

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O.A. No. 185/89

XXX

709

DATE OF DECISION 28-6-1990

PK Divakaran Applicant (s)

M/s OV Radhakrishnan, K Radhakamani Amma &

RAJU K Mathew

Advocate for the Applicant (s)

Versus

Sub Divisional Inspector Respondent (s)  
(Postal), Trichur & 3 others

Mr K Rrabhakaran, ACGSC Advocate for the Respondent (s) 1 to 3

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV 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? 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

(Shri AV Haridasan, Judicial Member)

The applicant an Extra Departmental Delivery Agent has in this application sought to set aside the order of the Sub Divisional Inspector, Chalakudi Postal Sub Division, the first respondent dated 31.7.1987 removing the applicant from service with immediate effect at Exbt.A3 and the appellate order of the Superintendent of Post Offices, Irinjalakuda dated 28.3.1988 at Exbt.A6 confirming the Exbt.A3 order.

The applicant while working as EDDA No.II, Kallur was put off duty with immediate effect from 19.10.1985. Thereafter he was served with a charge memo dated 8.9.1986. The charges

related to non-delivery of certain postal articles to  
Shri PV Kochumuhammed Thangal and thereby exhibiting lack of  
devotion to duty and integrity contravening the provisions of  
Rule 17 of PIT ED Agents Conduct and Service Rules, 1964.

The applicant pleaded not guilty to charge. The 4th respondent  
who was appointed as Enquiry Authority conducted an enquiry.

The first respondent, the Disciplinary Authority concurring  
with the findings of the Enquiry Authority held the applicant  
guilty of the charges and he by the impugned order at Exbt.A3  
removed the applicant from service with immediate effect.

Alongwith Exbt.A3, a copy of the Enquiry Report Exbt.A4 was  
also enclosed. The applicant filed an appeal to the Superin-  
tendent of Post Offices, Irinjalakuda Division, the second  
respondent who by the impugned order at Exbt.A6 refused to  
interfere with the Exbt.A3 order of punishment. Aggrieved  
by these orders the applicant has filed this application  
under Section 19 of the Administrative Tribunals Act. The  
applicant has challenged the impugned orders on various grounds.

It has been contended that the applicant has not been given  
reasonable opportunity to make his defence, that the charges  
are vague and that the enquiry held is not valid and proper.

In addition to that it has been specifically contended that  
before the Disciplinary Authority accepted the Enquiry Autho-  
rity's report and decided basing on it, that the applicant is  
guilty of the charges a copy of the Enquiry Authority's report  
was not given to the applicant and that he was not given an

opportunity to dissuade the first respondent from accepting the finding of guilt rendered by the Enquiry Authority and that this has resulted in denial of reasonable opportunity as contemplated in Article 311(2) of the Constitution of India. It has also been contended that the Appellate Authority has not considered the various grounds raised by him in the appeal and that therefore the order of the Appellate Authority is also unsustainable.

2. The impugned orders have been justified by the respondents in the reply statement filed by them.

3. We have heard the arguments of the learned counsel on either side and have also perused the documents produced. The learned counsel for the applicant submitted that non-supply of a copy of the Enquiry Authority's report before the Disciplinary Authority proceeds to decide about the guilt or otherwise of the delinquent basing on the report amounts to denial of reasonable opportunity to defend. The learned Additional Central Government Standing Counsel appearing for the respondents on the other hand contended that after the 42nd amendment of the Constitution, it is not necessary to give a second opportunity to the delinquent after the enquiry is over and before issuing the order of punishment and that as the rules do not prescribe furnishing a copy of the Enquiry Authority's report before the Disciplinary Authority decides the question of guilt, there is absolutely no merit in this contention. The change brought about by the 42nd Amendment to the Article 311(2) is that

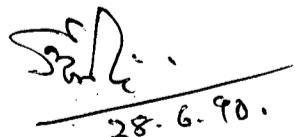
it is not necessary to give a second opportunity to the delinquent whose guilty established in an enquiry to show cause against the proposed punishment. But as the Disciplinary Authority is the person who decides for the first time whether the delinquent is guilty or not and as the Enquiry Authority's report is only in the nature of a report of the Commissioner in a suit the furnishing of a copy of that report and affording an opportunity to make a representation about the acceptability or otherwise of that report before the Disciplinary Authority decides about the guilt of the delinquent to our mind is a part of the first opportunity to defend oneself properly. This view has been taken by a Larger Bench of this Tribunal in Premnath K Sharma V. Union of India & others (1988(3) SLJ(CAT), 449), wherein it was held that the non-supply of a copy of the Enquiry Officer's report and denial of an opportunity to make a representation against the acceptability of the report in a case where the major penalties are imposed vitiates the proceedings. This view was accepted and adopted by the Bombay Bench of the Tribunal in E Bhashyam V. Union of India and others (1988(6) ATC, 863). Though the Supreme Court has in the SLP filed against the order of the Tribunal in Premnath K Sharma's case stayed the operation of the order, the principle enunciated in that decision still holds the field. In Bhashyam's case Division Bench of the Supreme Court has not unsettled the principle but while wholeheartedly endorsing it has referred the matter to be considered by a Larger Bench of the Supreme Court only because

of wide implications involved. In the circumstances, we are bound to follow the dictum in Premnath K Sharma's case. Since it is admitted that a copy of the Enquiry Authority's report was not furnished to the applicant before the Disciplinary Authority accepted the report and found the applicant guilty basing on the same, we are of the view that Exbt.A3 order of the Disciplinary Authority is vitiated and is unsustainable. The Appellate Authority in Exbt.A6 order has not adverted to this question of law hence the Exbt.A6 order also has to be set aside.

4. In view of what is discussed in the foregoing paragraph, we find that the Exbt.A3 and A6 orders of the first and second respondent respectively are unsustainable and therefore they are quashed. The disciplinary proceedings are remitted to the Disciplinary Authority the first respondent from the stage of receipt of the Enquiry Authority's report by him. Now that a copy of the Enquiry Authority's report has been furnished to the applicant along with Exbt.A3 order, the first respondent is directed to give the applicant an opportunity to make his representation and then proceed to complete the disciplinary proceedings, in accordance with law. The disciplinary proceedings should be proceeded with and completed within a period of 3 months from the date of communication of this order. There will be no order as to costs.

  
( AV HARIDASAN )  
JUDICIAL MEMBER

28/6/90

  
( SP MUKERJI )  
VICE CHAIRMAN

28-6-1990

trs