

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O. A. No. 382/89 199  
~~XXXXXX~~

DATE OF DECISION 25.6.90

T.B.Mustaffa Applicant (s)

Mr. O.V.Radhakrishnan Advocate for the Applicant (s)

Versus

Asstt. Supdt. of Post / Respondent (s)  
Offices, Idukki Division &  
5 others.

Ms. K.Subhagamani, ACGSC Advocate for the Respondent (s)

CORAM:

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? Yes
2. To be referred to the Reporter or not? Yes
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

(Shri S.P.Mukerji, Vice Chairman)

The applicant who has been working as an Extra Departmental Delivery Agent (EDDA), Vadattupara under the Superintendent of Post Offices, Idukki Division, in this application dated 18th June 1989 filed under section 19 of the Administrative Tribunals Act, has prayed that the impugned order dated 22.8.88 (Exbt. A4) appointing Assistant Superintendent of Post Offices as Disciplinary Authority, the order dated 30.9.88 at Exbt. A10 removing the applicant from service, the Enquiry Report dated 23.9.88 (Exbt. A11) and the

Appellate order dated 9.1.89 (Exbt. A13) rejecting his appeal, should be set aside and that the respondents be directed to re-instate him and treat him as continuing in service with all consequential benefits.

The brief facts of the case are as follows:

When

2. /the applicant was working as EDDA at Vadattupara he was put off duty on 10.7.86 and was served with a chargesheet dated 30.6.87 with the following 2 charges:

"Article of Charge-I

That the said Sri. T.B.Mustaffa, EDDA Vadattupara while on LWA from 11/2/86 to 10/4/86 gained unauthorised entry in the Vadattupara Post Office on 26.3.86 in the absence of the Branch Post Master and changed the date type of B.O. date-stamp from 25 to 24 and stamped book posts of Vadattupara Milk Producers Co-op. Society No.I-58 D and abetted his substitute to deliver them.

Sri. T.B.Mustaffa by his above act failed to maintain absolute integrity and devotion to duty violating Rule 17 of P&T ED Agents (Conduct & Service) Rules 1964.

"Article of Charge-II

That Sri. T.B.Mustaffa while working as EDDA Vadattupara failed to report for duty at Vadattupara P.O. to receive articles for delivery on 4.7.86 resulting in non delivery of mails on the day.

Sri. T.B.Mustaffa by his above act failed to maintain absolute integrity and devotion to duty violating Rule 17 of the P&T ED Agents (Conduct and Service) Rules 1964."

The applicant denied the charge in his written statement dated 13.7.87. Thereafter, enquiry proceedings started.

During the enquiry proceedings a corrigendum to the charge memo was issued on 23.11.87 changing the date of 26.3.87 to that of 26.3.86 in the first Article of

charge and the date 4.7.87 was corrected to 4.7.86 in the second Article of Charge. Thereafter, the Director of Vigilance (4th respondent) on 22.8.88 empowered the Assistant Superintendent of Post Offices to act as Disciplinary Authority vide Exbt. A4. According to the applicant, the Director has no such power, as under Rule 3A of the ED Agents (Conduct & Service) Rules 1964 only the Head of Circle is competent to issue such orders. The enquiry commenced on 30.6.87. The applicant's request for production of some defence witnesses and certain documents was not accepted. The Enquiry Officer submitted his report on 23.9.88 (Exbt. A11) in which he found the first charge to have been proved but the second charge as not having been proved conclusively. A copy of the Enquiry Report was not made available to the applicant by the Disciplinary Authority before he passed the impugned order removing him from service. In the order of removal the Disciplinary Authority agreed with the findings of the Enquiry Officer and on the basis of the fact that the first Article of the charge <sup>was</sup> ~~is~~ proved conclusively, found the applicant to ~~be~~ unfit to be retained in government service and removed him. The copy of the Enquiry Report was made available to the applicant only with the order of punishment. The applicant filed an appeal on 4.11.88 but the same was rejected without giving him a personal hearing.

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The contention of the applicant is that he was not served with a copy of the Enquiry Report before the Disciplinary Authority passed the order removing him from service. According to him, if he had received a copy of the Enquiry Report he could have pointed out the infirmities therein so as to dissuade the Disciplinary Authority from imposing the extreme penalty of removal from service. He has also advanced a number of other grounds pointing out the infirmities in the procedure adopted by the Enquiry Officer and the manner in which he has arrived at his findings. He has also challenged the gravity of the punishment saying that it is disproportionate to the offence alleged to have been committed by him. He has challenged the order of the Appellate Authority on the ground that it has not properly considered his appeal and has not satisfied itself whether the procedure laid down in the rules had been complied with, whether the findings are warranted by the evidence on record and whether the penalty imposed is justified. He has also challenged the appellate order on the ground that in accordance with the ruling of the Supreme Court in Ramachandra Iyer Vs. Union of India, (1986) 3 SCC 103, personal hearing is mandatory. The respondents have stated that the Disciplinary Authority was appointed not by the Director (Vigilance) but by the Postmaster General and this fact is indicated in the body of the impugned order at Exbt. A4.

The applicant did not challenge this order before or after the finalisation of the disciplinary proceedings. They have conceded that of the 10 witnesses proposed by the applicant, 3 were not allowed as the Enquiry Officer found that their evidence was not relevant to the charges framed. Likewise, the order book of the Post Office was not allowed <sup>to be produced</sup> as additional defence document <sup>as</sup> as the same had no relevance with the case. They have further stated that the rules do not provide for supplying a copy of the Enquiry Report in advance before the order of punishment is issued. The appellate order is a speaking order and the Appellate Authority had discussed the various reasons why the appeal was rejected. The respondents have stated that the charge established against the applicant was very grave and the punishment is not disproportionate. They have also argued that under the ED Agents (Conduct & Service) Rules, 1964, there is no provision for personal hearing before disposing of the application.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The learned counsel for the applicant during the course of the argument specifically emphasized the point that rules of natural justice have been violated by depriving the applicant of having a copy of the Enquiry Report before the Disciplinary Authority made up his mind about the guilt of the applicant. In this connection

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the ruling of the Full Bench of the Central Administrative Tribunal in Premnath K. Sharma Vs. Union of India 1988 (6) ATC 904, was referred to. It was, however, brought out during the arguments that the judgement of the Full Bench of the Tribunal has been stayed by the Hon' Supreme Court by its order dated 11.3.88 in C.A.939/88 in Union of India Vs. Premnath K.Sharma. The question is whether by the staying of the judgement of the Full Bench, the binding nature of that judgement is extinguished or not. In Roshan Jagdish Lal Duggal and others Vs. The Punjab State Electricity Board, Patiala and others, 1984 (2) SLR 731, the High Court of Punjab and Haryana indicated that even where the High Court's order had been stayed by the Supreme Court in appeal, the order of the High Court has still to be treated as binding precedent and the pendency of appeal and suspension of the judgement does not render that judgement non est. A similar view was expressed by the High Court of Delhi in Jagmohan Vs. The State, 1980 Cr.L.J. 742. It was observed by the Delhi High Court that "the judgement of the High Court is binding unless and until it is set aside by the Supreme Court and mere pendency of the appeal does not take away its binding force. The learned Magistrate should be cautious in future." The Hon'ble Supreme Court itself in a similar vein observed in Supreme Court Employees Welfare Association Vs. Union of India and others, 1990 Lab. I.C. 324 that where an SLP was dismissed without reason by the Supreme Court, there was no declaration of law. In the above circumstances we find that the

decision of the Larger Bench in Premnath K. Sharma's case is still binding on this Bench of the Tribunal. We are fortified in adhering to the ruling given by the Larger Bench of the Tribunal further, by the judgement of the Supreme Court in State of Maharashtra Vs. Baishankar Avalram Joshi and another, AIR 1969 SC 1302. In that case the Hon'ble Supreme Court upheld the decision of the High Court that the failure on the part of the competent authority to provide the delinquent officer with a copy of the report of the Enquiry Officer before the order of punishment was passed amounted to denial of reasonable opportunity contemplated in Article 311(2) of the Constitution. The Hon'ble Supreme Court observed as follows:

"It is true that the question whether reasonable opportunity has or has not been afforded to the Government servant must depend on the facts of each case, but it would be in very rare cases indeed in which it could be said that the Government servant is not prejudiced by the non-supply of the report of the Enquiry Officer."

The same question came up before the Hon'ble Supreme Court in Union of India Vs. E. Bashyan, ATR 1989(1) SC 50. In that case the Supreme Court observed that amendment of Article 311(2) of the Constitution dispensing with the notice regarding quantum of penalty proposed to be imposed, did not do away with the grant of reasonable opportunity compatible with principles of natural justice. It was observed further that before the disciplinary authority makes up its mind about guilt of the delinquent officer, failure to furnish the report of the Enquiry

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Officer to the delinquent <sup>officer</sup> deprives him of crucial and critical material to defend himself. Even though the Division Bench of the Hon'ble Supreme Court in that case referred the matter to the Larger Bench, they expressed themselves in no uncertain terms in support of the principle which was adumbrated by the Larger Bench of this Tribunal. The following extracts from the judgement of the Hon'ble Supreme Court in Bashyan's case will be pertinent:

"If the report is not made available to the delinquent, this crucial material which enters into the consideration of the Disciplinary Authority never comes to be known to the delinquent and he gets no opportunity whatsoever to have a say in regard to this critical material at any point of time till the Disciplinary Authority holds him guilty or condemns him. Such would be the consequence even if the Enquiry Officer has found him to be blameless and recommended his exoneration in case the Disciplinary Authority has disagreed with the Enquiry Report. There can be glaring errors and omissions in the report. Or it may have been based on no evidence or rendered in disregard of or by overlooking evidence. Even so, the delinquent will have no opportunity to point out to the Disciplinary Authority about such errors and omissions and disabuse the mind of the Disciplinary Authority before the axe falls on him and he is punished. It appears to us to be a startling proposition to advance that the only authority which really and actually holds him guilty need not afford any opportunity to the person against whom such finding of guilt is recorded and the material on which he acts.

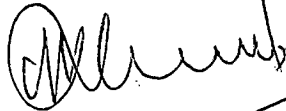
(emphasis added)

4. In the light of what has been stated above we do not wish to go into the merits of the case but we hold that de novo proceedings from the stage of serving of the charge sheet is <sup>warranted</sup> ~~initiated~~. It will also take care of the other <sup>in</sup> ~~in~~formities during the enquiry proceedings

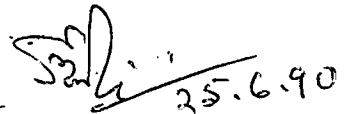
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pointed out by the applicant. In the facts and circumstances, we allow this application to the extent of setting aside the impugned orders at Exbt.A4, A10, A13 and the Enquiry Report at Exbt. A11 and direct that the applicant should be deemed to be put off duty from the date of his removal and the disciplinary proceedings be continued from the stage of service of the charge sheet. We further direct that the disciplinary proceedings should be completed in accordance with law within a period of six months from the date of communication of this order. There will be no order as to costs.



(A.V. Haridasan)  
Judicial Member



(S.P. Mukerji)  
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

R.A No.86/90 in

O. A. No. 382/89  
~~XXXXX~~No.

~~199~~

DATE OF DECISION 15.7.91

T.B.Musthafa Applicant (s)

M/s. O.V.Radhakrishnan, K.Radhamani Am Advocate for the Applicant (s)

Versus

Assistant Superintendent of Post Offices (O/S) Respondent (s)  
and Adhoc Disciplinary Authority, office of the  
Superintendent of Post Offices, Idukki Division, Thodupuzha and 5 others

Mr.A.A.Abul Hassan, ACCSC Advocate for the Respondent (s)

CORAM:

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? *M*
3. Whether their Lordships wish to see the fair copy of the Judgement? *W*
4. To be circulated to all Benches of the Tribunal? *W*

JUDGEMENT

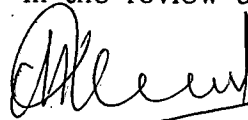
(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In our judgment dated 25.6.90 we set aside inter alia the impugned order of punishment removing the applicant therein, who was an Extra Departmental Delivery Agent from service and directed that he should be deemed to be put off duty from the date of his removal and the disciplinary proceedings continued from the stage of service of the charge sheet. The applicant has come up in this review application for a review of the order urging that "when the order of removal is set aside the order of put off duty will not get revived". He has also argued that there is no provision in the ED Agents (Conduct & Service Rules, 1964 corresponding to sub rules (3) and (4) of Rule 10 of C.C.S(C.C.A) Rules providing for retrospective revival and continuance of the suspension. He has also referred to the ruling of the Supreme Court in H.L.Mehra vs. Union of India, AIR 1974 SC 1281. He has stated that in the absence of a statutory

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provision or rule, the order of put off <sup>duty</sup> ~~suspension~~ cannot continue. He has stated that the inherent power of the Tribunal cannot override the general law of the land.

2. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. There is nothing in the review application which indicates that there has been any error apparent on the face of record or any new material which would warrant review of our judgment. The applicant seems to be under misapprehension that the powers of this Tribunal are coterminous with those of the administrative authorities. It is correct that this Tribunal cannot violate any statutory rules, but there is nothing in the rules applicable to Extra Departmental Agents which states that the Extra Departmental Agents cannot be put off duty by the Courts even where the order of removal has been set aside and the respondents directed to continue with the disciplinary proceedings. On the other hand, the concept of deemed suspension is available in Rule 10 of the C.C.S(C.C.A)Rules for enabling the administrative authorities to consider the employee put under suspension where the order of removal is set aside and disciplinary proceedings are revived. The Supreme Court ruling quoted by the applicant is with respect to the direction of the President that a disciplinary enquiry pending against the appellant shall be continued until its finalisation and the appellant shall continue under suspension under sub-rule 5 of Rule 10 of the C.C.S(C.C.A)Rules. As stated earlier the amplitude of the orders of this Tribunal is much wider than that of administrative authorities and since the rules applicable to the Extra Departmental Agents ~~does~~ <sup>do</sup> not contain any prohibition against the Courts directing the applicant to be deemed to be put off duty from the date of removal, we feel that the order of the Tribunal cannot be faulted. There has been no violation of any provision of statutory rules. Even accepting that with the setting aside of the order of removal the order of put off duty is not automatically revived, the Tribunal can by specific direction revive that order. In the facts and circumstances we do not see any merit in the review application and dismiss the same.

  
(A.V. Haridasan)  
Judicial Member

15/7/91

15.7.91

  
(S.P. Mukerji)  
Vice Chairman