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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 198/89
T.A. No.

198

DATE OF DECISION 1-5-1991

Shri N.T.Kharatmal Petitioner

Shri S.M.Shetty Advocate for the Petitioner(s)

Versus

The Director of Postal Services Respondent

Shri V.M.Bendre. Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. U.C.Srivastava, Vice-Chairman,

The Hon'ble Mr. M.Y.Priolkar, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Ye*
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. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

W
(M.Y.PRIOLKAR)
MEMBER(A).

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

(6)

Original Application No.198/89.

Shri N.T.Kharatmal.

... Applicant.

V/s.

The Director of Postal Services,
Bombay Region,
G.P.O. Main Building,
BOMBAY.

... Respondent.

Coram: Hon'ble Vice-Chairman, Shri U.C.Srivastava,
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearances:

Applicant by Mr.S.M.Shetty.
Respondent by Mr.V.M.Bendre.

JUDGMENT:-

(Per Shri M.Y.Priolkar, Member(A)) Dated: 1-5-1991

The applicant in this case, while working as Sorting Assistant in the Posts & Telegraphs Department, was proceeded against on 7.3.1980 under Rule 14 of the CCS(CCA) Rules and punished on 19.4.1983 with reduction to the minimum of the time scale for a period of two years, for submitting a false Leave Travel Concession claim on 12.1.1978 for Rs.1,656. His appeal was rejected on 29.8.1986. He approached this Tribunal against that order of the appellate authority and the Tribunal by its judgment dated 13.11.1987 ordered the appellate authority to decide the appeal afresh after giving the applicant the liberty of being heard. Accordingly, after hearing the applicant the appellate authority passed his order dated 1.3.1988 again rejecting the appeal. It is this order of the appellate authority which has been challenged in this application.

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2. The appellate order is assailed on the grounds, that the appellate authority failed to consider the delay of about 21 months in completing the enquiry, the applicant was not advised of his right to engage an advocate to defend him in the enquiry, the appellate authority's conclusions are perverse and not warranted by evidence on record and suffer from non-application of mind. It is contended that the appellate authority should have held that the L.T.C. voucher without the signature of the applicant has no legal validity and that the money receipt produced by the applicant was genuine and, on that basis, allowed the appeal and set aside the punishment.

3. After hearing the learned counsel on both sides and perusing the record, we do not find any merit in any of the contentions raised on behalf of the applicant. In the course of enquiry proceedings, it is revealed that the applicant submitted L.T.C. bill claiming Rs.1,656.00 for journey from Dadar to Trivandrum and back along with a money receipt No.D-470871 dated 25.11.1978 and prescribed certificates. These certificates were signed by the applicant but he did not sign the L.T.C. bill. The money receipt (D-470871) which was attached to the bill was issued for the purchase of BPTS for journeys by first class from Dadar to Trivandrum and back in favour of three adults. It was brought out in the enquiry that neither the ~~members~~ of the BPTS, nor those of the ~~money~~ receipt or dates on which these were issued to the persons concerned as per the Railway records tally with what the official had stated. It is now well established

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that unlike criminal proceedings where proof beyond reasonable doubt is required, what is considered adequate in departmental proceedings is preponderance of probability. We, therefore, reject the contention of the applicant that the findings of the appellate authority are perverse or not based on any evidence. As the Supreme Court has held in the case of Parma Nanda v. Union of India 1989(1) SCALE, this Tribunal cannot interfere with penalty if the conclusion of the enquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.

4. We do not also see how the delay of about 21 months in completing the enquiry has resulted in the denial of the principles of natural justice as stated by the applicant. The respondents have stated that there were sixteen witnesses to be examined. Out of these, twelve were from other Departments including two from Trivandrum and one from Madras. In these circumstances, the enquiry does not appear to have been abnormally delayed. In any case, the delay in our view is not such as to vitiate the proceedings.

5. Regarding the right to avail of the services of a legal practitioner, the respondents have stated that as per the provisions of the rule earlier in force, the delinquent official was allowed to engage a legal practitioner to assist him provided the Presenting Officer appointed by the Disciplinary Authority was also a legal practitioner but the said provisions are now omitted

in Rule 14(8)(a) (Rule 14 of the Government of India decision No.19) of the CCS(CCA) Rules. Apart from the above, there is also no record to show that the applicant had ever requested the Disciplinary Authority to allow him to engage a legal practitioner. We have, therefore, to agree with the respondents that since there was no provision, the Enquiry Officer did not advise the applicant to engage any legal practitioner and as such, there is no violation of principles of natural justice as alleged by the applicant.

5. On the basis of the foregoing discussion, we do not see any substance in any of the grounds advanced by the applicant to assail the appellate authority's order dated 1.3.1988. This application is, accordingly, rejected with no order as to costs.

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(M.Y. PRIOLKAR)
MEMBER(A)

U.C. SRIVASTAVA
(U.C. SRIVASTAVA)
VICE-CHAIRMAN.