

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 221/89
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DATE OF DECISION 23-5-1990

TK Sajeeda Beegum Applicant (s)

Mr MR Rajendran Nair Advocate for the Applicant (s)

Versus

Union of India and others Respondent (s)

Mr K Prabhakaran, ACGSC Advocate for the Respondent (s)

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? *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*

JUDGEMENT

(Shri AV Haridasan, Judicial Member)

The applicant who was a Postal Assistant has filed this application under Section 19 of the Administrative Tribunals Act challenging the order dated 26.3.1987 (Annexure-IV) of the Senior Superintendent of Post Offices, Ernakulam, the third respondent removing her from service and the appellate order dated 26.2.1988 (Annexure-VI) of the Director of Postal Services dismissing her appeal and praying that the respondents may be directed to reinstate her in service. The facts of the case can be briefly stated as follows.

2. The applicant ^{who} joined the services of the Postal Department on 10.11.1978 was declared quasi-permanent on 27.5.1981.

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She was granted extra ordinary leave from 16.4.1985 to 30.4.1985. Thereafter she had applied for extention of extra ordinary leave from 1.5.1985 to 30.6.1985 and 1.7.1986 to 30.6.1987. But the extra ordinary leave applied for from 1.5.1985 was not granted. While so she was served with a charge sheet dated 21.4.1986 issued by the Superintendent of Post Offices alleging that she by remaining unauthorisedly absent from duty continuously from 1.5.1985 had exhibited complete lack of devotion to duty and acted in a manner unbecoming of a Government servant thereby violating Rule 3 (1)(ii) and 3(i)(iii) of the CCS(Conduct) Rules, 1964. One K Sasisekharan Nair was appointed enquiry authority, who issued a notice dated 20.6.1986 informing the applicant that the enquiry was posted to 30.6.1986. While so by memo dated 28.8.1986, Government of India appointed Senior Superintendent of Post Offices, Ernakulam as ad hoc disciplinary authority in the place of SPO, Alleppey Division as it was found that SPO, Alleppey was lower in rank than the person who appointed the applicant initially. The first sitting of the enquiry was held in 30.6.1986. Thereafter the enquiry was fixed to 1.8.1986 for inspection of documents. As the applicant was allegedly laid up and had left India for better medical treatment, she did not appear to participate in the enquiry. The enquiry authority proceeded with the enquiry ex-parte and submitted a report finding the applicant guilty of the charge. The disciplinary authority agreed with the findings

of the enquiry authority held that the charge proved and by the impugned order at Annexure-IV removed the applicant from service with immediate effect. The applicant filed an appeal to the Post Master General, Kerala. The Director General of Postal Services, Cochin by the impugned order at Annexure-VI dismissed the appeal confirming the Annexure-IV order. The applicant has challenged the Annexure-IV and VI orders on the ground that the authority who issued the charge memo was not competent to initiate proceedings, that the charge against the applicant did not constitute a misconduct, that the charge was not established by legal evidence, that the action of the disciplinary authority is vitiated since the applicant was not given a copy of the enquiry officer's report before the punishment order was passed, that the appellate authority did not consider the appeal in accordance with the procedure laid down by rules and that the authorities did not consider the mitigat^{ing} circumstances while ordering to remove the applicant from service.

3. In the counter affidavit filed on behalf of respondents 1 to 4, it has been contended that the enquiry has been properly and validly held, that the charge against the applicant was established by legal evidence, that the enquiry officer was right in proceeding with the enquiry ex-parte as the applicant did not cooperate with the enquiry authority, that the person who issued charge sheet was competent to do so and that a copy of the enquiry report

need be furnished to the applicant only with the punishment order and that there is absolutely no merit in the contentions raised in the application.

4. We have carefully gone through the documents produced on either side and have heard the learned counsel for both the parties in detail. It has been contended in the application that the Superintendent of Post Offices who issued the charge memo being lower in rank than the Senior Superintendent of Post Offices who passed the order of removal, the charge memo is incompetent and therefore the entire proceedings based on the charge memo is vitiated. According to sub Rule 2 of Rule 13 of the CCS(CCA) Rules, a disciplinary authority competent to impose any of the minor penalties mentioned in Rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the major penalties also notwithstanding the fact that such authority is not competent under the rules to impose any of such penalties. Therefore the contention of the applicant that because the memo of charge was issued by an authority not competent to impose a penalty of removal from service the further proceedings on the basis of the charge sheet has to be held to be illegal has absolutely no merit. It was also argued on the side of the applicant that the appointment^{ment} of ad hoc disciplinary authority by the President in this case is irregular. As per the provisions of Rule 12 of the CCS(CCA).

Rules, the President is competent to empower any authority by a general or special order to act as disciplinary authority.

Annexure-II order appointing the Senior Superintendent of Post Offices, Ernakulam as disciplinary authority by President was issued in terms of the provisions of Rule 12 of the CCS that (CCA) Rules. Therefore we find there is no irregularity in the appointment of the ad hoc disciplinary authority also.

The learned counsel for the applicant argued that the disciplinary proceedings were held ex parte while the applicant was laid up and was under going treatment and that therefore the action taken by the enquiry authority has to be held to be illegal and against principles of natural justice. From the records it is evident that the applicant did not appear to participate in the enquiry inspite of the notice of posting of the enquiry. Exhbt.R1 is a true copy of the daily order sheet relating to the proceedings of the enquiry. It is seen from Ext.R1 that the proceedings were held ex parte and the witnesses were examined in the absence of the applicant only because inspite of notice, the applicant did not appear to take part in the proceedings. The applicant was also not present for questioning since the notice issued to her had was returned with the endorsement that she/left India. So even after the commencement of the enquiry, the applicant had without informing the enquiry authority left India and has voluntarily dissociated herself with the enquiry. In these circumstances, we are not in a position to find that

there has been any irregularity in the enquiry officer's proceeding with the enquiry ~~xxxxxxx~~ ex parte because since the applicant did not cooperate with the enquiry the only possible way for the enquiry authority was to proceed with the enquiry and to complete the same ex parte. So there is absolutely no merit in the complaint raised against the manner in which the enquiry was held. As the evidence is only one way which is unchallenged, it cannot be said that the finding of the enquiry officer is perverse. The contention of the applicant that the alleged imputations did not amount to a misconduct also is not convincing because unauthorised absence from duty is definitely a manifestation of lack of devotion to duty and therefore it cannot be said ^{that} it does not amount to a misconduct.

5. The learned counsel for the applicant at last argued that even if it is held that the ex parte enquiry and the finding are justifiable, the action of the disciplinary authority in proceeding to decide the question of applicant's guilt without giving the applicant a copy of the E.O's report and an opportunity to point out the infirmities in the report and to disabuse the mind of the disciplinary authority pleading that the evidence did not warrant a finding that she is guilty amounted ^{to} denial of reasonable opportunity and that therefore as has been held by the Full Bench of the Tribunal in Premnath K Sharma's case, the impugned order at Annexure-IV has to be

held to be unsustainable. This argument has great force.

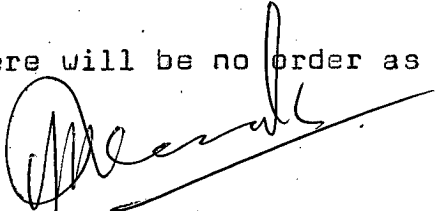
It has been held by a Full Bench of the Tribunal in Premnath K Sharma V. Union of India (1988(6) ATC, 904) that the non-supply of a copy of the enquiry authorities report and denial of an opportunity to represent before the disciplinary authority proceeded to decide the question whether the delinquent is guilty or not amounts to violation of principles of natural justice. Though the Supreme Court in the SLP filed against the decision in Premnath K Sharma's case stayed the operation of the order in that case, the principle enunciated in that decision is still binding. Therefore we are of the view that the Annexure-IV order of the disciplinary authority made without giving the applicant a copy of the EO's report and an opportunity to represent is violation of principles of natural justice and is therefore null and void. The appellate order Annexure-VI also does not rectify the error of law committed in Annexure-IV order. For these reasons the impugned orders at Annexure-IV and VI are liable to be set aside. In view of the fact that the Annexure-IV order of removal of the applicant from service is vitiated for the reasons mentioned above the applicant will have to be ordered to be reinstated in service. But taking into account of the case especially that the applicant left India without informing the enquiry authority and the disciplinary authority, we are of the view that the applicant will not be entitled to any back wages. We are convinced that the interest of

justice will be met if the respondents are directed to reinstate the applicant in service and to re-start the disciplinary proceedings if so advised from the stage after the receipt of the enquiry officer's report by the disciplinary authority. It will be open for the respondents to place the applicant under suspension and to continue the proceedings from that stage.

6. In the result the application is allowed in part.

The impugned order Annexure-IV and VI are set aside. The respondents are directed to reinstate the applicant in service forthwith. The applicant will not be entitled to any back wages. The respondents are at liberty to restart the disciplinary proceedings against the applicant if so advised to do so from the stage of receipt of the enquiry report by the disciplinary authority and if they decide to do so, the respondents are also directed to furnish the applicant with a copy of the enquiry officer's report in full, if it has not already been supplied to her even now, to give her an opportunity to make a representation and then to proceed to decide the question of the guilt of the applicant and to complete the disciplinary proceedings within a period of three months from the date of communication of this order.

There will be no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


23.5.90
(SP MUKERJI)
VICE CHAIRMAN

23-5-1990

trs

TRUE COPY

Dated

2 Deputy Registrar