

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 250 of 1990
T.A. No.

DATE OF DECISION 21-12-1990

R Felsi Applicant (s)

M/s GP Mohanachandran, KR Haridas &
M Jayachandran Advocate for the Applicant (s)

Versus

Supdt. of Post Offices, Respondent (s)
Trivandrum & 4 others

Mr TPM Ibrahimkhan 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? *NO*
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

(Mr AV Haridasan, Judicial Member)

The applicant, an ex-employee of the Postal Department has prayed that the order of suspension issued by the first respondent dated 11.7.1980, the punishment order issued by the second respondent on 22.5.1982 dismissing her from service with immediate effect, the appellate order issued by the third respondent dated 20.6.1983 and the revision order dated 21.5.1989 passed by the fourth respondent upholding the finding that the applicant is guilty while modifying the punishment into one of compulsory retirement from service may be declared as illegal, invalid and inoperative.

2. While the applicant was working as Postal Assistant Kanjiramkulam Post Office, Trivandrum South Postal Division

she was placed under suspension w.e.f. 11.7.1980 by the order of the first respondent. She was then served with the charge sheet under Rule 14 of the CCS(CCA) Rules 1965 as per memo No.F1/2/80/IV dated 23.3.1981. The charge against the applicant was that she committed a fraudulent withdrawal of a sum of Rs.210 on 31.5.1980 from the S.B.Account No.761590 standing open at Kanjiramkulam Post Office in the name of one Smt.G.Jagadamma without the pass book and without there being an application from the depositor and thereby violated the provisions of Rule 425 of P&T Manual Vol.VI Part II and that by the above said act she has failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant in violation of Rule 3(1)(i), (ii) & (iii) of CCS(Conduct) Rules 1964. Though the applicant denied the charge, an inquiry was held by the Sub Divisional Inspector who was appointed by the first respondent. The Inquiry Officer submitted a report holding that the charge against the applicant was proved.. Accepting this Inquiry Report the second respondent the Senior Superintendent of Post Offices who was appointed as Ad hoc Disciplinary Authority, passed the impugned order at Annexure-A2 dated 22.5.1982 imposing on the applicant a punishment of dismissal from service. Before deciding about the guilt of the applicant basing on the Inquiry Report, a copy of the I.R. was not furnished to the applicant. Aggrieved by the order of punishment, the applicant preferred an appeal before the third respondent. The applicant thereafter submitted

a representation on 22.2.1985 to the third respondent praying for an early disposal of the appeal. She was then informed on 2.4.1985 that the third respondent had already disposed of the appeal and rejected the same by order dated 20.6.1983. Thereafter the applicant preferred a revision petition to the Government. The revision petition was disposed of by order dated 21.5.1989 at Annexure-A5 confirming the finding of the Disciplinary and Appellate Authorities but altering the punishment to one of compulsory retirement instead of dismissal. Aggrieved by these orders, the applicant has filed this application under Section 19 of the Administrative Tribunals Act. It has been averred in the application that the inquiry was held in total violation of the principles of natural justice and against the mandate of Article 311(2) of the Constitution of India. The non-supply of ^{preliminary} ~~the~~ Inquiry Report and the relevant documents to the applicant inspite of her request for the same to enable her to make a proper defence is stated to have caused great prejudice to the applicant's defence. It is contended that the non-supply of the copy of the I.O.s report and ^{the denial of} ~~an~~ opportunity to make her representation against the acceptability of the same before the Disciplinary Authority accepted a finding of the I.O. has violated the provisions of Article 311(2) of the Constitution of India. It has been further averred that the Appellate Authority and the Revisional Authority have not considered the appeal and revision properly and that the

Fact that the ~~was~~^{was} applicant acquitted by the Criminal Court in prosecution for ~~similar~~^{the same} offence has not been taken into account by the Appellate and the Revisional authorities. The applicant prays that the impugned order of punishment may be quashed considering the fact that the appointment of the applicant itself was on compassionate grounds as her father who was a Subhedar in the Indian Army had died in the Indo-Pakistan war field.

3. The respondents in the reply statement have contended that the inquiry has been validly and properly held, that there has been no denial of reasonable opportunity or violation of the principles of natural justice enshrined in Article 311(2) of the Constitution since the applicant has been given reasonable opportunity to defend the case and that the copy of the Inquiry Report was not furnished to the applicant before the Disciplinary Authority decided about her guilt because the rules in that regard did not warrant supply of such a report before issuing the punishment order. The respondents contend that the applicant is not entitled to any relief as claimed in the application.

4. The back ground in which proceedings against the applicant were initiated was like this. In the course of percentage verification of S.B. transactions of Kanjiramkulam South Post Office where the applicant was working as Savings Bank Clerk, the Inspector of Post Offices, Neyyattinkara issued a notice to Smt.G Jagadamma, holder of S.B.A/C

No.761590 of Kanjiramkulam South Post Office noting the balance to her credit as per the S.B.A/C as Rs.101.80.

Smt.Jagadamma intimated that the balance at her credit was really Rs.311.80, On 26.8.1980 the depositor Smt.Jagadamma presented her pass book for verification. On verification the Sub Post Master, Kanjiramkulam noticed that a withdrawal of Rs.210.00 entered in the records of the Post Office on 31.5.1980 had not been noted in the pass book. The Sub Post Master seized the pass book and issued a receipt to the depositor and forwarded the same to the Superintendent of Post Offices, Trivandrum South Division with the^a/report for necessary action. On receipt of the above information, the Post Master, Neyyattinkara Post Office also sent a report to the Superintendent of Post Offices. The Inspector of Post Offices, Neyyattinkara was directed to make an inquiry and to submit a report. The Inspector of Post Offices, Neyyattinkara questioned the depositor Smt.Jagadamma and recorded her statement. The depositor stated that she had not withdrawn an amount of Rs.210.00 on 31.5.1980, that after the last withdrawal on 27.5.1980, she has never made any withdrawals and that the balance to her credit as per the entries in the pass book ~~and~~^{is} actually was Rs.311.80. The withdrawal application dated 31.5.1980 was shown to Smt. Jagadamma who said that she has never made such a withdrawal therein. application and denied the signature/ ^{The IPO} questioned Shri K Mony, Sub Post Master, Kanjiramkulam who stated that the pass book in respect of S.B.A/C No.761590 was not placed

before him along with application for withdrawal by the applicant on 31.5.1980 when the withdrawal was effected on that date, and that the applicant had told him that she had returned the pass book as the depositor wanted to go urgently and as the Sub Post Master had gone out. The Inspector of Post Offices issued a notice to the applicant directing her to appear before him at Kanjiramkulam Post Office on 6.1.1981 at 11.30 A.M. in connection with the preliminary fraudulent inquiry into the alleged withdrawal of Rs.210.00 from the S.B.No.761590. Though the notice was served on the applicant she did not turn up. The Inspector of Post Offices after completion of the inquiry submitted his report and it is pursuant to that the charge sheet was issued to the applicant.

5. The learned counsel for the applicant argued that the inquiry is vitiated since the preliminary Inquiry Report was not supplied to the applicant though demanded by her for the purpose of making a proper defence, that the Inquiry Authority has cross examined the applicant at length while such a cross examination is not permitted during questioning under Rule 14(18) of the CCS(CCA) Rules, that the Disciplinary Authority has not given the applicant an opportunity to make her representation against the finding in the Inquiry Report since the copy of the I.R. was not furnished to her before the Disciplinary Authority decided about her guilt, that this has violated the principles of natural justice and the safeguard contained in Article 311(2) of the Constitution

of India inasmuch as she has been deprived of an opportunity to point out that the finding was arrived at in the absence of any evidence at all and that for these reasons the punishment order, the appellate order and the revisional order are liable to be quashed. The learned counsel invited our attention to the fact that there has been no direct evidence to bring home the fact that the applicant had forged the signature of the depositor Smt. Jagadamma and that the conclusion that she has so done basing on the testimony of the Sub Post Master who was examined as PW-5 at the inquiry regarding the similarity of the applicant's handwriting and the disputed signature and writing in the withdrawal form was unsustainable especially when the Sub Post Master was obliged under the relevant rules in the P&T Manual to verify the specimen signature of depositor while countersigning and sanctioning the withdrawal. He has argued that the Sub Post Master examined ^{as} ~~the~~ PW-5 has to be treated as an accomplice and that to find the applicant guilty basing on the evidence of a person standing in the position of an accomplice is illegal. In the Inquiry Report the Inquiry Officer has taken into account the testimony of PW-5 regarding the similarity of the hand ^{the} writing of the applicant and the writing in the disputed document Exbt. P4 and also to various circumstances which according to the I.O. would lead to ^{the} irresistible conclusion that the fraudulent withdrawal was effected by the applicant. He has also made a comparison of the hand ^{the} writing of the applicant in Exbt. P3 which is not disputed with the disputed hand writing in

Exbt.P4. Basing on all these facts and circumstances, the Inquiry Officer concluded that the applicant is guilty. The Disciplinary Authority has accepted the finding for the similar reasons as mentioned by the Inquiry Officer. The argument of the learned counsel is that the conclusion based on a comparison of the signature without any direct evidence is absolutely unscientific and the testimony of PW-5 who would as well have made ^{the} fraudulent withdrawal cannot be considered as a corroborative evidence and that therefore the finding that the applicant is guilty is unsustainable. He also argued that the handwriting should have been examined by an expert before reaching a conclusion. The learned counsel also argued that had the applicant been furnished with the copy of the Inquiry Report and afforded an opportunity to make her representation, she could have pointed out these infirmities in the evidence recorded at the inquiry and in the finding and the refusal to do so has resulted in grave prejudice to her. In Premnath K Sharma V Union of India & others (1988(3) SLJ(CAT), 449) a Larger Bench of the Tribunal has held that non supply of the copy of the I.O's report before the Disciplinary Authority decides the question of guilt of the delinquent basing on the report would result in negation of reasonable opportunity to defend and violation of the principles enshrined in Article 311(2) of the Constitution of India and that the inquiry therefore from the stage of receipt of the I.O's report has to be held vitiated. The Supreme Court has in Civil Appeal No.839/88 filed by the Union of India upheld the judgement of the Tribunal in Premnath K Sharma's case and in several appeals, by the common judgement by a three Judge Bench dated 20.11.1990 in Union of India & others V. Mohd. Ramzan Khan, 1990(2)

SCALE 1094. Though the Supreme Court directed in the said judgement that 'this shall have prospective effect and no punishment imposed shall be open to challenge on this ground', since in this case the challenge had already been made, the rulings of the Supreme Court and of the Larger Bench in that case still holds the field. Therefore we are of the view that inasmuch as the copy of the I.R. was not given to the applicant and as she was not given the opportunity to make the representation regarding the acceptability or otherwise of the report before the Disciplinary Authority took a decision that the applicant is guilty, the proceedings in this case is vitiated from the stage of receipt of the report by the Disciplinary Authority and that the disciplinary proceedings have to be remanded to the Disciplinary Authority quashing the punishment order for recommencement from the stage of receipt of the I.O's report by the Disciplinary Authority. In view of the above view, we do not find it necessary at this stage to go into the merits of the other contentions raised in the application.

6. In the result, finding that the impugned punishment order Annexure-A2 and the proceedings leading to that are vitiated from the stage of receipt of the I.O's report by the Disciplinary Authority, we quash and set aside the impugned punishment order, appellate order and the revisional order and remit the disciplinary proceedings to the Disciplinary Authority for recommencement from the stage of receipt of the I.O's report by the Disciplinary Authority. Now that a copy of the I.O's report has been furnished to the applicant along with

the punishment order, the applicant is directed to make her representation putting forth her contention against the acceptability of the report to the Disciplinary Authority within a period of 15 days from the date of communication of this order. We direct the Disciplinary Authority, the second respondent to pass final order in the disciplinary proceedings within a period of three months from the date of communication of this order taking into consideration the contentions raised by the applicant in her representation, if so made. If the applicant does not submit a representation within the time specified the Disciplinary Authority will be free to pass final order without such a representation. The applicant will be deemed to be placed under suspension by the Appointing Authority from the date of original order of dismissal/compulsory retirement, in accordance with the provisions contained in Sub Rule 4 of Rule 10 of the CCS(CCA) Rules. After the completion of the disciplinary proceedings, the Disciplinary Authority shall pass final orders and also orders as to how the period of suspension is to be treated. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

21-12-1990

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