

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 404 1990
~~XXXXXX~~

DATE OF DECISION 9.4.1991

C.H.Narayana Bhat Applicant (s)

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

Versus

Supdt. of Post Offices, Respondent (s)
Kasargod Divn., Kasargod & 4 others

Mr.T.P.M.Ibrahim Khan, ACGSC Advocate for the Respondent (s)
(for respondents 1, 3, 4 & 5)

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 while working as Extra Departmental Branch Postmaster, Dharmathadka was proceeded against departmentally under Rule 8 of the Extra Departmental Agents (Conduct and Service) Rules, 1964 for certain alleged misconducts. In the enquiry the Inquiry Authority found him guilty for the charges. The Disciplinary Authority agreeing with the findings of the Inquiry Authority held the charges proved and by its order dated 31.10.1988 imposed on him a punishment of removal

....2/-

[Handwritten signature]

from service with immediate effect. Before deciding that the applicant was guilty basing on the enquiry report, the Disciplinary Authority, the first respondent had not given the applicant a copy of the enquiry report and an opportunity to make a representation. Aggrieved by the punishment order against him, the applicant preferred an appeal to the third respondent. Several grounds including that the enquiry was held in violation of principles of natural justice were raised in the appeal memorandum. This appeal was rejected by the Annexure-A7 order. The applicant preferred a review which was also rejected by the 4th respondent by Annexure-A9 order dated 12th Dec., 1989. Aggrieved by the Annexure-A4, A7 and A9 orders, and the report of the enquiry at Annexure-A5 the applicant has filed this application praying that the impugned orders may be quashed and the respondents be directed to treat the applicant as continuing in service and to give him full service benefits for the period during which he was put off duty between 13.11.86 to 31.10.1988 and for the period he was illegally kept out of service from 31.10.1988 till he is reinstated in the service. It has been averred in the application that the enquiry was held in violation of the principles of natural justice, and that since a copy of the enquiry was not supplied to him by the ^{Disciplinary} ~~the~~

Authority took the decision that the applicant was guilty, the impugned orders are vitiated.

2. In the reply statement it has been contended that the enquiry has been held in full conformity with the requirements of natural justice, that a copy of the enquiry report was not served on the applicant before the D.A. decided, that the applicant was guilty because the rule did not provide for such a ^{procedure} *ly*, and that there is no merit in the application.


3. We have heard the counsel on either side and have also carefully perused the documents produced.

4. The learned counsel for the applicant submitted that in the light of the ruling of the Larger Bench of the Tribunal in Premnath K Sharma Vs. Union of India, 1988(6) ATC 904 and the recent ruling of the Supreme Court in Union of India & Others Vs. Mohd. Ramzan Khan, JT 1990(4) SC 456, this application can be disposed of giving liberty to the respondents to recommence the proceedings in accordance with law from the stage of supply of enquiry report. The learned counsel for the respondents agreed that a copy of the enquiry report was not supplied to the applicant before the Disciplinary Authority took a decision that the applicant was guilty of the charges, and that the matter may be disposed of in accordance with law. Since it is admitted that a copy of the enquiry report was not supplied to the applicant before the Disciplinary

Authority decided that the applicant was guilty, as the applicant did not get the chance to submit a representation before the acceptance of the enquiry report, we are of the view that the requirement of giving reasonable opportunity has not been satisfied in this case, agreeing with the dictum laid down by the Larger Bench in Premnath K Sharma's case Vs. Union of India, and the Supreme Court in Mohd. Ramzan Khan's case. Therefore, we are of the view that the application can be disposed of on this legal question without entering into the other merits of the case.

5. In the result, finding that by not furnishing a copy of the enquiry report and denying an opportunity to the applicant to make his representation against the acceptance of the report before the Disciplinary Authority decided that the applicant was guilty, reasonable opportunity has been denied to the applicant to make his defence and that for that reason the impugned order at Annexure-A4 is vitiated, we quash the same. We also quash the appellate and revisional orders at Annexure-A7 and A9 because they are also bad since the legal infirmity attached to Annexure-A4 has not been rectified in these orders. We direct the respondents to reinstate the applicant forthwith and to pay him backwages from the date of removal from service till the date of reinstatement. The respondents will be at liberty to recommence the disciplinary proceedings and to complete the same from the stage of

furnishing of the Enquiry Officer's report to the applicant. As a copy of the report has already been supplied to the applicant alongwith the punishment order, the respondents shall if they decide to recommence the disciplinary proceedings issue the notice to the applicant within 15 days from the date of communication of this order, directing him to make his representation within a period of 15 days and dispose of the disciplinary proceedings considering the representation, if any, made by the applicant, within a period of two months from the date of receipt of the representation or the dates fixed for submission of such representation. As the disciplinary proceedings upto the stage of issuing the impugned order, Annexure-A4 has not been held to be vitiated no order regarding the payment of backwages for the period of put of duty is made. That will abide by the final decision in the disciplinary proceedings. There will be no order as to costs.


(A.V. HARIIDASAN)
JUDICIAL MEMBER


9.4.91
(S.P. MUKERJI)
VICE CHAIRMAN

9.4.1991