

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 20  
T. A. No.

199 1

DATE OF DECISION 31.10.91

K. K. Pavithran Applicant (s)

Mr. M R Rajendran Nair Advocate for the Applicant (s)

Versus

Sub Divisional Inspector, Respondent (s)  
(Postal) Calicut North Sub Division, Calicut and others

Mr. V. V. Sidharthan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
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

N. DHARMADANJ (M)

JUDGEMENT

The disciplinary proceedings challenged in this case  
is 4  
were initiated in the year 1985 and this/the second time  
that the applicant is approaching this Tribunal attacking  
the orders passed against him in connection with the  
Disciplinary proceedings.

2. The charge against the applicant is stated to be  
not so grave enough to be penalised with an extreme  
penalty of removal from service. The allegation is that  
while working as E.D. Chowkidar at West Hill Post Office  
the applicant did not attend the duty on 12.12.1984 from

8.30 p.m. to 9.40 p.m. and thus failed to maintain absolute integrity and devotion to duty required of him under Rule 17 of the P & T E.D. Agents (Conduct and Service) Rules, 1964. In the statement of imputations it was further stated that the applicant was found absent in the post office when the DPS Calicut region visited the West Hill Post Office at 8.30 p.m. on 12.12.84. The officer found that the office doors on the northern side of the post office were kept open and the applicant was not available till 9.40 p.m. When a punishment of termination of his provisional appointment was imposed on the applicant he filed O.A.K. 261/87 which was heard and allowed by this Tribunal by our judgment Annexure-IV dated 19.9.1989. We quashed the orders and directed the respondents "to proceed with the disciplinary proceedings from the stage they had reached as on 31.3.86 and conclude the same in accordance with law, within a period of three months from the date of communication of this order." Thereafter memo dated 19.10.1989 of the SDI (Postal) Calicut North was issued appointing an officer who <sup>by</sup> enquiry/ submitted Annexure-V report dated 21.6.90. The applicant submitted objection, Annexure-VI to enquiry

261/87

31-3-86

by

report raising serious irregularity in the proceedings and submitted that he may be reinstated in service after dropping all proceedings. Nevertheless the disciplinary authority passed Annexure-I penalty order dated 9.7.1990 removing him from service with immediate effect. The appeal filed against the same was rejected by Annexure-II order dated 19.10.90. The applicant is challenging both these orders on various grounds.

3. The learned counsel, Shri M. R. Rajendran Nair, appearing on behalf of the applicant argued that the duty time of the applicant had not been proved. There is no notified duty time for the applicant and hence dereliction of duty cannot be attributed to him. The applicant was assigned only 7½ hours duty which is between 10 p.m. to 7 a.m. There is no charge that the applicant failed to attend the office during this period. He further submitted that the impugned penalty order was not passed by the authority in terms of the directions of this Tribunal in Annexure-IV judgment and that in the light of the changes effected on Rule 7 of the E.D. Agents (Service and Conduct) Rules, 1964 and inclusion of additional penalties, a reconsideration of the case of the applicant

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is necessary in the interest of justice. The relevant portion containing the charges of penalty reads as follows:

"Rule 7. Nature of penalties.

The following penalties may for good and sufficient reasons and as hereinafter provided, be imposed on an employee, by the appointing authority, namely:-

- (i) Censure.
- (ii) Debarring of ED employees for appearing in the examination for Postmen/Postal Assistants/Sorting Assistants for a period of one year or two years or for a period not exceeding 3 years
- (iii) Debarring of E.D. employees for promotion for a period not exceeding three years
- iv) Recovery from allowance of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders
- v) Removal from service which shall not be a disqualification for future employment
- vi) Dismissal from service which shall ordinarily be a disqualification for future employment."

4. Having regard to the charge framed in this case against the applicant the duty time of the applicant is a relevant and most important factor which should have been proved for finding the applicant guilty of the charges framed against him. <sup>notwithstanding his alleged admission which was withdrawn.</sup> There is no clear finding in Annexure-V the enquiry report, about the notified duty time. The following portions in the enquiry report are relevant:

- "iv) No material evidence is adduced either by the disciplinary side or by the defence side to show the notified duty time of the Chowkidar employed at West Hill P.O. And as admitted by DW.1 the duty time of the Chowkidar (SPS) is not laid down in office records. Thus it can be assumed that the Chowkidar worked according to the oral instructions from the Sub Postmaster from time to time."

(v). "As testified by DW.1, the Chowkidar is employed at Westhill PO for keeping a "General Watch" of the closed PO during night. The term "general watch" has a comprehensive meaning. Generally, the duty of a Chowkidar in a closed PO during night is to guard the office building and properties from being damaged by miscreants and also to avert possible theft of valuables to the extent possible by the secured Post Office, overnight."

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X

X

"It is clear from the evidence both documentary and oral that the SPS being the Chowkidar on duty at Westhill PO on the night of 12.12.84 left the office premises without locking the external doors of the PO keeping the office open and accessible to outsiders. This amply manifests the lack of devotion and dereliction of duty on the part of the SPS."

5. The learned counsel submitted that without a clear finding on this issue the charge as framed in this case would not be sustainable. However, it is pertinent to note that the Enquiry officer has relied on D.G.P&T's letter No. 24-11/82-TE-II dated 18.6.83 without giving a copy of it to the applicant and found that a Chowkidar employed in an E.D. post office is bound to keep a 'general watch' of the post office for 12 hours and held the applicant <sup>charges against the</sup> are proved. According to the learned counsel, there is no charge against the applicant that he failed to do the duty <sup>is included in the statement of allegations.</sup> of keeping a 'general watch' of the Post Office. But this <sup>However, this</sup> document, as indicated above, was relied on by the Enquiry <sup>admittedly</sup> Officer without giving the applicant an opportunity to



decision by the disciplinary authority on this question before finding the applicant guilty. The Appellate authority also did not independently considered these issues. This is also another infirmity in the impugned order which caused real prejudice to the applicant.


7. The next contention of the learned counsel for the applicant is <sup>b</sup> that the disciplinary authority did not complete the enquiry as per directions of this Tribunal in as much as the time schedule provided for deciding the case had not been followed by the authorities in spite of warning by the applicant. I am not very much impressed by this argument. Even if I accept this argument, it may not affect the merits of the case and it is irrelevant for deciding the issue arising for consideration. Hence, I am not examining this contention. However, based on the finding on the first contention raised by the learned counsel for the applicant the case has to be allowed by setting aside the impugned orders. But it would be fair and proper under these circumstances to remand the case to the disciplinary authority for a fresh disposal of the matter in accordance with the law so that the authority also <sup>b</sup> may consider the arguments of the learned counsel based on

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the changes of Rule 7 and the inclusion of additional penalties as well if they really apply to this case. The learned counsel for the applicant only submitted that in case the <sup>matter is</sup> ~~case~~ is remanded to the lower authorities for reconsideration, freedom to raise the question of application of the changed rule 7 for imposing the punishment. <sup>may be preserved. 2</sup> Hence, I am not considering this issue at this stage, <sup>but preserve the freedom. 2</sup>

8. Accordingly, I set aside the impugned orders and remand the matter to the disciplinary authority for a fresh disposal of the case by the said authority in accordance with law, based on the charges already framed against the applicant. I am making it clear that the applicant shall be deemed to be continuing in put off duty till the conclusion of the proceedings.

9. In the result, the application is allowed to the extent indicated above. There will be no order as to costs.

  
31.12.91  
(N. DHARMADAN)  
JUDICIAL MEMBER

kmm



N.V.Krishnan, Administrative Member

10. I regret I am unable to agree with the conclusions reached by my learned Brother. The main facts have been stated in my learned Brother's judgement. Therefore, there is no need to repeat them.

11. My learned Brother has not adverted to two documents, which I consider to be most important. It is, therefore, necessary to refer to them straightaway.

12. When the applicant returned to the office premises on 12.12.84 after finishing his dinner, he found the Deputy Director, Postal Services, Calicut Region in the office. When questioned by him, the applicant gave a statement to the Dy. Director, Postal Services. In Annexure-IV to the memorandum dated 6.6.85 initiating the disciplinary proceedings, this statement is mentioned as one of the documents by which the charge was proposed to be proved. This can be seen from the <sup>impugned</sup> Annexure-I order of the disciplinary authority in which the text is reproduced.

13. Similarly, in the preliminary enquiry, which was held before commencing the disciplinary proceedings, the applicant gave another statement on 26.12.84 to the Sub Divisional Inspector, Calicut North. This is also in his own hand. This is also one of the documents on which the Department depended to prove the charges against the applicant, as can be seen from the extracts reproduced in Annexure-I.

14. The learned counsel for the respondents has produced for our perusal the records of the enquiry proceedings. These two statements dated 12.12.84 and 26.12.84 have been admitted in evidence as Exhibit P3 and P4 respectively.

15. The two statements contained the following admissions:

(i) The applicant entered duty at 6.30 P.M.

(ii) He had permission to go out for meals for about an hour.

(iii) He therefore left office at 8.20 PM for meals and while going he had locked the front door of the office but left open the entrance on the northern side to enable the Telegraph Messenger to enter the office and deposit the undelivered telegrams.

16. The Disciplinary Authority has naturally attached considerable significance to these two statements as can be seen from his order at Annexure-I. His observations in the light of these statements are as follows:

"It is also therefore clear that the charged ED Agent was not available in the Post Office or its premises from 8.30 PM to 9.40 PM on 12.12.84, further the point to be examined is whether the said time falls within duty hours or not. (DW1) Defence witness deposed that the duty hours of the ED Chowkidar West Hill was firstly from 7 PM to 7 AM and he revised the duty hours from 10 PM to 5.30 AM. The date of the revision of the duty hours was not mentioned by him. So to decide whether the duty hours of the charged EDA on 12.12.84 was from 7 PM to 7 AM or from 10 PM to 5.30 AM the other evidences in the inquiry have to be relied on. P.4 is the written statement of the charged ED Agent given to DDPS Calicut on 12.12.84 when questioned the charged ED Agent. for not being on duty during the visit of the DDPS around 8.30 PM to 9.40 PM and also for leaving the office doors unlocked. The depositions of PW 4 and PW 1 establishes the fact. P4 statement was written by the charged ED Agent in his own hand. In case his duty hours was commencing from 10 PM on that date he could have given a statement saying so. It is very clear that the hours he left office from 8.20 PM to 9.40 PM was during his duty hours. P3 is another statement of the charges ED Agent given to the SDI Calicut North (PW 3) on 26.12.84 about his absence on 12.12.84 night. In the statement also the charged ED Agent says that he joined duty before 6.30 PM on 12.12.84 and he went for meals from 8.20 PM to 9.40 PM. He further states in it that he had already got permission from the SPM to go out and take meals availing one hour. The charged ED Agent has stated before the IA that SPM DW1 had already given him permission for one hour to take meals. DW 1 deposed that he used to grant permission to the charged EDA to take meals if he requested. DW 1 was

on leave on 12.12.84. The charged ED Agent deposed before the IA that he did not seek special permission from the Sub Postmaster on duty on 12.12.84. But availed one hour on the basis of the usual permission got from DW1. There is no question of one hour permission in case his duty began at 10 PM. According to P3, he was aware that permission was necessary to be absent from 8.20 PM to 9.40 PM on 12.12.84. Actually he did not get permission from the SPM on duty on 12.12.84. It is definite that the time availed by the charged EDA from 8.20 PM to 9.40 PM was his duty hours on 12.12.84 and he absented from duty for the said time."

Nobody can find fault with the aforesaid reasoning of the Disciplinary Authority.

17. The appellate authority had also come to similar conclusion as would be evident from para 4.1 of his order at Annexure-II. It is needless to reproduce that para except for the following extract:

"Neither the Inquiry Officer nor the Disciplinary Authority had erred in holding that on 12.12.84 his duty hours were from 7 PM to 7 AM next morning and on that day between 8.30 PM to 9.40 PM he had failed to attend to his duties. Legality of bringing him on duty for more than 7½ hours apart, the Disciplinary Authority was fully justified in examining whether on the said date, viz. 12.12.84 the appellant's duty had commenced before 8.30 PM and whether he had failed to be on duty during any period in between. He has rightly held that the failure to attend duty was during duty hours."

18. I am of the view that if the sheet anchor of the applicant's case is that his duty hours were only from 10 PM to <sup>4 5.30</sup> ~~10~~ AM, then, the only statement he could have made to the Deputy Director, Postal Services on 12.12.84 was that he was yet to enter his duty and that he was not aware as to how the office had been kept opened. In situations like this, when statements are taken from the delinquents and they are used to prove the charges, the plea generally taken is that the statement was given or extracted under duress or it was given out of fear of the superior authority and it is retracted. Even that plea is neither taken nor available to the applicant. For, subsequently on 26.12.84, he has given a similar statement to the S.D.I Calicut North who conducted the preliminary enquiry.

19. Therefore, the question whether the applicant's duty hours are from 10 PM to <sup>5.30</sup> ~~10~~ AM or from 7 PM to 7 AM is not at all material. The applicant himself had admitted in the two statements, Ex. P3 and P4, that he was absent from 8.20 PM to 9.40 PM after he had entered his duty at 6.30 PM on that day. As the appellate authority has pointed out it is <sup>a</sup> totally different <sup>question whether</sup> matter ~~that~~ under the standing instructions, he could not have been put on duty for more than 7½ hours.

20. The issue whether the duty hours are from 10 PM to <sup>5.30</sup> ~~10~~ AM would have arisen only if the applicant contended before the Deputy Director, Postal Services, Calicut on 12.12.84 that his duty commenced <sup>e</sup> only at 10 PM. In the light of Exbt. P3 and P4 statements in the Enquiry, this question need not have arisen at all. Therefore the Enquiry Authority embarked on an unnecessary exercise to find out his duty hours.

21. My learned Brother has held that the reliance of the Enquiry Authority on the guidelines of the D.G., P&T dated 18.6.83, without giving the applicant an opportunity in this regard, vitiates the entire proceedings as being violative of the principles of natural justice. I regret I am unable to accept this finding. The records of the enquiry show that in the brief submitted by the Defence Assistant who helped the applicant in the disciplinary proceedings, reliance was placed on the order of the D.G. in Memo No. 714/6/80 dated 20.7.90 to show that E.D. Chowkidars can be assigned work for only 7½ hours. A copy of this memorandum was, however, not produced before the Enquiry Authority. This contention has been rebutted by the Enquiry Authority by stating that as per guidelines

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circulated by the DG P&T in letter No. 24-11/82-TE.2 dated 18.6.83, a Chowkidar employed to keep a general watch of the Post Office can be brought on duty for 12 hours. The learned counsel of the applicant contends that the Enquiry Authority has sprung a surprise on the applicant and has not given an opportunity to be heard in this regard and hence this single act vitiates the enquiry and renders it ab initio void. My learned Brother has accepted this view.

22. The aforesaid instructions of the DG, P&T should be within the knowledge of every employee. If the Enquiry Authority had committed a mistake by relying on the circular dated 18.6.83, the applicant had an opportunity to point this out to the Disciplinary Authority, which, in fact, he did, as would be clear from Annexure-VI which is his representation in regard to the report of the Enquiry Authority. He states therein that the letter of the DG, P&T relied upon is really applicable to departmental Chowkidars and as there was no mention about ED Chowkidar in this letter, the presumptions of the Enquiry Officer that he was to keep a general watch of the Post Office during the night and that he had a 12 hour duty from 7 AM to 7 PM was wrong. Therefore, the question of denying natural justice does not arise at all and the applicant was not unaware of the instruction which should govern his case.

23. The action of the Enquiry Officer merely amounted to his looking into some instructions or rule book. In my view, it is not necessary that the delinquent should be informed about this. This act of the Enquiry Officer will not amount to denial of natural justice. There would have been such denial if, for example, after closing the enquiry, the Enquiry Officer referred to some other official records (e.g. attendance register) without the knowledge of the applicant and behind his back, to come to a finding of guilt or if he had obtained further evidence from some other

official behind the back of the applicant and used it in his Enquiry Report to the detriment of the applicant. Such acts alone would have amounted to denial of natural justice because the applicant would, <sup>or then</sup> have been denied his valuable and basic right of cross examining the witnesses who have given statements against him or who have prepared records incriminating the applicant.

24. A passing reference is needed to the contention that the disciplinary proceedings have been completed in violation of the directions of this Tribunal on 8.5.90 in MP 356/90 in OAK 261/87 which have been extracted in Annexure-VII. Neither in the original order dated 31.8.89 (Annexure-IV) in OAK 261/87 nor in the subsequent order dated 8.5.90 (in the aforesaid MP) has the Tribunal declared that failure to complete the proceedings within the time stipulated in the judgement would mean that the disciplinary proceedings will abate and that the respondents will lose all rights to continue with the proceedings thereafter and that the applicant would then be deemed to have been found not guilty of the charges framed against him. In the absence of such specific directions, the completion of the proceedings beyond the time fixed therefor will render the authorities concerned to action for contempt, but will under no circumstance, render the proceedings illegal. The Tribunal only directed that if there was delay beyond the stipulated period, the applicant had to be given full pay and allowances during the further continuance of the proceedings. It did not direct that the proceedings should be dropped and the applicant reinstated.

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25. The last issue that remains is the effect of the amendment to Rule 7. As I have come to the conclusion that the impugned orders cannot be faulted for finding the applicant guilty in the disciplinary proceedings, the only question that remains is about the penalty. In that circumstances, the respondents had no alternative except to impose only one of the penalties specified in Rule 7. The disciplinary authority has chosen to impose the lighter of the two permitted penalties, i.e. removal from service instead of dismissal.

26. It is now stated that Rule 7 has been amended by the letter No. 10-4/90-Vig.III dated 16th May 1991. That letter reads as follows:

" xxx xxx xxx

Sir,

As per the existing provisions of Rule 7 of EDA (Service & Conduct) Rules, 1964, the following penalties can be imposed on ED Agents:-

- (i) Recovery from allowance of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders;
- (ii) Removal from service, which shall not be a disqualification for future employment; and
- (iii) Dismissal from service, which shall ordinarily be a disqualification for future employment.

2. Prima facie the penalty of recovery can be imposed in the cases where some pecuniary loss has been caused to the Government due to negligence or breach of orders by the EDAs. In all other cases, irrespective of the nature and gravity of misconduct, the disciplinary authority is bound to follow the elaborate procedure which is almost identical to the procedure prescribed in Rule 14 of CCS (CCA) Rules, 1965. In the end the disciplinary authority has either to let off the official completely or dismiss or remove him from service. In cases of lapses of minor nature noticed on the part of EDAs, it was found appropriate to introduce certain other penalties with a view to come to a decision quickly.

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3. The Department has been considering for some time the question of incorporation of additional penalties which could be imposed on EDAs, in addition to the penalties already existing in Rule 7 *ibid*. After its approval by Members of the Postal Services Board, the proposal was examined in consultation with the Ministry of Law, Department of Legal Affairs and it was decided to amend Rule 7 of EDAs (Service & Conduct) Rules, 1964 as follows:

Rule 7 NATURE OF PENALTIES:-

The following penalties may for good and sufficient reasons and as hereinafter provided, be imposed on an employee, by the appointing authority, namely:-

- (i) Censure.
- (ii) Debarring of ED employees for appearing in the examination for Postmen/Postal Assistants/Sorting Assistants for a period of one year or two years or for a period not exceeding 3 years.
- (iii) Debarring the ED employees for promotion for a period not exceeding three years.
- (iv) Recovery from allowance of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders.
- (v) Removal from service which shall not be a disqualification for future employment.
- (vi) Dismissal from service which shall ordinarily be a disqualification for future employment.

4. This may be brought to the notice of all concerned authorities for strict compliance. The receipt of this letter may be acknowledged.

Sd/-  
Director (Vigilance  
Petitions) "

It does not indicate from which date it will be effective. Therefore, normally, it will be effective only from the date of its issue.

27. The question, therefore, is whether the additional lighter punishments now provided for, can be imposed on the applicant in the circumstances of this

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case. The learned counsel of the applicant did not produce any material in this behalf excepting to state that if the impugned orders are quashed and the case is remanded, one of the lighter penalties can now be imposed. The learned counsel for the respondents submitted that normally such orders will be effective only from the date of issue.

28. My learned Brother has not discussed this issue, as he has left it to the disciplinary authority to consider whether this circular will at all be applicable to decide the question of penalty to be imposed in this case.

29. I am of the view that the applicability of this circular has to be considered and decided by the Tribunal itself. I have not been able to locate any judicial authority to support the view that the penalties mentioned in this circular will apply to a disciplinary case where proceedings were initiated in 1985 and the original order of Disciplinary Authority imposing penalty was passed on 9.7.90.

30. It was in 1987(2) ATC 813 that the Cuttack Bench of this Tribunal expressed the need for lighter punishments also to deal with various types of delinquencies amongst ED Agents. The Department has considered this matter and has now come out with this circular. Obviously, the Department is fully convinced that the provision of only two penalties (viz. removal or dismissal) is too harsh and hence lighter penalties also have now been prescribed. From this background it is obvious that the liberalized provisions of Rule 7 should be invoked wherever possible. In other words,

considering the spirit of this circular, an inference can necessarily be drawn, that its application will not be limited to fresh cases instituted after the date of its issue but that it will also apply to proceedings which are still pending.

31. The matter can be further briefly examined considering the question of vested rights. The Department may not claim to have a vested right to impose only the penalties of removal or dismissal which were in force during the relevant time because they are satisfied that this provision was unjust and needed modification. If the proceedings have not yet become final they should not have any objection if the liberalized provisions are invoked.

32. On the contrary, if only lighter penalties had been prescribed earlier and, for the first time, the Department, now prescribes stricter penalties, a delinquent government servant could claim, in a situation like in the present case, that only one of the lighter penalties should be imposed on him as he had a vested right to be governed by the provisions prevailing when the memorandum of charges was issued. I do not, however, feel called upon to pronounce on this issue except to state that even if, for argument's sake, that contention is held to be valid, it will not mean that in the present case, I should hold that the amendment now made will not apply to pending proceedings. This is due to ~~the~~ one basic difference in the situation viz. the later amendment liberalizes the earlier provisions. The memo dated 16.5.91 is a beneficent

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provision and unless in the circumstances of this case, its applicability is restricted by express terms to only disciplinary proceedings initiated in future, it should, in the interest of justice, be held to apply to all pending cases, particularly in view of the narration given in the memorandum as to the reasons for the amendment.

33. In this view of the matter, I hold that the circular dated 16th May, 1991 will apply to the instant disciplinary proceedings which are undoubtedly pending.

34. The question is what further action is needed.

35. In this connection it is necessary to recollect the rule laid down by the Hon'ble Supreme Court in Union of India vs. Parma Nanda, (1989) 2 SCC 177, in para 27 of their judgment which is reproduced below:-


"27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

In this case the disciplinary authority had no other alternative except to impose <sup>one</sup> of the two punishments and therefore, the question of interfering on other grounds does not even arise. However, in the light of the new rules that has been promulgated it is only proper that the matter regarding penalty be considered by the disciplinary authority again.

36. In the circumstances, I dispose of this application by upholding the finding of guilt of the applicant rendered by the disciplinary and appellate authorities in their orders at Annexure-1 and Annexure-II respectively but quash the penalty imposed on the applicant by them. I remand the case to the disciplinary authority for imposing the proper penalty within one month from the date of receipt of this order after considering the penalties specified in Rule 7 as amended. For this purpose a copy of the circular No.10-4/90-Vig.III dated 16.5.91 shall be sent to the disciplinary authority along with this order.

37. In the circumstances, the applicant should be deemed to continue to be put off from duty from the date the impugned Annexure-I order was passed till the disciplinary authority passes appropriate orders as directed above and his reinstatement, if any, will abide by such orders.

38. The application is disposed of as above.

  
31.10.91  
(N.V. Krishnan)  
Administrative Member

In view of difference of opinion between us, we refer the following question for decision under the provisions of Section 26 of the Administrative Tribunals' Act, 1985. The office may place the files before the Hon'ble Chairman for appropriate orders:

"Having regard to the facts and circumstances of this case what is the appropriate direction ~~that~~ <sup>which disposing of the matter, is</sup> need to be given. In other words, whether the impugned order should be quashed in toto and the case remanded or ~~only~~ <sup>the</sup> penalty imposed need ~~only~~ <sup>to</sup> be quashed for a reconsideration of the appropriate penalty to be imposed taking into account Rule 7 of the E.D. Agents Service and Conduct Rules as amended on 16.5.91."

  
(N. DHARMADAN)  
JUDICIAL MEMBER

31.8.91

  
(N. V., KRISHNAN)  
ADMINISTRATIVE MEMBER

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
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O. A. No. 20/1991  
T. A. No.

199

DATE OF DECISION 30-04-92

K.K. Pavithran Applicant (s)

Mr.M.R.Rajendran Nair Advocate for the Applicant (s)

Versus

Sub Divisional Inspector,  
~~(Postal), Calicut North Sub~~ Respondent (s)  
Division, Calicut and others.

Mr.V.V.Sidharthan, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
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

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This application has been referred to me under the orders of the Hon'ble Chairman dated 7.1.92 under Section 26 of the Administrative Tribunals Act to resolve the difference of opinion that has arisen between Hon'ble Shri N.V.Krishnan, Administrative Member and Hon'ble Shri N.Dharmadan, Judicial Member in their order dated 31.10.91 on the aforesaid application. The issue referred to is as follows.

" Having regard to the facts and circumstances of this case what is the appropriate direction to be given, while disposing of the matter. In other words, whether the impugned order should be quashed in toto and the case remanded or the penalty imposed need only be quashed for a reconsideration of the appropriate penalty to be imposed taking into account Rule 7 of the E.D. Agents Service and Conduct Rules as amended on 16.5.91."

The brief facts of the case are as follows.

2. The provisional appointment of the applicant was terminated

by an order dated 31.3.86 while the applicant had been put off duty and had been chargesheeted for disciplinary proceedings for being absent from duty while acting as Extra Departmental Chowkidar between 8.30 p.m. and 9.40 p.m. on 12.12.84. The disciplinary proceeds were cancelled on 31.3.86 and on the same day, his services were terminated. The impugned order as also the appellate order rejecting his application were challenged by the applicant in O.A. 261/87 and the Tribunal by its order dated 31st August, 1989, allowed the application, set aside the impugned orders and directed the respondents to proceed with the disciplinary proceedings from the stage they had reached on 31.3.86 and bring them to a conclusion. The charge against the applicant was that while working as E.D.Chowkidar at West Hill Post Office, he did not attend duty on 12.12.1984 from 8.30 P.M to 9.40 P.M. When the DPS, Calicut region visited the Post Office at 8.30 p.m. on that date, the officer found that the office doors on the northern side of the Post Office were kept open and the applicant was not available till 9.40 p.m. Subsequent to the judgment of the Tribunal in O.A. 261/87, an Enquiry Officer was appointed who submitted the enquiry report on 21.6.90 to which the applicant filed a reply, but the disciplinary authority passed Annexure-I penalty order dated 9.7.1990 removing him from service. The appellate order was passed on 19.10.90 rejecting his appeal. It is against these orders that the applicant moved this Tribunal again in O.A.20/1991, on which the aforesaid difference of opinion has arisen in the order of the Division Bench dated 31.10.91.

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3. The learned counsel for the applicant had argued before the Division Bench that there was no notified duty time for the applicant and hence dereliction of duty cannot be attributed to him. The applicant was assigned only 7½ hours of duty which is between 10 p.m. to 7 a.m. That there was no charge that the applicant failed to attend duty during this period. The Hon'ble Judicial Member Shri N.Dharmadan observed that having regard to the charge framed against the applicant the duty time of the applicant is relevant and most important factor which should have been proved for finding the applicant guilty of the charges framed against him "notwithstanding his alleged admission which was withdrawn" and there was no clear finding in the enquiry report about the notified duty time. It was also observed that while the Enquiry Officer had relied on D.G,P&T's letter of 18.6.83(without giving a copy of it to the applicant) and found that a Chowkidar employed in an E.D. Post Office is bound to keep a 'general watch' of the Post Office for 12 hours and held the charges against the applicant to have been proved, the Hon'ble Judicial Member thought that it was not very clear whether the D.G ,P&T's letter would apply to Extra Departmental Chowkidar who according to Annexure-VIII cannot be employed for more than 7½ hours. According to the Hon'ble Judicial Member this controversy has not been carefully examined by the authorities and there was no decision of the disciplinary authority on this question before it found the applicant guilty. The appellate authority also did not consider this issue. On this point alone, the Hon'ble Judicial Member thought it fair and proper that the case be remanded to the

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disciplinary authority for a fresh disposal of the matter "so that the authority may also consider the arguments of the learned counsel based on the changes of Rule 7 and the inclusion of additional penalties as well if they really apply to this case" whereby apart from removal other penalties were also included. Without considering the issue of changed Rule 7, the Hon'ble Judicial Member thought that the applicant should have the freedom to raise the question of application of Rule 7 of the ED Agents (Service and Conduct) Rules. The operative portion of the order of the Hon'ble Judicial Member reads as follows:-

"8. Accordingly, I set aside the impugned orders and remand the matter to the disciplinary authority for a fresh disposal of the case by the said authority in accordance with law, based on the charges already framed against the applicant. I am making it clear that the applicant shall be deemed to be continuing in put off duty till the conclusion of the proceedings.

9. In the result, the application is allowed to the extent indicated above. "

4. The Hon'ble Administrative Member Shri N.V.Krishnan in his dissenting view, referred to two documents which had not been adverted to by the Hon'ble Judicial Member. The first document is the statement which the applicant had given to the Dy.Director, Postal Services on 12.12.84 referred to in the punishment order at Annexure-I. The second document is the statement given by the applicant on 26.12.84 during the preliminary enquiry proceedings, to the Sub Divisional Inspector, Calicut North. These two documents are admitted in evidence at Exbts.P3 and P4. In these two statements, the Hon'ble Administrative Member observed that the applicant had admitted that he had entered duty at 6.30 P.M.

that he had permission to go out for meals for about an hour and therefore, he left office at 8.20 P.M. locking the front door but leaving the entrance on the northern side open to enable the Telegraph Messenger to enter the office and deposit the undelivered telegrams. The disciplinary authority and the appellate authority had taken note of these two statements and according to the learned Administrative Member, the findings of these authorities cannot be faulted. The Hon'ble Administrative Member observed that "if the sheet anchor of the applicant's case is that his duty hours were only from 10 P.M to 5.30 P.M, then the only statement he could have made to the Deputy Director, Postal Services on 12.12.84 <sup>would have been</sup> ~~was~~ that he was yet to enter his duty and that he was not aware as to how the office had been kept opened." The learned Administrative Member observed that no plea was taken that the statement given by the applicant was under duress. In the face of the applicant's admission that he was absent from 8.20 P.M to 9.40 P.M after he had entered his duty at 6.30 P.M. on that day, the question whether he could not have been put on duty for more than 7½ hours. is not relevant. The Hon'ble Administrative Member did not accept the view that the Enquiry Authority's reliance on D.G, P&T's guidelines dated 18.6.83 without giving the applicant an opportunity in this regard, vitiated the disciplinary proceedings. The Hon'ble Administrative Member has argued that the Enquiry Officer referred to the circular of D.G, P&T dated 18.6.83 in his report and the applicant had an opportunity to challenge the reliance of the Enquiry Officer of this circular, and the applicant did exactly the same in his representation

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at Annexure-VI in regard to the enquiry report. Accordingly there is no denial of the principle of natural justice. The instructions of D.G, P&T should be within the knowledge of every employee. As regards the quantum of punishment to be considered on the basis of Rule 7 as amended on 16th May, 1991, the Hon'ble Administrative Member has referred to the amending letter dated 16th May, 1991 and has stated that since the letter does not indicate from which date the amendment will be effective, it will be presumed to be effective from the date of its issue. The learned Administrative Member has felt that the liberalised provisions of Rule 7 prescribing punishments lighter than removal or dismissal as originally provided for, should not be limited to fresh cases instituted after the date of its issue but that it will also apply to proceedings which are still pending. Finally it has been held that since the later amendment liberalises the earlier provisions, the memo dated 16.5.91 being a beneficent provision and its applicability having not been specifically restricted to disciplinary proceedings initiated in future, it should, in the interest of justice, be held to apply to all pending cases, particularly in view of the narration given in the memorandum as to the reasons for the amendment.

5. I have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The charge against the applicant was as follows:-

" That Sri K.K.Pavithran while functioning as ED Chowkidar West Hill failed to attend duty on 12.12.84 from 0830 PM to 940 PM and thereby failed to maintain absolute integrity and devotion to duty required of him under Rule 17 of the P&T ED Agents (Conduct and Service) Rules, 1964."

The following factual position has been indicated in the impugned order at Annexure-I which has not been disputed:-

"Besides, PW4 and PW1 have deposed that they visited the West Hill Post Office after 8 PM, entered the Post Office through the unlocked doors on the northern side and remained there for about more than one hour and that they could not see the charged ED Agent in the post office or its premises till 9.40 P.M. It is also therefore clear that the charged ED Agent was not available in the Post Office or its premises from 8.30 P.M. to 9.40 P.M. on 12.12.84, further the point to be examined is whether the said time falls within duty hours or not. (DW1) Defence witness deposed that the duty hours of the ED Chowkidar West Hill has firstly from 7 pm to 7 am firstly and he revised the duty hours 10 PM to 5.30 AM. The date of the revision of the duty hours was not mentioned by him. So to decide whether the duty hours of the charged EDA on 12.12.84 was from 7 PM to 7 AM or from 10 PM to 5.30 PM the other evidences in the inquiry have to be relied on. P.4 is the written statement of the charged ED Agent given to DDPS Calicut on 12.12.84 when questioned the charged ED Agent. for not being on duty during the visit of the DDPS, around 8.30 PM to 9.40 PM and also for leaving the office as doors unlocked. The depositions of PW 4 and PW 1 establishes the fact. P 4 statement was written by the charged ED Agent in his own hand. In case his duty hours was commencing from 10 PM on that date he could have given a statement saying so. It is very clear that the hours he left office from 8.29 P.M to 9.40 PM was during his duty hours. P3 is another statement of the charges ED Agent given to the SDI Calicut North (PW 3) on 26.12.84 about his absence on 12.12.84 night. In the statement also the charged ED Agent says that he joined duty before 6.30 PM on 12.12.84 and he went for meals from 8.20 PM to 9.40 PM. He further states in it

that he had already got permission from the SPM to go out and take meals availing one hour. The charged ED Agent has stated before the IA that SPM DW1 had already given him permission for one hour to take meals. DW 1 deposed that he used to grant permission to the charged ED Agent to take meals if he requested. DW 1 was on leave on 12.12.84 the charged ED Agent deposed before the IA that he did not seek special permission from the Sub Postmaster on duty on 12.12.84. But availed one hour on the basis of the usual permission got from DW1. There is no question of one hour permission in case his duty began at 10 PM. According to P-3, he was aware that permission was necessary to be absent from 8.20 to 9.40 on 12.12.84. Actually he did not get permission from the SPM on duty on 12.12.84. It is definite that the time availed by the charged ED Agent from 8.20 PM to 9.40 PM was his duty hours on 12.12.84, and he absented from duty for the said time."

From the above it is clear that the applicant in his written statements recorded in his own hand<sup>admitted</sup> that he had left office premises from 8.20 p.m to 9.40 p.m. on 12.12.84 to take his meals after joining duty at 6.30 p.m. On previous days he used to get permission from the SPM to go out and take meals<sup>during this period</sup> availing<sup>at</sup> one hour. The SPM was on leave on 12.12.84 and the applicant deposed before the IA that he did not seek special permission on 12.12.84 but availed of one hour on the basis of the usual permission. As pointed out by the learned Administrative Member, the two statements given by the applicant also show that while going at 8.20 p.m. for meals the applicant had locked the front door but left open the entrance on the

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northern side to enable the Telegraph Messenger to enter the office and deposit the undelivered telegrams. All these clearly establish that the applicant was on duty before going out for meals and after coming back. If he were not on duty, the question of his locking the front door itself would not have arisen. In these circumstances it is irrelevant to consider what the duty hours of the applicant were and when they commenced and when they ended. Even if for the sake of argument it is conceded that the applicant was being engaged beyond the limit of 7½ hours per day prescribed for ED Chowkidars, the applicant should not have left the premises unattended during the extended duty hours. In that light, the charge is fully established and the D.G,P&T's guidelines dated 18.6.83 are of no relevance. Production or non-production of these instructions would have made no difference to the establishment of the charge and their non-production would not be violative of the principles of natural justice. I would, therefore, agree with the Hon'ble Administrative Member that non-production of the D.G,P&T's instructions of 18.6.83 does not in any manner violate the principles of natural justice and does not vitiate the disciplinary proceedings. The matter, therefore, need not be remanded to the respondents on merits. As regards remanding the case on the question of quantum of punishment, the Hon'ble Judicial Member did not go into the question of application of the changed Rule 7 for determining the quantum of punishment but reserved the freedom of the applicant to raise this question under the changed Rule 7 of the Extra Departmental Agents(Service and Conduct) Rules.

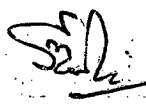
The Hon'ble Administrative Member also felt that

"in the light of the new rules that has been promulgated it is only proper that the matter regarding penalty be considered by the disciplinary authority again."

Thus there is no difference between the Hon'ble Members of the Division Bench so far as the quantum of penalty to be considered by the disciplinary authority under the changed rules is concerned. In the light of what has been discussed above I decide the issue raised before me as follows:-

"Having regard to the facts and circumstances of this case, the impugned orders are upheld as regards the finding of guilt, but are set aside so far as the quantum of punishment is concerned and the case is remanded to the disciplinary authority for a reconsideration of the appropriate penalty to be imposed taking into account Rule 7 of the ED Agents (Service and Conduct) Rules as amended on 16.5.91 to the extent it is applicable to the present case in accordance with law."

6. Registry is directed to place my opinion before the concerned Division Bench for pronouncement of appropriate final orders.

  
30.4.92  
(S.P. MUKERJI)  
VICE CHAIRMAN

n.j.j.

ORDER OF THE BENCH

Having regard to the facts and circumstances of this case, the impugned orders are upheld as regards the finding of guilt, but are set aside so far as the quantum of punishment is concerned and the case is remanded to the disciplinary authority for a reconsideration of the appropriate penalty to be imposed taking into account Rule 7 of the ED Agents (Service and Conduct) Rules as amended on 16.5.91 to the extent it is applicable to the present case in accordance with law.

*N. Dharmadan*  
*22.5.92.*

( N. DHARMADAN )  
MEMBER (JUDICIAL)

*N.V. Krishnan*  
*28/5/92*

( N.V. KRISHNAN )  
MEMBER (ADMINISTRATIVE)

*9/6/92*  
*22/5*