

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 19.10.1989

PRESENT

HON'BLE SHRI S.P.MUKERJI, VICE CHAIRMAN
&
HON'BLE SHRI A.V.HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.22/89

I.Badhan - Applicant

V.

1. The Sub Divisional Inspector
of Post Offices, Neyyattinkara,
695121.
2. The Superintendent of Post
Offices, Trivandrum South
Postal Division,
Trivandrum.
3. Union of India, represented by
Secretary, Department of Post,
Government of India, New Delhi. - Respondents

M/s GP Mohanachandran,
SK Vijayasankar, Kalliyoor N - Counsel for
Sukumaran Nair & KR Haridas applicant

Mr P Santhalingam, ACGSC - Counsel for
respondents

O_R_D_E_R

(SHRI A.V.HARIDASAN, JUDICIAL MEMBER)

In this application filed under Section 19 of the
Administrative Tribunals Act, the applicant an Extra
Departmental Delivery Agent under the Postal Department
has prayed that the order of the disciplinary authority
removing him from service which was confirmed by the
appellate authority may be quashed and that he may be
ordered to be reinstated in service with back wages.

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The facts of the case can be briefly stated as follows. While working as E.D.D.A., Kudappanamoodu Post Office on 13.12.1984, the applicant was put off duty. Thereafter the first respondent on 22.1.1986 issued a memo of charge to the applicant. The charge framed against the applicant was as follows: "That the said Sri I.Badhan while working as EDDA Kudappanamoodu has shown a money order for Rs.200/- as paid on 19.11.84 without being effected the payment to the proper payee. Thus Shri I.Badhan has failed to maintain absolute devotion to duty as envisaged in Rule 17 of the P&T ED Agents(Conduct and Service) Rules 1964".

The applicant in his explanation denied the charge.

The Assistant Superintendent of Post Offices, Trivandrum who was appointed as enquiry authority conducted an enquiry and submitted a report holding the charge proved. The first respondent, the disciplinary authority accepted the report of the enquiry authority held the applicant guilty and by order dated 27.2.1988 imposed on the applicant the penalty of removal from service with immediate effect. The applicant filed an appeal before the second respondent which was rejected. Aggrieved by the punishment order and the rejection of the appeal, the applicant has filed this petition. In the application it has been alleged that the enquiry having been conducted in an illegal manner, denying him reasonable opportunity to defend himself and in violation of principles of natural justice, the disciplinary proceedings is vitiated. It has been further alleged that the findings of the

enquiry authority which has been readily accepted by the disciplinary authority is absolutely perverse since the evidence recorded at the inquiry does not warrant such a finding because neither the remitter of the money order nor the payee has been examined. It is further contended that the enquiry authority and the disciplinary authority have gone ^{wrong} in making use of statements of witnesses alleged to have been recorded behind the back of the applicant in a preliminary inquiry without affording the applicant an opportunity to cross-examine the witnesses. In the rejoinder filed by the applicant it has been averred that since a copy of the inquiry report was not furnished to the applicant before the disciplinary authority accepted the report and made up his mind regarding the guilt of the applicant, he has been denied a reasonable opportunity enjoined in Article 311(2) of the Constitution. The applicant has also raised a contention that the order of the appellate authority is unsustainable, ^{since} it does not reflect the application of mind.

2. The second respondent on behalf of the respondents has filed a counter affidavit contending that there is no merit in the averments in the application and that the inquiry has been held in full conformity with the principles of natural justice. Mr P Santhalingam, ACGSC has made available for our perusal the proceedings of the enquiry.

3. We have carefully gone through the documents produced and also heard the arguments of the counsel on either side. The learned counsel for the applicant has argued that the inquiry is vitiated for the following reasons:

- i) A copy of the preliminary enquiry report was not made available to the applicant to enable him to defend the case properly,
- ii) The inquiry authority and the disciplinary authority have gone wrong in making use of statements of the remitter of the money order Shri G.Satheeshkumar and the payee Smt B.Prabha alleged to have been recorded in a preliminary enquiry without offering ^{the} two witnesses for cross-examination,
- iii) The finding based on inadmissible evidence is absolutely perverse, and
- iv) The inquiry and the action taken pursuant to it are vitiated since the disciplinary authority has not furnished a copy of the inquiry report to the applicant before the disciplinary authority made up his mind in regard to the guilt of the applicant.

4. It is seen from pages 2&3 of the inquiry report that the applicant had in his letter dated 13.5.1986 requested the enquiry officer to cause production of

the proceedings of the inquiry dated 18.2.1986 and the preliminary enquiry report of the SDI and that when the inquiry authority addressed the disciplinary authority ~~for the meeting~~, he was informed that as no sitting was held on 18.2.1986, no proceedings were recorded on that date and that the preliminary inquiry report cannot be produced, and that the inquiry authority communicated this information to the applicant. So it is evident that the preliminary inquiry report and the statements of the witnesses recorded during the inquiry have not been given to the applicant even though he made a specific request in that behalf. In *Kashinath Dikshita V. Union of India*, (1986) 3 SCC 229: 1986 SCC(L&S) 502, the Supreme Court has observed as follows:

"When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental inquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In absence of such copies, how can the concerned employee inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf"

A similar situation came up for consideration before the Cuttack Bench of the CAT in 1989(9) ATC 21. In that case the delinquent government servant had made a request for production of the following documents:

- (a) Copies of the preliminary report and the evidence collected against him.
- (b) The receipts whereunder the petitioner's signature alleged to have appeared.

The authorities did not produce these documents and took the stand that it would have ^{been} sufficient for the delinquent to have inspected the documents and therefore it was unnecessary to produce the documents as requested by the delinquent. The Tribunal observed as follows:

"In the present case copies of the statements of witnesses were not supplied to the petitioner and therefore, in our opinion, serious prejudice has been caused to the petitioner. In view of the aforesaid facts and circumstances, we are of opinion that non-supply of copies of the preliminary report/statements of witnesses to the petitioner in regard to filing of his written statement and also in effectively defending himself. Therefore, the order of punishment cannot be sustained."

The situation in this case is identical. Though the applicant had made a specific request for causing production of preliminary inquiry report, the same was not made available to him. Unless the report and the statement of the witnesses recorded during the inquiry were made to the applicant, it cannot be said that a reasonable opportunity has been afforded to the applicant to prepare himself well for the defence. The non-production of inquiry report and the connected statements in this case despite the request made by the applicant has in our view seriously prejudiced the applicant in his defence and we are of the view that for this reason the inquiry is vitiated.

5. The inquiry authority in his report and the disciplinary authority in his order have made free use of the Ext.S7 and S8 statements alleged to have been given by Smt.Prabha and also the complaint alleged to have been given by Shri Sateeshkumar, the remitter of the money order without examining them. It is principally on the basis of this evidence that the inquiry authority as well as the disciplinary authority have come to the finding that the applicant is guilty of not paying the money under the money order to the payee on 19.11.1984. The charge is that the applicant did not pay the money under the money order to Smt.Prabha on 19.11.1984. Unless Smt.Prabha is examined, it is impossible to find whether the money had been paid on that date or not. The examination of Mr Vijayan, who was of course denied his signing as a witness in the money order coupon even if taken ^{at} ~~for~~ its face value would only prove that the signature was not his. The charge against the applicant is that he did not pay the money to Mrs. Prabha on 19.11.1984 and nothing else. It is the case of the prosecutor that the money was paid later. So this aspect of the charge cannot be taken as proved by the examination of Mr.Vijayan. Therefore, we are of the view that the finding arrived at by the inquiry authority and the disciplinary authority that the applicant did not pay them money under the money order to Smt.Prabha on 19.11.1984 is not supported by any legal evidence and that the evidence relied on by the inquiry authority and the disciplinary authority namely,

the statements alleged to have been given by Smt. Prabha during preliminary inquiry and the complaint alleged to have been given by Shri Satheeshkumar, the remitter of the money order and not having been subjected to cross-examination by the applicant are inadmissible in evidence. For this reason also, we find that the finding is perverse and that the inquiry is vitiated.

6. In the affidavit filed by the applicant on 28.8.1989, it has been contended that since the disciplinary authority did not furnish a copy of the inquiry report to him before accepting the report and making up his mind in regard to the guilt of the applicant, serious prejudice has been caused to him and that this amounted to denial of reasonable opportunity envisaged in Article 311(2) of the Constitution of India. The fact that a copy of the inquiry report was not furnished to the applicant before the disciplinary authority made up his mind in regard to the guilt of the applicant based on the report is evident from the punishment order at Annexure-C because it is seen from this order itself that a copy of the inquiry report was sent to the applicant along with the punishment order only. The averment in the affidavit of the applicant that the copy of the inquiry report was not furnished to him before the disciplinary authority accepted the report and made up his mind regarding the guilt of the applicant has not been contraverted by the respondents. In Premnath

K Sharma -Vs- Union of India & others reported in 1988(3)

CAT SLJ 449 a full Bench of the Tribunal, New Bombay

Bench has observed as follows:

"It would be seen from the above, the limited departure made by the Forty-second amendment Act, 1976 is that no second show cause is necessary with respect to the penalty proposed to be imposed. But the obligation to afford a reasonable opportunity to defend himself and to observe the principles of natural justice by supplying all the material sought to be put against the charged officer which includes the Inquiry Report is not in any way whittled down. The denial of a copy of the Inquiry Report and an opportunity to make representation against it offends the principles of natural justice and violates the provisions of Article 311(2) itself."

The dictum laid down by the Full Bench in the above case is squarely applicable to this case also. Hence for the reason that the disciplinary authority did not give a copy of the Inquiry Report to the applicant and denied him an opportunity to make a representation also the inquiry and impugned order has to be declared as vitiated.


7. The appellate order is devoid of application of mind. The second respondent has disposed of the appeal with the following words:

"I have gone through the appeal carefully and I have examined the points of defects pointed out in the inquiry report and also in the order of the disciplinary authority. But I do not find any valid reason to interfere in this and I uphold the punishment awarded to the charged ED Agents, i.e., Removal from Service".

Hence the appellate order is also liable to be set aside.

8. For the reasons stated in the forgoing paragraphs, we are of the view that the inquiry has been held in

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violation of principles of natural justice and that the same is vitiated for the reasons stated above. The application is therefore allowed. The punishment order dated 27.2.1988 and the appellate order dated 20.7.1988 are quashed. The respondents are directed to reinstate the applicant in service forthwith ^{with} full back wages from the date he was put off duty namely 13.12.1984. They will be at liberty if so advised to start *denovo* proceedings in accordance with law.

9. There will be no order as to costs.



(A.V. Haridasan)
Judicial Member



(S.P. Mukerji)
Vice Chairman

19.10.1989