based on any evidence at all.

...5...

3

In the Enquiry report, a copy of which is at Annexure-III, the Inquiry Officer has stated as follows:

"SW-2 deposed on 10.11.87 that he was the HSA in TCR RMS/2 dated 28.2.87. He did not remember whether he had reported about the CO as stated in S-1. He should report every undue incident in his DR. The office is being swept after 17.30 hrs. i.e.; after the final closing in TCR RMS/2. He had seen the CO among a group of officials standing near the staircase at about 18.00 hrs. on that day."

SW-3 P. Ramankutty deposed that he found the CO removing the cob-webs when he approached him to intimate that the IRM was calling him. Then the CO replied that he would attend the IRM after washing his hands as they were full of dust. He did not see the features of intoxication in CO. He did not hear any one complaining about intoxication of the CO eventhough he can hear the conversations in the cabin of the IRM from SRO. He did not see the reporting of SW-2 to SW-1 regarding the nature of the CO."

The only other evidence on the side of the Disciplinary Authority against the applicant was the testimony of SW-1, IRM and the report, in his letter sent to the second respondent on 28.2.1987 which reads as follows:

"It is reported to me by HSA TCR RMS/2 Shri P.A. Sreedharan LSG that Shri V.N. Govindan ED Sweeper is found in a state of intoxication and is not able to sweep the office. He was summoned by me through Shri P Ramankutty, MM who worked in SRO, TCR on 28.2.1987. Shri P Ramankutty informed me that Shri VN Govindan is not

...6/-

2

in a position to come. I have gone to the ground floor and found Shri VN Govindan ED Sweeper lying on the sack in a state of intoxication and he had vomitted on the sack. The official is found sleeping and or at rest but not in a position to perform his duty."

About the testimony given by SW-1, the Inquiry Officer has stated in his report as follows:

"SW-1 identified the report and stated before the inquiry on 10.11.87 that the facts noted in S-1 are made by him and are correct. He further stated that nobody was seen by the side of the CO. Nobody tried to admit him in a hospital. By seeing the office he came to the conclusion that the office was not swept on that day. The CO did not answer his call. There was alcoholic smell. The incident was orally reported to him by SW-2 Shri P.A.Sreedharan."

4. It is on the basis of this evidence, that the Inquiry Officer has found that Shri V.N.Govindan was unable to sweep and he laid on a sack. SW-1 has stated that what was stated by him in S-I report was true. ^{has} He ~~also~~ stated that he found the delinquent lying on a sack and that he was not well. This can be said to be sufficient evidence to hold that the applicant was unable to sweep, and that he lay back on a sack. But the testimonies of SW-2 and 3, and the ~~xxxxx~~ defence witnesses show that the applicant had performed his duty. Anyway those details need not detain us any longer in order to

decide whether the applicant has been rightly found guilty of any misconduct. The Inquiry Officer has found that the first limb of both the charges that the applicant was in a state of intoxication has not been proved, and that the only parts of the charges that were proved were that he was unable to sweep, and that he ^{lying} was ~~on a sack~~.
M

This finding has been accepted by the Disciplinary Authority also. Being unable to sweep and lying on a sack cannot at all to be considered as misconduct. Therefore, the finding of the Disciplinary Authority, that the applicant is guilty of part of the charge is unsustainable.

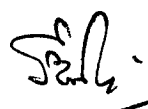
The Disciplinary Authority should have found the applicant not guilty of any charge and should have exonerated him.

Therefore, we are of the view that the finding that the applicant is guilty and the punishment of warning and denial of allowances during the period of put-off duty are illegal and unsustainable. In P.M. Rusamma Vs.

Inspector of Post Offices, Madras & others reported in 1988-7 Administrative Tribunals Cases 833, ^{the} Madras Bench of the Central Administrative Tribunal has held that when the punishment of removal from service inflicted by the Disciplinary Authority was set aside by the Appellate Authority, the employee was entitled to

remuneration for the entire period for which he was put off duty. Therefore, as the finding that the applicant is guilty of ~~any~~ part of the charges is unsustainable, we hold that the applicant was entitled to be ~~ex~~onerated in full and that he should be paid his full allowances for the entire period between 2.3.1987 to 7.3.1988 during which he was put off duty. ^{Accordingly} ~~Therefore~~, we allow the application, quash Annexure-II and III and declare that the applicant should be deemed to be continued in service during the period between 2.3.1987 to 7.3.1988 and direct the respondents to pay to him his full remuneration for this period within a period of two months from the date of receipt of this order. There will be no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

29-3-1990