

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKUDAM BENCH

DATE OF DECISION: 18.10.1989

PRESENT

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

ORIGINAL APPLICATION NO.286/87

V.Chandrasekharan - Applicant

v.

1. Post Master(G), Calicut.
2. K.C.Vijayakumaran Nair,
Director of Postal Services,
Calicut Region,
Calicut-673 032.
3. R.Kishore,
Member(Personnel),
Postal Services Board,
Govt. of India,
Ministry of Communications,
Department of Posts,
New Delhi-110 001.
4. Union of India, represented
by its Secretary,
Ministry of Communications,
Department of Posts,
Govt. of India, New Delhi. - Respondents

M/s K Vijayan & - Counsel for
PK Madhusoodhanan applicant

Mr K Narayananakurup, ACGSC - Counsel for
respondents

O_R_D_E_R

(SHRI A.V.HARIDASAN, JUDICIAL MEMBER)

The applicant was an employee in the Postal
Department. He joined the department as an Extra
Departmental Branch Postmaster at Poovathuparamba
and later promoted as a Postman at Head Post Office.

at Calicut. While so he was suspended from service and proceeded against under Rule 14 of the CCS(CCA) Rules for alleged misappropriation of money received from a depositor without making entries in the pass-book. There were altogether 5 charges. The applicant denied the charges in his written statement. The Enquiry Officer who conducted the inquiry found xxxxxxxx charges 1 to 3 and 5 proved and charge No.4 not proved and submitted his report. The first respondent, who is the Disciplinary Authority agreed with the findings of the enquiry authority on charges 1 to 3 and 5 and disagreed with him in his finding on charge No.4 and found the applicant guilty of all the charges. He by order dated 28.1.1984 finding the applicant guilty of all the 5 charges imposed on him a penalty of removal from service with immediate effect. The applicant preferred an appeal before the second respondent which was dismissed. A revision filed by the applicant before the third respondent also was dismissed. Aggrieved by the orders of disciplinary authority, appellate authority and the revisional authority, the applicant has filed this application praying that the impugned orders may be quashed and the respondents may be directed to reinstate him in service with continuity of service and all the attendant benefits.

2. The first respondent on behalf of all the respondents has filed a counter affidavit, justifying the order of the disciplinary authority, appellate and revisional orders.

3. We have heard the arguments of the learned counsel appearing on either side and have perused carefully the documents produced. The only point that was argued before us by the learned counsel for the applicant is that as the disciplinary authority has not given the applicant a copy of the inquiry report and an opportunity /represent his case against the acceptance thereof before it decided about the guilt of the applicant, basing on the inquiry report, ^{to} he has been denied/reasonable opportunity enjoined in Article 311(2) of the Constitution of India and for that reason the disciplinary proceedings are vitiated. This case has been specifically put-forth by the applicant in ground(b) of the application. In the counter affidavit filed by the first respondent on behalf of all the respondents though it has been contended that the disciplinary authority has elaborately discussed relevant materials on record dispassionately and found ^{to} all the 5 charges proved the allegation raised as ground(b), that no opportunity has been given to the applicant before

passing the proceedings dated 28.1.1984 has not been contraverted. Ext.R1(a) produced by the respondents alongwith the counter affidavit is a copy of the proceedings of the first respondent dated 28.1.1984. It is seen that a copy of this proceedings alongwith a copy of the inquiry report was forwarded to the applicant. Therefore, it is evident that a copy of the inquiry report was furnished to the applicant only with the punishment order Ext.R1(a). Therefore, the complaint of the applicant that the first respondent with has failed to furnish him/a copy of the inquiry report and to give him an opportunity to represent against the acceptance of the report before the first respondent took a decision on the question whether the applicant is guilty or not of the charges is found to be/genuine one. In premnath K Sharma Vs. Union of India and others reported in 1988(3) All India Service Journal 449, the Bench New Bombay of the Tribunal has held that the non-supply of a copy of the inquiry report and a denial of opportunity to make a representation before the disciplinary authority made up his mind regarding the guilt of the delinquent amounts to a denial of reasonable opportunity envisaged in Article 311(2) of the Constitution of India, and for that reason, the inquiry has to be held to be vitiated. The dictum is applicable to this case as well.

Since the first respondent has not given a copy of the inquiry report to the applicant and has not given him an opportunity to make a representation before the first respondent made up his mind regarding the guilt of the applicant, we are of the view that a reasonable opportunity as envisaged in Article 311(2) of the Constitution of India has been denied to the applicant and for that reason the punishment order dated 28.1.1984 is vitiated.

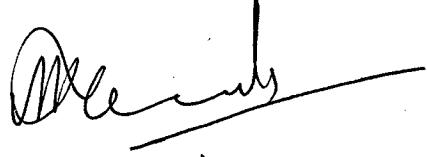
The appellate and revisional orders also have to be set aside because they do not cure the defect in the original punishment order.

4. In the result, we set aside the impugned order dated 28.1.1984(Ext.R1(a)) and the appellate and revisional orders Annexure-I and II on the ground that the Ext.R1(a) order is vitiated since the disciplinary authority has failed to give the applicant a copy of the inquiry report and an opportunity to make his representation before the authority made up his mind regarding the guilt of the applicant basing on the inquiry report. This does not preclude the respondents from completing the disciplinary proceedings after giving the applicant an opportunity to make his representation since a copy of the inquiry report has been supplied to him alongwith the punishment order. If the respondents decide to

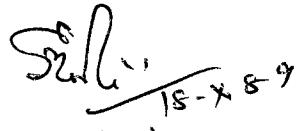
complete the proceedings from that stage as to how the period spent in the proceedings is to be treated would depend on the ultimate result.

5. The application is disposed of as above.

There will be no order as to costs.



(A.V.HARIDASAN)
JUDICIAL MEMBER



(S.P.MUKERJI)
VICE CHAIRMAN

18-10-1989

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