

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 34/90
TXXXXXX

229

DATE OF DECISION 16-7-1990

P. K. Vallon

Applicant (s)

M/s OV Radhakrishnan, K Radhamani Amma &
N Nagaresh

Advocate for the Applicant (s)

Versus

Assistant Superintendent of Post Offices, Irinjalakuda Division & 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? Ys
2. To be referred to the Reporter or not? N
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. To be circulated to all Benches of the Tribunal? NO

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The applicant who was an Extra Departmental Delivery Agent, Thazhakad E.D.Sub Post Office has filed this application under Section 19 of the Administrative Tribunals Act praying that the punishment order dated 31.7.1987(Exbt.A8) issued by the first respondent, the ad-hoc Disciplinary Authority(Exbt.A8) removing him from service, the enquiry report(Exbt.A9) basing which the on/Exbt.A8 order was passed, the appellate order dated 28.1.1988(Exbt.A11) of the second respondent rejecting his appeal and confirming Exbt.A8 order and the order of the

third respondent dated 21.4.1989(Exbt.A13) rejecting revision petition filed by the applicant on 5.5.1988 may be quashed and that the respondents may be directed to treat the applicant as continuing in service and to grant him all service benefits including arrears of allowances and ~~and~~ the consequential reliefs. The facts of the case can be briefly stated as follows:

2. While the applicant was working as Extra Departmental Delivery Agent, Thazhekad Sub Post Office, by order dated 1.11.1985, he was put off duty. Thereafter, a charge memo dated 22.1.1986(Exbt.A2) containing two heads of charges alleging that on 4.9.1985, he demanded tips for delivery of a telegram addressed to ^{one} Mrs. Vimala Johnny and that he failed to deliver two inland letters addressed to Mrs. Vimala Johnny on 9.9.1985 and 13.9.1985 and irregularly returned the letters to Kallettinkara as Mrs Vimala Johnny did not pay him tips demanded by him for delivery of the telegram of 4.9.1985. The applicant submitted a written statement denying the charges. Since the Assistant Superintendent of Post Offices, Irinjalakuda Sub Division was a witness in the case, the first respondent was appointed ad-hoc Disciplinary Authority to conduct the disciplinary proceedings against the applicant. The ad-hoc disciplinary authority did not grant the applicant's request to allow him to be represented by a lawyer to defend him. The fourth respondent after completion of the enquiry,

(Exbt.A9)
submitted a report/with the following finding:

"Considering the evidence adduced during the inquiry as discussed earlier, I hold the charges framed against Sri PK Vallon, EODA Thazhekkad (put off duty) in Article I and Article II of memo No.DA/EDSO/9 dt.22.1.86 of ASP, Irinjalakuda Sub Dn proved except to the extent that EXP-5 and EXP-6 were returned irregularly to Kallettumkara as tips demanded for delivery of telegrammon 4.9.85 were not given and that Sri PK Vallon has exhibited lack of devotion to duty, in violation of Rule 17 of P&T ED Agents (Conduct & Service) Rules 1964".

The first respondent disagreed with the finding of the Enquiry Authority in regard to his finding on Charge No.2 and held that both the charges were proved/ issued the impugned order at Exbt.A8 removing the applicant from service. Before taking a decision whether the applicant was guilty or not basing on the evidence recorded at the enquiry and disagreeing with the Enquiry Officer on his finding on Charge No.2, a copy of the Enquiry Report was not furnished to the applicant and he was not given an opportunity to make any representation. Aggrieved by the order of removal from service, the applicant filed an appeal to the second respondent raising various grounds including that non-supply of a copy of the Enquiry Officer's Report before the first respondent found him guilty has vitiated the proceedings and the punishment order. This appeal was rejected by the second respondent by Exbt.A11 order. The applicant filed a review to the first respondent which was also dismissed by Exbt.A13. Aggrieved by these orders and the removal from service, the applicant has filed this application praying that the impugned

orders may be quashed and that he may be directed to be deemed to be in service and awarded all consequential benefits.

3. The respondents in the reply statement have justified the impugned orders. It has been *inter alia* contended that at the time when the Exbt.A8 order was issued as per rules, it was not necessary to issue a copy of the Inquiring Authority's report/delinquent before taking a decision whether the delinquent was guilty or/that therefore there is no violation of principles of natural justice.

4. We have heard the learned counsel for the parties have and/gone through the documents carefully. Though the legality, propriety and correctness of the impugned orders have been challenged on various grounds, the important point that was urged by the learned counsel for the applicant is that the non-supply of a copy of the Enquiry Officer's report before the Disciplinary Authority took the decision that the applicant is guilty amounts to denial of reasonable opportunity to defend ~~xxxxxx~~ enshrined in Article 311(2) of the Constitution of India and that on this ground the impugned orders are liable to be set aside. In support of his contention, the learned counsel relied on a decision of this Bench of the Tribunal in *Sekharan Kutty V. Superintendent of Post Offices, Alwaye* in OA-844/86 and also on the decision of the Full Bench of the Tribunal in *Premnath K Sharma V. Union of India and others* reported in 1988(6) ATC, 904. The learned counsel for the respondents on

the other hand, argued that since the rules did not provide for furnishing a copy of the EO's report to the delinquent before the Disciplinary Authority taking a decision regarding the guilt, there is no merit in this argument and that the decision of this Tribunal in Premnath K Sharma's case has been challenged before the Supreme Court in SLP. Having heard the learned counsel on either side at length, we are of the view that the case can be disposed of/a decision on this important point and that it is not necessary to go into the other points raised in the application. It has been held by this Bench as argued by the learned counsel for the applicant in Sekharankutty V. Superintendent of Post Offices, Always that non-supply of a copy of the EO's report to the delinquent and/benefit of an opportunity to make a representation against the same would amount to denial of reasonable and proper opportunity to defend the case and that such a denial being violative of principles of natural justice, the punishment order has to be set aside. This principle has been upheld by the Full Bench of the Tribunal in Premnath K Sharma's case. Though in the SLP filed by the Union of India, the Supreme Court has stayed the operation of the order in Premnath K Sharma's case, the principles enunciated by the Full Bench in that case are still binding on us. Further, in E.Bhashyam V. Union of India and others (1988(6) ATC, 863) the Supreme Court has not only not disagreed with this view but has approved the view taken by the Full Bench though considering the far-reaching consequences and nationwide

importance of the issue the matter has been referred to be considered by a Larger Bench of the Supreme Court. Therefore, it has to be held that the non-supply of a copy of the Enquiry Authority's report in this case before the Disciplinary Authority the first respondent decided that the applicant is guilty of the charges has vitiating the proceedings. It is pertinent to note that in this case, the Disciplinary Authority disagreed with the finding of the Enquiry Authority on charge No.2. While the Enquiry Authority has found that charge No.2 has not been fully established, the Disciplinary Authority has disagreeing with that finding, held that both the charges have been proved. In such a case, the prejudice caused by the non-supply of the Enquiry Authority's report is patent and obvious. In Narayan Misra V. State of Orissa, 1969 SLR, 657, the Supreme Court has held that where the Enquiry Officer exonerates the delinquent officer of some charges but the Disciplinary Authority disagrees, the delinquent officer must be given a notice before finding him guilty of these charges.

5. For the reasons mentioned in the foregoing paragraphs, we find that the Exbt.A8 order is vitiating because by not giving a copy of the Enquiry Authority's report to the applicant before the Disciplinary Authority took a decision basing on the evidence adduced at the enquiry and partly disagreeing with the finding of the Enquiry Authority that charge No.2 has not been fully established without giving the applicant any notice, a reasonable opportunity has not been given to the applicant.

Hence we quash and set aside the Exbt.A8 order of the Disciplinary Authority dated 31.7.1987 removing the applicant from service and Exbt.A11 and A13 orders of the appellate and revisional authority and direct the respondents to reinstate the applicant in service forthwith with continuity of service and other benefits from the date of removal from service. It is open for the respondents to recommence the disciplinary proceedings from the stage of receipt of the Enquiry Authority's report by the Disciplinary Authority. Now that a copy of the Enquiry Authority's report has been furnished to the applicant along with the punishment order, the disciplinary authority may proceed to complete the proceedings after giving the applicant by a notice, a reasonable opportunity to make his representation in regard to the enquiry report. It is made clear that it will be open for the respondents to place the applicant on put off duty, if felt necessary again for the purpose of completing the disciplinary proceedings. There is no order as to costs.



(AV HARIDASAN)
JUDICIAL MEMBER

16.7.90



(SP MUKERJI)
VICE CHAIRMAN

16-7-1990

trs

The Assistant Superintendent
of Post Offices, Irinjalakuda
Division & 4 others

- Review Applicants

-Vs-

P.K.Vallon

- Review respondent

ORDER

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

In O.A.34/90, the applicant has challenged the punishment order dated 31.9.1987 issued by the Disciplinary Authority removing him from service, the appellate order dated 29.1.1988 and the revisional order dated 21.4.1989, refusing to interfere with the punishment order. Considering the rival contentions of this case we have held that the disciplinary order and appellate orders are vitiated and therefore we quashed these orders and directed the reinstatement of the applicant with full back wages, continuity of service and other benefits. However, we had stated in the order that it is open for the respondents to re-commence the disciplinary proceedings from the stage of receipt of the Enquiry Authority's report by the Disciplinary Authority after giving the applicant a reasonable opportunity to make his representation in regard to the enquiry report and that it is open for the respondents to place the applicant on put off duty if felt necessary for the purpose of completing the disciplinary proceedings.

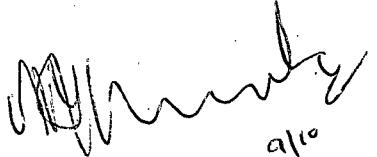
2. Now the respondents 1 to 4 filed this application for review praying that our judgement dated 16.7.1990 may be reviewed and orders may be passed allowing them to treat the applicant as under put off duty and deleting the clause in the order directing reinstatement of the applicant into service with continuity of service and

back wages. No error apparent on the face of records nor any facts of circumstances warranting a review of the order is even averred in the application. Two grounds on which the respondents wants the order to be reviewed are :

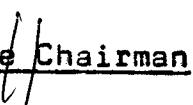
- i) as the applicant had already completed 65 years of age as on 20.10.1990 there cannot be a reinstatement and further put off duty.
- ii) in some other cases where opportunity was granted to the department to complete the disciplinary proceedings after furnishing the Enquiry Officer's report the department was given opportunity to treat the delinquent under deemed to be off duty.

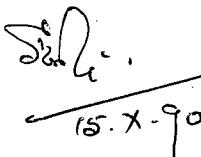
In paragraph 5 of the application, it is averred that the applicant has completed 65 years of age as on 20.10.1989 and that as per the Extra Departmental Agents Conduct and Service Rules, 1964, ED Agents can be retained in service only till the attainment of 65 years. The averment in paragraph 3 and 5 are contradictory in that. In Paragraph 3 what is stated is that the applicant has obtained 65 years on 20.10.1990. Anyway, these are not grounds for reviewing the order. The fact that in some other cases the department was allowed to treat the delinquent to be under deemed put off duty is not a reason why reinstatement and payment of back wages cannot be ordered in this case. Each case is decided on the intrinsic merit of the case. If the applicant has already attained the age of superannuation, it is open for the department to pay him back wages only upto that date, treating that he continued in service till that date. It is made clear that our order in the Original Application will not have the effect of postponing the date of superannuation of the applicant. If on the date of ~~super~~ pronouncement of the order the period upto which the applicant can be retained

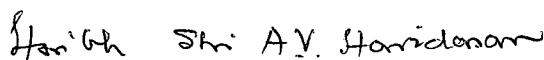
in service in conformity with the regulation regarding age is over, it is sufficient that the applicant is deemed to have continued in service and left on that date and the back wages are paid to him in full upto that date. The direction contained in the order to reinstate him and to pay him back wages was consequent on the finding that the order of removal was unjustified. The same has to be complied with and the compliance will be in the manner mentioned above in the particular circumstances of the case. Therefore, I am of the view that the application can be disposed of by circulation dismissing the same with the above observation, if the Hon'ble Vice Chairman agrees.


(A.V. Haridasan)
Judicial Member
9-10-1990

Hon'ble Vice Chairman

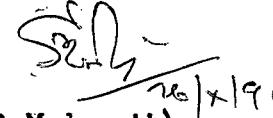

I agree.


15.10.90


Hon'ble Shri A.V. Haridasan

26.10.90

Order pronounced on behalf of the Bench in the open court.


(S.P. Mukerji)
Vice Chairman
26.10.90