

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

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

O.A. 213/89 199-

DATE OF DECISION 24.5.1990

V.D.Joseph Applicant (s)

M/s M.R.Rajendran Nair &
P.V.Asha Advocate for the Applicant (s)

Versus
Union of India & 2 others Respondent (s)

Mr. Thangakoya Thangal Advocate for the Respondent (s)
ACGSC

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. A.V.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? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? M
4. To be circulated to all Benches of the Tribunal? M

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 3.4.89 filed under section 19 of the Administrative Tribunals Act, the applicant who has (T.O.A) been working as Telecom Office Assistant/in the office of SDOT, Idukki, has prayed that the impugned order dated 16.2.87 (Annexure II) removing him from service and the appellate order dated 20.8.88 reducing the punishment of removal to that of reduction of his basic salary from Rs 1100 to Rs 975 for a period of 3 years without cumulative effect should be set aside. He has also prayed that the respondents be directed to pay him his emoluments for the

period he was out of service between 20.8.88 and the date of re-instatement. The brief material facts of the case are as follows:

2. On 21st September, 1982 the applicant while working as T.O.A. drew an LTC advance of Rs 520 and later submitted an LTC bill for tour with family between 4.10.82 and 17.10.82. According to the respondents, the applicant had given train ticket numbers for upward and downward journeys. He was asked to give further information about the journey on 10.2.83. He did not submit any reply. On a reminder he submitted such an information on 15.7.83 stating that the tickets for the upward journey from Ernakulam to Nizamuddin Station near New Delhi were purchased from Ernakulam Junction. He further indicated that "the ticket numbers purchased already given in the claim and the additional particulars as above are sufficient evidence." He had also suggested that the ticket numbers may be verified. On verification the Chief Booking Supervisor, Ernakulam Junction, vide his letter dated 20.9.83 stated that the ticket numbers referred to did not come under the running series of tickets to New Delhi or Nizamuddin issued during October 1982 from Ernakulam Junction. On 15.2.84 the LTC claim of Rs 1016 was rejected and the advance recovered. On 18.6.84 the applicant was charge sheeted as follows:

"Article-I

That the said Shri V.D.Joseph had preferred a LTC claim for the block year 1982-85 for Rs 1016.00 in connection with journey said to have been performed from Ernakulam Junction to Nizamuddein East (New Delhi)

"The claim appears to be a fraudulent one.

Annexure-II

" Statement of imputation of misconduct or misbehaviour in support of the article of charge framed against Shri V.D.Joseph, TOA, DET's office, Thodupuzha.

" Article

" 1. Shri V.D.Joseph, TOA had submitted a LTC claim for a journey said to have been performed from Ernakulam Jn. to Nizamudeen East (New Delhi) and back. He has indicated in his claim the following ticket Nos. by which the journey is said to have been performed by him as proof of the journey.

<u>Ticket No.</u>	<u>Date</u>	<u>Train</u>	<u>Place</u>
16975	4.10.82	Nizamudeen Exp.	New Delhi
16976	do	do	do
16977	do	do	do
16978	do	do	do

" 2. Shri V.D.Joseph, TOA, has again reiterated vide his letter dt. 10.7.83 add to DET, Ernakulam that he had performed the journey, and has stated that the ticket nos. are as furnished in his LTC claim.

" The railway authorities in reply to inquiry from DET, Ernakulam has intimated that these tickets were not issued from Ernakulam Junction and that those tickets did not come under the running series of tickets to New Delhi or Nizamudeen issued during October-82 from ERS. Thus it is seen that the claim preferred by him appears to be a fraudulent one and thereby he has acted in a manner quite unbecoming of a Government servant and thereby violated Rule 3(1) (iii) of CCS (Conduct) Rules, 1964....."

3. The applicant denied the charges and an Enquiry Officer was appointed on 16.6.85. In the first sitting the applicant pleaded not guilty and in the second sitting on 15.11.85 he requested for copies of the five documents listed with the charge memo. He was informed that no copies of the documents can be supplied

but he was allowed to take copies of the extracts of documents during the sitting. His further request to nominate one Shri Karunakaran as his assisting Government servant was denied and at his own request another official Shri Padmanabhan was nominated. In the third sitting on 10.1.86 when after waiting Shri Padmanabhan did not appear the applicant requested for an adjournment but his request was rejected. Further documents were admitted. In the first sitting the applicant submitted a list of 3 defence witnesses who were summoned but the witnesses expressed their inability to attend and the Enquiry Officer dropped them even though the applicant had asked for 5 days more for submitting additional evidence. On that very date in the afternoon, the applicant was questioned by the Enquiry Officer in a gruelling manner Annexure-1(c). After obtaining the written proof from the presenting officer and the applicant the Enquiry Officer came to the following conclusions:

- "1. It is possible that Sri V.D.Joseph would have made a journey to New Delhi for the block year 1982-85.
2. No journey by train has been made by Sri V.D.Joseph with his wife, father and mother as claimed in the LTC bill.
3. The claim is fraudulent."

4. Agreeing with the findings of the Enquiry Officer the Divisional Engineer, Telegraphs passed an order of removal dated 13.2.87 at Annexure-II without giving him a copy of the Enquiry Officer's report along with that order. The applicant filed an appeal on 13.3.87 which was rejected by the appellate order at Annexure-IV dated 20.8.88.

found to have

5. According to the applicant, since he had been performed the journey with his family members from Ernakulam to New Delhi and submitted the LTC bill and he could not establish the claim the bill was rejected and the advance was recovered. That should have been the end of the matter and no disciplinary proceedings should have been initiated. According to him, the charge that his claim appeared to be fraudulent was vague and that the enquiry was not conducted in accordance with the prescribed rules. Copies of documents were not furnished nor were the defence witnesses examined. He was cross examined by the Enquiry Officer against the rules and there was no evidence to support the findings of the Enquiry Officer. He has also contended that the Disciplinary Authority did not record any finding on the charge and the Appellate Authority did not follow Rule 27 of the CCS (CCA) Rules.

6. According to the respondents, in his statement dated 15.7.83 the applicant had stated that the tickets had been purchased from the Ernakulam Junction but the letter of the Chief Booking Supervisor clearly showed that the ticket numbers indicated by him in the LTC bill had not been issued from that Station. Recovery of the LTC advance on rejection of the LTC claim did not remove the liability of the applicant under disciplinary proceedings. The respondents have further stated that the applicant was allowed to take extracts from the documents indicated in the charge memo, that the defence assistant was appointed at the instance of the applicant. They have, however, conceded that on 10.1.86 when his defence assistant did not turn up and the applicant asked for adjournment, his request was not granted and the proceedings went on. As regards the 3 defence witnesses they have stated that they were summoned for hearing but none was willing to attend and when their letters were shown to the charged officer he suggested to exclude them from the list of witnesses. They have not accepted the contention of the applicant that ticket numbers of the onward journey had not been written by him in the original bill but he wrote them down from his memory when he was asked to furnish the information. According to the respondents, if he had written the ticket numbers later,

he should have examined the concerned clerk and should have clearly mentioned in his clarificatory that had been reply the ticket numbers already given by him from memory. The respondents have accepted that the copy of the enquiry report had not been given along with the order of punishment but stated that the same would have been made available to the official if he had mentioned about it in his appeal.

7. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. Without going into the merits of the case or the findings of the Enquiry Officer and the Disciplinary Authority, we find that the enquiry proceedings and the disciplinary proceedings based thereon suffer from grave infirmities. The whole case against the applicant is based on the fact that the railway ticket numbers which he had given in support of his LTC claim were fictitious and no ticket bearing those numbers had been issued from the Ernakulam Junction in accordance with the letter of the Chief Booking Supervisor, Ernakulam Junction, dated 20.9.83. Though this letter was listed amongst the 5 documents and heavily relied upon in Annexure-III to the charge memo, the Chief Booking Supervisor who wrote this letter was not produced to

prove the same and ^{to} subject himself to cross examination
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by the applicant. He was the key witness and by keeping him outside the pale of cross examination by the applicant, the applicant can be said to have been denied reasonable opportunity of defence.

8. In State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan, AIR 1961 SC 1623, a Constitution Bench of the Supreme Court held as follows:

"Stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. The right to cross-examine the witnesses who give evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would mean that the enquiry had not been held in accordance with rules of natural justice."

By not being supplied with the copies of the documents the applicant can be deemed as not having been treated fairly.

In Kashinath Dikshita V. Union of India and others, AIR 1986 SC 2118, the Supreme Court held that

where the charged officer was not supplied with the copies of statements of witnesses examined at the stage of preliminary inquiry preceding the commencement of the inquiry and those documents were relied upon by the disciplinary authority in order to establish the charges against the employee the order of dismissal was violative of Article 311(2) of the Constitution due to denial of reasonable opportunity of defending himself.

In Ram Babu Pushkar V. Union of India and others (1988) 6 ATC 1004 the Allahabad Bench of this Tribunal held that the statements made during the preliminary enquiry cannot be considered as evidence if the person making those statements is not produced. Of course, the previous statement can be utilised for corroboration or discrediting the witnesses by cross-examination. The evidence heard at preliminary inquiry must be reproduced in the departmental inquiry if it is considered necessary to be relied upon. If the charged officer is not allowed to cross-examine on the preliminary evidence, the principles of natural justice are violated. The Tribunal further held-

"As already stated, the purpose of the fact-finding inquiry is to ascertain whether it is a fit case for starting a regular departmental proceeding. If the evidence led before the fact-finding body is supposed to be sufficient to connect the delinquent officer with the charge then what is the necessity of holding a departmental inquiry.

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The departmental inquiry has to be held under the rules for awarding punishment. There may be cases in which false complaints are made. So it would be hazardous to believe the complaint only on the ground that the complainant is not normally willing to face cross-examination during the departmental inquiry. There is absolutely nothing to show that those complainants were won over. From the mere fact that the applicant visited the complainants shop or he had past record of "bad deeds", a reasonable inference cannot be drawn that the applicant has accepted illegal gratification."

In Ram Prakash V. State of Punjab and others

(1989) 10 ATC 599 the Supreme Court held that the order of removal without giving full opportunity to cross-examine the witness is invalid due to violation of Article 311(2) of the Constitution.

9. In the instant case before us, though there is no statement of witnesses examined during the preliminary investigation is involved, yet, the letter written by the Chief Booking Supervisor is as good as a statement during preliminary investigation made by him and his presence for being cross-examined by the applicant during the enquiry for proving that the letter stands on all fours with the issue involved in the aforesaid rulings of the Supreme Court and this Tribunal.

In State of Mysore and others v. Shivappa Makapur, AIR 1963 SC 375 a Five Judge Bench of the Supreme Court categorically stated that before any statement made behind the back of the delinquent officer is taken into

account, the delinquent officer must be given a full opportunity to cross-examine the party which made that and statement observed as follows:

"The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him."

In M/s Bareilly Electricity Supply Co. Ltd. v. The Workman and others, 1971 (2) SCR 617 the Supreme Court held that on the principle of natural justice "no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are not subjected to cross-examination by the party against whom they are sought to be used".

In Central Bank of India v. P.C.Jain, AIR 1969 SC 983 the Supreme Court held that "statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act.

10. We have gone through the various questions put by the Enquiry Officer to the charged officer as given in Annexure-I(C). We find that the Enquiry Officer completely transgressed his domain by not only putting to the applicant incriminating and leading questions but

also trying to trap him by asking him a leading question as to the time when the train from Ernakulam to Delhi reached Madras. It is common knowledge that no direct train from Ernakulam to New Delhi passes through Madras. The Enquiry Officer tried to trap him by getting some affirmative answer to the question and later incriminating the applicant by stating that the applicant never travelled by the train and his claim was fictitious. The examination of the applicant by the Enquiry Officer was nothing less than gruelling cross-examination between a criminal and an over-enthusiastic police officer. In Prembabu Vs. Union of India and other (1987) 4 ATC 727 the Principal Bench of this Tribunal has held that where the Enquiry authority himself cross-examine the delinquent there is violation of principles of natural justice and the order of punishment has to be set aside.

11. From the above it is clear that the enquiry proceedings suffer repeatedly ~~from~~ violation of principles of natural justice. In a recent case, M.G.M.T., M/s M.S.Nally Bharat Engineering Co. Ltd. Vs. State of Bihar (1990) 2 SCC 48 (para 25), the Supreme Court held that the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. Non-observance of natural justice, according to the Supreme Court, is itself prejudice to any man and proof of

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prejudice independently of proof of denial of natural justice is unnecessary. Thus, even if the applicant admitted that he has not been able to prove his LTC claim of railway tickets, the violation of the principles of natural justice is sufficient to vitiate the disciplinary proceedings. In the context of this major lacuna the other infirmities in the proceedings, viz., that the copy of enquiry report was not given along with the punishment order and that the applicant was not given additional time for getting his defence assistant and the proceedings went on without that assistance, would only compound the prejudice caused to the applicant.

12. In the facts and circumstances, we allow the application, set aside the impugned order at Annexure-IV noting that Annexure-II has already been set aside by the Appellate Authority by Annexure-IV and direct that de novo proceedings should be conducted against the applicant from the stage of service of the charge memo, strictly in accordance with law. The applicant should be paid arrears of salary and other emoluments from the date of his removal from service as if the impugned orders at Annexures-II & IV had not been passed. Action on the above lines

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should be completed within a period of three months from the date of communication of this order.

13. There will be no order as to costs.


(A.V. Haridasan)
Judicial Member


(S.P. Mukerji)
Vice Chairman
24.5.90