

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

267

1990

DATE OF DECISION 31.12.1991

K.N.Chellamma Applicant (s)

Mr.M.Balakrishna Pillai Advocate for the Applicant (s)

Versus

UOI rep. by Secy., M/o Commns., Respondent (s)
New Delhi & 3 others

Mr.V.Krishna Kumar, 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? *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

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

The applicant, a member of the Scheduled Caste while working as EDSPM at Kodumpidi Post Office was put off duty with effect from 9.4.1987 by the Sub Divisional Inspector, Palai. Thereafter a memorandum of charges dated 31.7.1987, Annexure-I containing two articles of charges, alleging that she failed to bring into the Post Office account a sum of Rs.250/- collected from Smt.K.V.Valsamma in her S.B. Account No.407401 on 16.3.1987 and a sum of Rs.200/- collected by her from Shri Joby Augustine for deposit in his S.B. Account No.407749 on 23.12.1986 and thus ~~having~~ violated

...2/-

Rule 131 of Rules for Branch Offices and failed to maintain absolute integrity and devotion to duty as envisaged in Rule 17 of P&T Agents (Conduct & Service) Rules 1964. The applicant in her reply dated 17.8.1987 denied the charges. The Disciplinary Authority ordered an enquiry. The Inquiry Authority conducted the enquiry and submitted an enquiry report finding that the charges have been established. Without furnishing a copy of the enquiry report to the applicant and without giving her an opportunity to make a representation the Disciplinary Authority by the impugned order at Annexure-IV dated 30.9.1988 found the applicant guilty of the charges and imposed on her a punishment of dismissal from service with immediate effect. The applicant submitted an appeal to the Post Master General on 15.10.1988. She also submitted an appeal to the Director of Postal Services. The appeal submitted by the applicant to the Director of Postal Services was disposed of as per memo dated 21.3.1989 of the Sub Divisional Inspector, Palai at Annexure-V. But the appeal submitted to the Post Master General has not so far been disposed of. As the respondents were taking steps to fill up the post of EDSPM, Kodumpidi on a regular basis the applicant has filed this application praying that the charge memo dated 31.7.1987, the enquiry report dated 20.9.1988 and the order of the Disciplinary Authority dismissing

...3/-

2

her from service dated 30.9.1988 may be set aside and the respondents may be directed to treat ~~that~~ the applicant to have continued in service with effect from 9.4.1987 and to pay her allowance.

2. It has been averred in the application that the Sub Divisional Inspector was not competent to put her off duty, that the alleged act of the applicant did not amount to a misconduct warranting disciplinary action under Rule 8 of the P&T ED Agents (Conduct & Service) Rules, that a preliminary enquiry was not held before the Disciplinary Authority framed a charge against the applicant, that she was not given copies of all documents relied on by the respondents to establish the charge against her before the enquiry to enable her to cross-examine the witnesses, that the findings of the Inquiry Authority and the Disciplinary Authority are based on no evidence and therefore are perverse, that the principles of natural justice have been violated in the enquiry as the Disciplinary Authority before taking a decision that the applicant was guilty basing on the enquiry report did not give her a copy of the enquiry report and an opportunity to make a representation, and that as the entire proceedings have been held in violation of principles of natural justice enshrined in Article 311(2) of the Constitution of India, the impugned

...4/-

3


order at Annexure-IV is liable to be set aside.

3. The respondents in their reply statement have contended that the enquiry has been held properly and validly, that there is no violation of ^{the} principles of natural justice in not giving the applicant a copy of the enquiry report before the Disciplinary Authority decided that the applicant was guilty ^{relying} ~~based~~ on the enquiry report, since the rules do not provide for supply of a copy of the enquiry report before passing final order in the disciplinary proceedings, and that there is absolutely no merit in the contentions raised by the applicant in the application.

4. We have heard the arguments of the counsel on either side and have also carefully gone through the pleadings and documents.

5. The learned counsel for the applicant argued that the Sub Divisional Inspector has no authority to put an E.D. Agent off duty. In this case the applicant was put off duty with effect from 9.4.1987 by the Sub Divisional Inspector, Palai, as it was suspected that the applicant had committed fraud in respect of the Post Office Savings Bank fund. This order of put off duty was ratified by the Senior Superintendent of Post Offices, Kottayam on 14.4.1987 as contended by the respondents in their reply statement. Proviso 2

...5/-



to Rule 9(1) of the ED Agents (Conduct & Service) Rules enables the Inspector of Post Offices to put an ED Agent off duty with immediate effect with intimation to the Appointing Authority, in cases involving fraud or embezzlement. Sub Rule (2) of Rule 9 stipulates that, order made by Inspector of Post Offices under Sub Rule (1) ^{cease} ~~would~~ to be operative on the expiry of 15 days from the ~~date~~ thereof unless confirmed by the Appointing Authority or an authority to which the Appointing Authority is subordinate. As the applicant was put off duty on 9.4.1987 in a case involving fraud and embezzlement of funds and as the order put off duty was ratified by the Sr. Supdt. of Post Offices within 15 days, the contention of the applicant that the order putting her off duty by the Sub Divisional Inspector is incompetent has no force.

6. It is argued on behalf of the applicant that before ordering a formal enquiry the Disciplinary Authority has to be satisfied that there was prima facie ground for holding a disciplinary enquiry, and that, as no such satisfaction had been arrived at by the Disciplinary Authority as no preliminary enquiry had been held the disciplinary action taken against the applicant is vitiated. In support of this contention the learned counsel invited our attention to the ruling of the Supreme Court in Krishna Chandra Tandon Vs. Union of

India, 1974-SLJ-420. But as a matter of fact from the averment in the application itself it is obvious that a preliminary enquiry was held and witnesses ^{had been} ~~were~~ questioned before the Disciplinary Authority ~~was~~ decided to hold a formal enquiry. Therefore this contention also has no force. The applicant has raised ^{other} contentions such as denial of reasonable opportunity to defend by not supplying copies of documents relied in support of the charge and perversity of finding. It has also been contended that, as a copy of the enquiry was not furnished to the applicant and an opportunity to make representation regarding ~~the~~ the enquiry report was denied to her, the impugned order at Annexure-IV is vitiated for violation of principles of natural justice enshrined in Article 311⁽²⁾ of the Constitution of India. That a copy of the enquiry report was not furnished to the applicant before the Disciplinary Authority decided that the applicant was guilty of the charges basing on the enquiry report is a fact admitted. The applicant had specifically raised this as a ground in this application challenging the validity and correctness of the impugned order. The Supreme Court has in Union of India Vs. Mohd Ramzan Khan, AIR-1991-SC-471, held that failure on the part of the Disciplinary Authority to furnish the delinquent Govt. servant with a copy of the enquiry report and to give him an opportunity to make representation in regard to

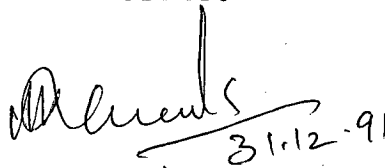
the evidence adduced at the enquiry and the finding of the Inquiry Authority vitiates the disciplinary order. The principles enunciated by their Lordships in the above cited decision is applicable to the facts of this case as well. By not giving a copy of the enquiry report to the applicant and denying her an opportunity to make a representation, the Disciplinary Authority has denied to the applicant a fair and reasonable opportunity to defend her case. On that ground the impugned order at Annexure-IV is liable to be set aside.

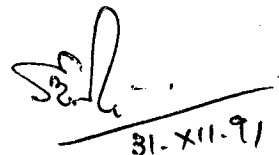
7. In view of the facts that the impugned order at Annexure-IV is liable to be set aside on the ground of denial of reasonable opportunity to defend and for violation of the principles of natural justice, we are of the view that it is not necessary to go into the other rival contentions of the parties in this case.

8. In the result, the impugned order of the Disciplinary Authority removing the applicant from service dated 30.9.1988 at Annexure-IV is set aside. The respondents are directed to reinstate the applicant in service with effect from the date of removal forthwith and to pay her arrears of full allowances from the date of removal from service till the date of reinstatement within a period of one month from the date of receipt of this order. As the allegations against the applicant are of very serious nature, we are of the view that the

disciplinary proceedings have to be remitted to the Disciplinary Authority for continuance from the stage of receipt of the enquiry report by him. Now that a copy of the enquiry report has been furnished to the applicant alongwith the order of dismissal, the Disciplinary Authority is directed to send a notice to the applicant immediately after reinstatement giving her an opportunity to make a representation in regard to the enquiry report within a period of 15 days and to pass final order in the disciplinary proceedings denovo after considering the representation, if any, submitted by the applicant within the said period within a further period of one month thereafter.

To facilitate the continuance of the proceedings it is open ^{to} ~~for~~ the Disciplinary Authority if it deems it necessary to put the applicant off duty again after reinstatement. The Disciplinary Authority ^{after due notice in accordance with law} should also pass orders ^{as to} how the period during which the applicant was put off duty is to be treated, after completion of the proceedings. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

9.12.1991