

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
XXXXXX

244/89 199

DATE OF DECISION 21.12.1990

R.Prabha Sudha _____ Applicant (s)

M/s K Ramakumar & _____ Advocate for the Applicant (s)
VR Ramachandran Nair
Versus

UOI rep. by Director General Respondent (s)
of Posts, New Delhi & 3 others

Smt.K.B.Subhagamani, ACGSC Advocate for the Respondent (s)

CORAM:

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

and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

The applicant, formerly an Extra Departmental Branch Post Master, Kottakkakom has in this application filed under Section 19 of the Administrative Tribunals Act, prayed that the order dated 17.6.1988, Annexure-B of the 4th respondent, the Superintendent of Post Offices, Trivandrum South Division, removing her from service, and the order dated 29.12.1988 of the Additional Post-Master General, Kerala Circle, 3rd respondent confirming the order and rejecting her appeal may be set aside and the respondents be directed to reinstate her in service with all consequential benefits.

2. The facts relevant for the purpose of disposal of the application can be briefly stated as follows.

When the applicant was working as Extra Departmental Branch Post Master, Kottakkakom, she was served with a charge sheet dated 21.11.1986 alleging that, ~~while~~ ^{she} functioning as Extra Departmental Branch Post Master, Kottakkakom Branch Office, on 4.3.1986 made up a withdrawal voucher for Rs.110/- in the SB Account No.1632423 of Kottakkakom standing in the name of one Smt.Krishnamma, without the knowledge of the depositor and produced before the Superintendent of Post Offices, Trivandrum South Division as voucher for SB Withdrawal of Rs.110/- in the above said account to cover up the offence at the time of verification of cash and stamp balances of the office by the Superintendent of Post Office, and that she has thereby failed to maintain integrity ~~and~~ ^{has} and devotion to duty and ~~and~~ ^{has} violated the provisions of Rule 17 of the P&T ED Agents (Conduct and Service) Rules, 1964. She submitted an explanation denying the charge. An enquiry under Rule 8 of the E.D. Agents (Conduct and Service) Rules was conducted. The Enquiry Officer submitted a report holding that the charge levelled against the applicant was not proved. The Disciplinary Authority, the 4th respondent without giving a copy of the enquiry report to the applicant, and without giving her an opportunity to make any representation, disagreeing with the finding of the Enquiry Officer held the charge

proved and inflicted on her a punishment of removal from service, by order dated 17.6.1988, at Annexure-B. The applicant filed an appeal before the 3rd respondent who confirmed the finding of the Disciplinary Authority and the punishment imposed on the applicant by order dated 29.12.1988. Aggrieved by the order of punishment and the rejection on her appeal, the applicant has filed this application challenging the legality, propriety and correctness of these orders. It has been averred in the application that as the Enquiry Officer did not allow her to examine the witnesses cited by her and refused to call for the documents sought to be relied on by her for her defence, she was not given a fair and reasonable opportunity to defend her case, and that, therefore, the enquiry is vitiated as principles of natural justice have been violated. It has been further averred that the Disciplinary Authority has committed a great error of law in disagreeing with the finding of the Enquiry Officer, that the applicant is ~~guilty~~ ^{not}, without giving her notice of the intention to differ with the finding of the Enquiry Officer. It has been further contended that the finding of the Disciplinary Authority is absolutely ~~perverse~~ ^{in her case} since there is absolutely no evidence to warrant a finding that she is guilty. The applicant has also averred that the Appellate Authority has not given due consideration to the grounds raised by her

in the appeal memorandum while rejecting the appeal.

The applicant therefore prays that the impugned orders may be set aside, and that respondents may be directed to reinstate her in service with all attendant benefits.

3. In the reply statement filed on behalf of the respondents, it has been contended that the enquiry had been validly and properly held giving the applicant reasonable opportunity to defend her case, that the refusal to permit ~~cross~~-examination of witnesses and the production of documents was for good and sufficient reasons since ~~examining~~ ² the relevancy of the documents and witnesses was not divulged by the applicant, ~~and~~ that the finding of the Disciplinary Authority disagreeing with the Enquiry Officer is perfectly justified on the basis of the evidence of records, and that the applicant is not entitled to the relief claimed.

4. The learned counsel for the respondents has produced for our perusal the entire file relating to the disciplinary proceedings. We have heard the arguments of the learned counsel and have also perused the documents produced.

5. The charge against the applicant is that, she while working as Extra Departmental Branch Post Master, Kottakkal had on 4.3.1986 made up a withdrawal voucher

for Rs.110/- in the SB Account No.1632423 of Kottakkakom standing in the name of Smt.Krishnamma without the knowledge of the said Krishnamma, and produced the same before the Superintendent of Post Office, Trivandrum South Division as voucher for SB withdrawal for Rs.110/-, and have thereby failed to maintain integrity and devotion to duty.

The important points argued by the learned counsel for the applicant are that the enquiry has been held in gross violation of the principles of natural justice, as the applicant has not been given reasonable opportunity to adduce evidence on her side, and that the finding of the Disciplinary Authority disagreeing with that of the Enquiry Officer is absolutely perverse and based on no acceptable evidence. We shall consider these two points in succession.

6. The learned counsel for the applicant argued that the action of the Enquiry Officer in not allowing the applicant to examine all the witnesses cited by her and to cause the production of the material documents as requested by her has disabled the applicant to conduct a proper defence, and that for that reason alone the enquiry has to be held vitiated. Paragraph 4 of the report submitted by the Enquiry Officer reads as follows:

"The defence side furnished a list containing a series of documents to be discovered and produced. Also furnished a list of witnesses to be examined on their behalf without furnishing the relevancy of the documents and

witnesses. The case was considered in detail and as the relevancy of the documents was not made out the request for the production of the additional documents and examination of witnesses cited were not conceded to. However, even though the relevancy was not made out, one of the witnesses-Shri Gopalan Ammavan, whose name figured in one of the exhibits, cited by the charge side was permitted to be examined as defence witness. Notice was issued to the defence witness which could not be served on him by the Postal authorities as he was not available in the address given. Therefore, the defence was asked to produce the witness cited by them. As required by the defence, one week's time was given to produce the defence witness. The defence side failed to produce the defence witness and as required by them the defence witness was dropped."

The enquiry proceedings filed shows that the applicant had on 7.12.1987 submitted a written representation to the Enquiry Officer requesting for the production of 14 documents including the preliminary investigation report and summoning 8 witnesses. In the last paragraph of this representation is seen stated as follows:

"Details on relevancy of additional documents and witnesses mentioned above will be made clear in due course. At this stage, any further details on relevancy, I fear, will cause obstruction to my bringing of the truth. Therefore, I pray details of relevancy may not be insisted at this stage."

This request was disposed off by the Enquiry Authority with the following order:

"The question of making available the documents required by you in your notice

dated 7.12.1987 was examined in detail. I find that none of these documents is relevant in the issue. You have also failed to indicate the relevancy of these documents. Therefore, it is regretted that your request for discovery and production of additional documents cannot be complied with.

2. You are permitted to examine Shri Gopalan 'Ammavan' of the depositor as your witness regarding examination of other witnesses cited by you, I find that none of them is relevant in this case. You have also failed to make out the relevancy of these witnesses. Therefore, I am inclined to reject your request for the examination of witnesses other than Shri Gopalan(S1.2) mentioned at Serial 1 and 3 to 8 of your notice dt. 7.12.87.

3. The enquiry will be resumed shortly for the examination of Smt.Krishnamma as SW."

The documents listed in the representation of the applicant dated 7.12.1987 are:

- 1) Investigation report of the case.
- 2) Case file with the divisional office, Trivandrum South Division.
- 3) Note of the Supdt. of Post Offices in the case file.
- 4) SPOs, visiting remarks of the Kottakkakom BO dated 4.3.86.
- 5) Order book of the BO, Kottakkakom for the last three years.
- 6) SPOs, Trivandrum South Dn. letter No. BO/Kottakkakom dated 4.3.1986
- 7) Aryanad SO's daily account dt.4.3.86
- 8) Aryanad SO's Account dt.4.3.86.
- 9) B.O. Summary of Aryanad SO dt.4.3.86
- 10) SB objection register or registers from Feb.'86 to April '86 of the SB Branch of Thycaud HO.
- 11) SB objection register or registers from Feb.'86 to April '86 of the SBCO, Thycaud HO.

- 12) Error book maintained at the SO during the period from Feb. to April, '86.
- 13) Error book of Aryanad SO SB Branch for the period from Feb. '86 to April '86.
- 14) Error book of sub account Branch of Aryanad SO dated 4.3.86.

Since the charge relates to an SB account of Kottakkal~~SO~~ Branch Office, it appears that many of these documents mentioned above have a direct bearing on the issues involved in the case. As the person who has conducted the investigation was sought to be examined as a witness in support of the charge, the investigation report and the file relating to that cannot be said to be ~~irrelevant~~ ^{totally} for the purpose of conducting a proper defence. Further, the applicant who wished to examine the defence witnesses alone would know for what purpose the witnesses were intended to be examined. In the representation submitted by her, she had made it clear that the details to be spoken to ~~the~~ witnesses and the purpose for which the documents were cited could not be divulged by her at that stage as she feared that, if she had divulged the details, the purpose of adducing the evidence might be foreshadowed. Before rejecting the request of the applicant to cause production of documents and for permission to examine the witnesses, the Enquiry Officer did not insist on the applicant explaining the relevance. Without giving any such opportunity to the applicant on the ground that the documents were not relevant, the Enquiry Officer has turned down the request of the applicant. The Enquiry

Officer cannot take a unilateral decision about the relevancy of the documents and witnesses. The person who wished to examine those witnesses and have the documents produced would know better as to what would be the purpose in adducing that evidences. The refusal on the part of the Enquiry Officer permission to adduce the evidence as desired by the applicant has prejudiced the defence. Though the Inquiry Authority can allow or reject such request at his discretion the discretion has to be exercised judicially. Therefore, we agree with the learned counsel for the applicant that the refusal to grant the permission to examine witnesses and to have the documents produced has vitiating the proceedings. The applicant had during the course of enquiry requested that the originals of the documents marked as S-7 and S-8 at the enquiry should be produced and that the certified extracts marked as S-7 and S-8 should not be received in evidence without the originals being produced. Exbt. S-7 marked in the enquiry is an extract from the SO ledger of Aryanad, relating to the SB account No. 1632423 of Smt. Krishnamma and Exbt. S-8 marked at the enquiry is a certified extract of BO. SB ledger of Kottakkakom Branch Office dated 4.3.86. This Exbt. S-7 extract was prepared by the witness K. Vamadevan who was SPM, Aryanad. The correctness of the extract has been challenged in cross-examination. Similarly Exbt. S-8 was prepared by witness Chandrasekhara Pillai, who was the SOI, Nedumangad. The correctness of this extract has been challenged in the cross-examination of the witness also. The applicant requested the Enquiry

Officer to have ~~the original documents~~. the original registers produced for verification and for ascertaining whether the extracts were genuine or not. But the Enquiry Officer has rejected this request stating that in Postal Department it was the practice to receive extracts certified by the officers. But when the applicant wanted the originals to be produced for cross-verification with the extracts, in fairness the Enquiry Authority should have made the original documents available to her. This also caused great prejudice to the defence of the applicant. From the enquiry proceedings, it is seen that on 3.2.1988 the enquiry started at 10.30 A.M., and that at 3 PM the applicant made a written request to the Enquiry Officer to adjourn the enquiry to another date to enable her to go home and to breast-feed her child aged 6 months. Since she had left her house at 9 'O clock in the morning for taking part at the enquiry, and that the Enquiry Officer has rejected the request and compelled the applicant to continue the cross-examination of the third witness on the ground that the request was only a ~~cause~~ for delaying the proceedings. This attitude of the Enquiry Officer appears to be highly unfair. For the above said reasons, we find that the Enquiry Officer has not been fair towards the applicant, and that reasonable opportunity has not been given to her for conducting her defence ^a in proper way.

7. Since the charge against the applicant is that she has made up a SB withdrawal voucher without the knowledge of the depositor, Krishnamma, the most competent person to speak about the genuineness of the SB withdrawal will be Krishnamma. Exbt. S-3 marked in the enquiry is the application for withdrawal. This is the disputed document in the sense ^{that} ~~the allegation in the~~ charge, and the case of the prosecution is that, this application form was not signed by Krishnamma, and that it was prepared and signed by the applicant without the knowledge of Smt. Krishnamma. The SW-3, S. Meenakshi Sundaram is the SPO, Trivandrum South Division who inspected the branch office, Kottakkakom on 4.3.1986 and directed the ^{to have been} misconduct alleged ~~committed~~ committed by the applicant. She has questioned the depositor, Smt. Krishnamma and recorded her statement, marked as Ext. S-2. He has also obtained a statement from the applicant which is marked as Ext. S-1. According to this witness Smt. Krishnamma, the depositor has told him that she did not withdraw Rs. 110/- from the SB account. In the Ext. S-2 it is seen stated that on 4.3.1986 Smt. Krishnamma had not withdrawn a sum of Rs. 110/- from her SB account. This statement alleged have been recorded by the SW-3 has been attested by a witness Mr. John Sundara Rajan, who was examined as SW-2. Smt. Krishnamma was examined as SW-I. This depositor, Krishnamma while examined as SW-I has sworn that she had withdrawn an amount of Rs. 110/-

on 4.3.1986, and that the signature in the Exbt.S-3 was put by her. She has also deposed that the statement in Exbt.S-2 that she did not withdraw Rs.110/- from her SB account on 4.3.1986 is not correct, and that she has not stated so to SW-3. She has stated that she has only put her signature in Ext.S-2 and what was written in the Ext.S-2 was not actually stated by her. The presenting officer has not declared the witness as hostile or impeached her credibility. No suggestion was even made that she was retracting from her earlier statement with a view to save the applicant. Similarly, Mr.Sundara Rajan who has signed as a witness in Exbt.S-2 has sworn that he did not hear the Krishnamma stating to the SW-3 as was seen recorded in Exbt.S-2 and that he signed in Exbt.S-2 because the SW-3 wanted him to put his signature there and also thinking that if the BPO had cheated the depositor, then it was his duty to help the department in such matters. But he has stated clearly that he did not hear Krishnamma saying anything as recorded in Exbt.S-2. So the two independent witnesses have not supported the charge. Smt.Krishnamma, the depositor ~~sworn~~ has put ~~she~~ ~~that/her~~ signature in Exbt.S-3. Thus Exbt.S-3 ceases to be a disputed document at all. Then the only evidence relied on by the Disciplinary Authority to bring home the guilt of the applicant is Exbt.S-2, the alleged statement given by the Krishnamma, which is disputed and denied by her.

The Enquiry Officer has found that the charge against the applicant is not proved, since without the comparison of the signature of Krishnamma in S-2 and S-7, it is not possible to conclude that the signature in Exbt.S-3 was not put by Krishnamma. The Disciplinary Authority has disagreed with this view and has held that the charge had been proved. But before deciding to disagree with the finding of the Enquiry Officer, the Disciplinary Authority did not give notice to the applicant and an opportunity to be heard. It is a settled law that when a Disciplinary Authority proposes to disagree with the finding of the Enquiry Authority and to hold a delinquent Govt. servant guilty, principles of natural justice demands an opportunity be given to the delinquent Govt. servant to be heard. The Disciplinary Authority has differed from this finding stating that there is no reason to disbelieve the testimony of SW-3, a responsible officer but when the depositor, Krishnamma has categorically admitted that the signature in Exbt.S-3 was put by her, without any corroborating evidence, it is absolutely perverse to conclude basing on what SW-3 said that the applicant had forged the signature of Krishnamma, SW-1. SW-3 has not seen the applicant filling the Exbt.S-3 and forging the signature of Krishnamma and Krishnamma has categorically stated that signature in Exbt. S-3 was hers. In M/s Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and others, 1971 SCC 617, the Hon'ble Supreme Court has observed as follows:

"The application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish contested facts which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used."

In this case, the person who is competent to speak about the genuineness of the signature of Krishnamma in Exbt.S-3 is Krishnamma herself. This Krishnamma has in clear, ...14/-

terms sworn that she had put her signature in Exbt.S-3. So to conclude basing on the testimony of SW-3 who is not competent to speak about the genuineness or otherwise the signature of Krishnamma that the signature in S-3 is not that of Krishnamma is against the legal principles laid down in the above said ruling. Rejecting the testimony of Krishnamma whose veracity has not been questioned during enquiry and to accept the statement alleged to have been made by her which is denied by her and recorded in the absence of the applicant by the SW-3 is impermissible in law. In Central Bank of India Vs. PC Jain (Bhargava J), 1989-SC-983, the Hon'ble Supreme Court has observed as follows:

"It is true that, in numerous cases, it has been held that domestic tribunals, like an Enquiry Officer, are not bound by the technical rules about evidence contained in the Evidence Act, but it has nowhere been laid down that even substantive rules, which would form part of principles of natural justice, also can be ignored by the domestic tribunals. The principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom the enquiry is held and 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."

Even ~~the~~ SW-3 Shri Meenakshi Sundaram who allegedly recorded the statement of Krishnamma is not very specific as to who recorded the statement. Though he has at one stage said

that he recorded the statement, at another stage he has sworn that the statement probably would have been written by SW-2, John Sundararajan. So, SW-3 himself is not sure who actually recorded the S-2 statement. Sundarajan, the ~~examined~~ SW-2 has sworn that he did not record the statement. So since the persons competent to speak about the genuineness of the signature in Exbt.S-3 namely, Krishnamma has sworn that she has put the signature, the whole edifice of the prosecution case against the applicant tumbles down as a pack of cards. The charge that the applicant has made up Exbt.S-3 withdrawal form, forging the signature of Krishnamma without her knowledge has no legs to stand, when Krishnamma herself says that she has put her signature in Exbt.S-3 and has withdrawn an amount of Rs.110/- on 4.3.1986. The learned counsel for the respondents argued that in the statement given by the applicant before the SW-3, marked as Exbt.S-5, she has stated that withdrawal form was filled up by her as authorised by Krishnamma, and that this would amount to an admission. But the case of the applicant is that she was made to write what was dictated by the SW-3, the superior officer. In any case, since Smt. Krishnamma, the depositor has sworn that the signature in Exbt.S-3 is her signature put by her, then Exbt.S-3 ceases to be a disputed document and it cannot be held that the applicant has forged the signature of Krishnamma. In Exbt.S-3, basing on the

testimony of the SW-3, who ~~charge-sheetsed~~, conducted on the preliminary investigation and ~~whose~~ report the applicant was charge-sheeted. Therefore, we find that there is no even an iota of evidence in the whole of the depositions and documents received in evidence at the enquiry which would warrant a finding that the applicant is guilty of the charge, On the basis of the evidence on record no reasonable tribunal can arrive at a finding that the applicant is guilty of the misconduct. It may be said that the conduct of the applicant was suspicious according to the SW-3. But it is settled law that suspicion can be never a substitute for legal proof. On the basis of the above facts evidenced and legal principles, we have no hesitation to hold that the finding of the Disciplinary Authority, that the applicant is guilty of the charge is absolutely perverse and that it is liable to be quashed.

8. The applicant had in the appeal memorandum raised all the contentions which she has raised before us in detail and meticulously. But the Appellate Authority has not appreciated the defence in proper perspective. Hence, the Appellate order is also liable to be quashed.

9. In view of our finding that the enquiry is vitiated and that the finding of the Disciplinary Authority that the applicant is guilty is perverse, we quash the

impugned punishment order dated 17.6.1988 of the 3rd respondent, Annexure-B and the Appellate order dated 29.12.1988, Annexure-D and direct the respondents to reinstate the applicant in service forthwith with continuity of service and all attendant benefits, and to pay her full backwages from the date on which she was put off duty, within a period of 2 months from the date of communication of this order. There is no order as to costs.


21/12/90
(A.V.HARIDASAN)
JUDICIAL MEMBER


21.XII.90
(S.P.MUKERJI)
VICE CHAIRMAN

21.12.90