

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 168/91 & 347/91 *100*
KXAKXNo.

DATE OF DECISION 6.3.1992

K.Mohankumar _____ Applicant (s) in O.A. 168/91
C.R.Krishnan _____ Applicant in O.A. 347/91

Shri M.K.Damodaran _____ Advocate for the Applicant (s)
in both the O.As
Versus

Superintendent of Post Offices,Alleppey Respondent (s)
and 3 others

Mr.P.Sankarankutty Nair,ACGSC _____ Advocate for the Respondent (s)
in O.A. 168/91
CORAM : Mr.K.A.Cherian _____ Advocate for Respondents in
O.A.347/91

The Hon'ble Mr. S.P.MUKERJI,VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN,JUDICIAL MEMBER

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

JUDGEMENT

(Hon'ble Shri S.P.Mukerji,Vice Chairman)

In these two applications dated 1.1.1991 and 10.2.1991 the two applicants who have been working as Postmen under the Superintendent of Post Offices, Alleppey have challenged the impugned order dated 4.12.1989 (Annexure-7 in the first application and Annexure-6 in the second application) passed by the first respondent imposing on them the punishment of withholding of next one increment for a period of one year without cumulative effect. They have also challenged the appellate order dated 29.6.1990 (Annexure-9 in the first application and Annexure-7 in the second application) rejecting their appeal and confirming the punishment. They have prayed that the first respondent be directed to grant them increments and pay and allowances withheld by the penalty orders. The material facts of the case are as follows.

2. The applicants were active members of the P&T Staff Quarters' Residents' Welfare Association in Alleppey. There were some differences of

opinion between the Postal and Telecom staff members and according to the applicants there was lot of dissatisfaction with the functioning of the General Secretary. It appears that in the 3rd week of June after the expiry of the nominated President and transfer of the Vice President, one Shri Unnithan, Accounts Officer in the Office of the T.D.E, Alleppey was an aspirant for the post of President. The Secretary of the Association was supporting Shri Unnithan. The Secretary of the Association had convened a meeting of the General Body of the Association on 25.6.1989 in the staff quarters' premises. According to the applicants a number of members present vehemently protested against a proposal to have Shri Unnithan preside over the meeting. The applicants came to the meeting a little later. According to them one Shri Achary was presiding over the meeting when they came and there was no unruly or bad behaviour except for the allegations of the fund mismanagement by the Secretary. According to the applicants the Secretary of the Association sent a letter dated 1.7.1989 (Annexure-II) to the Telecom District Engineer about what happened in the aforesaid meeting when Shri Unnithan was present there to preside over the meeting. According to the letter four members of the Postal Wing came there under influence of some intoxicant and began to use filthy language to disturb the meeting and threw away the food packets which had been prepared to be distributed amongst the inmates and their families. Seeing this unruly behaviour of these hooligans Shri Unnithan and many other members left the place on which Shri Achary Member of the Governing Council was requested to preside over the meeting. According to the applicants, in reply to Annexure-II, the Telecom District Engineer (T.D.E) Alleppey wrote back to the General Secretary of the Association on 5.7.89 (Annexure-III) that convening the annual general body meeting without the President or the Vice-President was not regular and not valid. The applicants' allege that the Secretary of the Association and Shri Unnithan took it as a personal insult and

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sent lot of false complaints against the applicants and others to the 1st respondent who thereafter served the chargesheet dated 12.10.89 on the applicants. The Statement of Imputation attached with the charge-memo is at Annexure-V. In this the letter of the Secretary of the Association dated 1.7.89(Annexure-II) was quoted verbatim and the following observations were made:-

" Necessary enquiries were made into this through ASP Alleppey Sub Dn. Enquiry revealed that Sri K.Mohankumar Postman Alp.North, residing in the Postal quarters allotted to him, behaved in an indecent and highly objectionable manner under the influence of liquor and uttered vulgar language in the meeting held on 25.6.89. It was also revealed in the enquiry that Sri K.Mohankumar, Postman, Alleppey North, failed to observe the decorum and decency expected of from Govt. Servant, on that day at the time of the meeting. This has been testified by other members in the P&T Quarters viz. V.J.Joseph Stanley, K.V.V.Achary, Telegraphist, CTO Alp, T.Karthikeyan Telecom. Auto Exchange Alp., K.C.Rajan, IPO(C&PG)Alp.dn, N.Radha, PA Alp.I.B., P.R.Omana, Gr.D. SRO Alp.and others."

The applicants gave their reply on 6.11.89 (Annexure-6 in the first application) denying the charge of appearing in the meeting in a state of intoxication and throwing the food packets and alleging that the enquiry on which the charge was based was not impartial and that only the statements of the persons supporting the Secretary were recorded. They demanded a 'confronting enquiry' and also ^{that} the copies of the statements given by the persons mentioned in the Statement of Imputation as quoted earlier, be made available to them. Without conducting any enquiry and giving the opportunity of cross-examining the witnesses or copies of the statements of the witnesses, the disciplinary authority passed the impugned order of punishment dated 4.12.89 holding that the charges against the applicants are proved and imposing the punishment of withholding of next one increment. The appeals filed by them were also rejected without considering the various grounds taken by the

applicants and without giving them a personal hearing. The main contention taken by the applicants is that the rules of natural justice were completely violated inasmuch as the punishment was imposed by the disciplinary authority on the basis of an enquiry conducted behind their back by the ASP and without giving them any opportunity of cross-examining the witnesses. The copy of the preliminary enquiry report on which alone the order of punishment was based, was also not made available before the order was passed. They have referred to Rule 16 of the CCS(CCA) Rules, according to which it is incumbent on the authority to apply its mind whether an enquiry was necessary or not when such an enquiry even in case of a minor punishment is asked for by the charged official. According to the applicants as the charge was "highly controversial", the disciplinary authority should have exercised its discretionary powers under Rule 16(1)(b) of the aforesaid rules for a regular enquiry under Rule 14 of those rules. They have also referred to sub-rule 1-A of Rule 16 of those rules stating that since the penalty of withholding of increment is to affect their pension, Rule 14 enquiry was mandatory. They have referred to a few rulings of the Supreme Court also in support of their contention.

3. In the counter affidavit the respondents have stated that the ASP who conducted the preliminary enquiry had actually confronted the applicants with the statements recorded from other witnesses and have stated that the statements given by the applicants themselves showed that they were given chance to explain what they had to say on the alleged incident. They have also stated that the ASP had actually shown the statements of witnesses to the applicants and have questioned the applicants on the basis of those statements. They have explained that since the increments were stopped without cumulative effect the applicants were to get the benefit of withheld increments after one year and since they had 17 to 20 years of service still left and the pension is calculated on the basis of the average pay for the last ten months of the service, the pension of the applicants would not in any manner be affected by the punishment.

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4. In the rejoinder the applicants have categorically stated that the ASP who conducted the enquiry had not supplied copies of the statements recorded from the witnesses nor were they allowed to cross-examine the witnesses. They have argued that in the letter of the General Secretary of the Association there was not even a whisper of allegation in Annexure-II about the applicants and others. The witnesses examined by the ASP were handpicked and were those persons against whose irregular activities the applicants had complained. Their statements were recorded at the back of the applicants and relying upon those statements is violation of the principle of natural justice and Article 14 of the Constitution. They have referred to their reply to the charge memo in which they had demanded a 'confronting enquiry' for an effective opportunity to cross-examine the witnesses.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The impugned order of punishment is based entirely on the preliminary enquiry by the ASP ,Alleppey Sub Division. It is admitted that the ASP's enquiry is based on the statements of some witnesses recorded by him behind the back of the applicants. From the enquiry papers shown to us there is nothing to show that the statements of the witnesses recorded by the ASP behind the back of the applicants had been given to the applicants. It is a fundamental element of natural justice that when any evidence is relied upon for coming to a finding adverse to the charged officer it should be such as ~~had~~ been recorded in the presence of the charged officer who should also be given an opportunity to cross-examine such witnesses. Otherwise, such evidence remains an ex parte evidence which cannot be relied upon in any quasi judicial proceedings. It is true that the witnesses examined during the preliminary enquiry need not be examined in presence of the delinquent officer nor subjected to cross-examination but this may be so when such an enquiry is in the nature of a fact finding enquiry for formulating a charge. But where

such an enquiry is for the sole purpose of drawing a conclusion about the guilt or otherwise of the charged officer, the rules of natural justice have to be followed. In this case since the preliminary enquiry report was relied upon by the disciplinary authority in the impugned punishment order, violation of the rules of natural justice in depriving the applicants of the opportunity of seeing the statements of the witnesses recorded behind their back and of cross-examining them, is a fatal flaw in the entire disciplinary proceedings.

6. Further, in reply to the charge memo the applicants had asked for an enquiry to be held. Under Rule 16 (1)(b) of the CCS (CCA) Rules though it is upto the disciplinary authority to allow holding of an enquiry as contemplated in Rule 14, the disciplinary authority must exercise its discretion judicially where such an enquiry is requested for. The following extracts from the Department of Personnel's O.M. dated 28th October, 1985 (Govt. of India's instructions No.1 below Rule 16 of the CCS (CCA) Rules in 17th Edition of Swamy's Compilation) will be relevant :-

" In other cases, where a minor penalty is to be imposed, Rule 16 (1) ibid. leaves it to the discretion of disciplinary authority to decide whether an inquiry should be held or not. The implication of this rule is that on receipt of representation of Government servant concerned on the imputations of misconduct or misbehaviour communicated to him, the disciplinary authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not." (emphasis added)

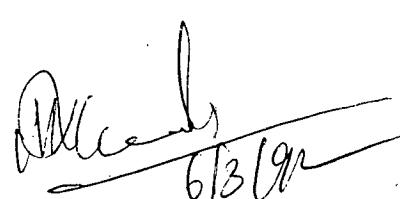
In the counter affidavit it has stated that "the disciplinary authority did not consider it necessary to hold an enquiry under Rule 14 especially when the misbehaviour of the applicants was not connected with the official duties but related to things happened outside". We feel that the ground taken is totally irrelevant. So long as the charge has been framed on the basis of the alleged misbehaviour of the applicants, holding an enquiry has nothing to do with whether the misbehaviour was in connection with the official duties or not. The circumstances of the

case fully warranted that an enquiry should have been held or in any case full opportunity should have been given to the applicants to rebut and demolish the ex parte statements given by some witnesses against them.

7. In Ram Babu Pushkar vs. Union of India, (1988)6 ATC 1004, it has been held that a preliminary inquiry is only a fact-finding inquiry and has no legal sanction to become basis of any punishment. It was further held that the statements made during preliminary enquiry cannot be used in the regular enquiry unless the witness presents himself before the inquiry officer, makes a deposition and is subjected to cross-examination. In the present case there has not only been absence of regular enquiry but also the ex parte statements of witnesses taken during preliminary enquiry have formed the basis of the punishment order without supplying the applicants copies of the statements recorded and without subjecting those witnesses to cross-examination. The principle of natural justice has been violated in one more important respect. The disciplinary authority relied upon the preliminary enquiry report of the ASP and came to his finding of guilt of the applicants without making a copy of that enquiry report available to the applicants before passing the order of punishment. In Union of India vs. Mohd. Ramzan Khan, Judgment Today (1990) 4 SC 456, the Supreme Court held that in a quasi-judicial matter if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected.

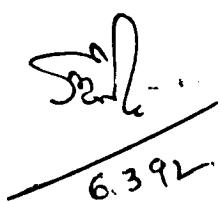
8. In the conspectus of facts and circumstances we allow both the applications, set aside the impugned orders at Annexures 7 and 9 in the first application and Annexures A-6 and A-7 in the second application and direct the respondents to restore the pay and allowances

of the applicants with retrospective effect and pay to them the arrears thereof as if the impugned orders had not been passed. Action on the above lines should be completed within a period of two months from the date of communication of this order. There will be no order as to costs.



6/3/92

(A.V.Haridasan)
Judicial Member



6.3.92

(S.P.Mukerji)
Vice Chairman

n.j.j