BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE 24TH OCTOBER, 1986

Present: Hon'ble Mr Justice K.S. Puttaswamy Vice Chairman

Hon'ble Mr L.H.A. Rego Member(AM)

Application Nos. 196/86 and 1646/86

S. Gundu Acharya
Extra Department Delivery Agent,
Sahbarakatte, Udupi Taluk ...Applicant
(Shri K.J.Shetty ... Advocate)
Vs

1. Union of India by its Secretary, Ministry of Transport and Communication, New Delhi. (Respondent 1 in A.No. 196/86 and 1646/86)

2. Superintendent of Post Office, Udupi Division, Udupi. (Respondent 2 in A.No. 196/86)

3. Inspector of Post Offices, North Sub-Division, Udupi (Respondent 3 in A.No. 196/86)

4. The Director of Postal Services, Bangalore. (Respondent 2 in A.No. 1646/86)

5. Superintendent of Post Office, Udupi Division, Udupi (Respondent 3 in A.No. 1646/86)

6. Asst. Superintendent of Post Offices, Udupi Division, Udupi. (Respondent 4 in A.No. 1646/86)

(Shri M.Vasudeva Rao,.. Advocate)

The application has come up for hearing before Court today, Vice-Chairman made the following:

ORDER

These are transferred applications received from the High Court of Karnataka under Section 29 of the Administrative Tribunals Act of 1985 (the Act).

2. As the questions that arise for determination in these cases are inter-connected, we propose to dispose of them by a common order.

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3. The applicant who is common in both the applications, joined service on 21.3.73 as Extra Departmental Delivery Agent (EDDA) in the Sahbarakatte Post Office of Udipi Division of the Postal department of Government of India.

4. On or about 28.9.1978, one Smt. Lakshmi, a resident of that village lodged a written complaint before the Inspector of Post Offices, Udipi North Division(IPO) alleging certain misconducts by the applicant. On that complaint, and further investigation thereto, the IPO by his order dated 12.10.78 (Ex 'B') in Application No. 196/86) kept off the applicant from duty under Rule 9 of the Posts and Telegraphs Extra Departmental Agents (Conduct & Service) Rules, 1964 (Rules). Aggrieved by the same, the applicant filed an appeal before the Superintendent of Post Offices, Udipi Division(Supt) who by his order dated 30.11.78 (Annexure C) dismissed the same. In Application No. 196/86, the applicant has challenged the said orders of the Supt and IPO.

5. Sometime after making his order on 12.10.78, the IPO commenced disciplinary proceedings under the Rules against the applicant and served on him Articles of charge and statement of imputations on 30.9.80, which were denied by him. In that view, the IPO who is also the disciplinary authority (DA) under the Rules held a regular enquiry and found the applicant guilty

of all the 3 charges levelled against him. On complying with the requirements of the Rules, the Disciplinary authority by his order no. Memo.No. ASP-Disc/3, dt. 29.3.82 (Ex 'G' in Application No. 1646/86) inflicted the penalty of removal from service against the applicant. Aggrieved by the same, the applicant filed an appeal before the Superintendent who by his order dt. 3.8.82 (Ex'J' in Application No. 1646/86) dismissed the same. In Application No. 1646/86, the applicant has challenged the orders of the Superintendent and the DA (Annexures 'J' and 'G').

6. In justification of the orders made, the respondents in Application No. 1646/86, have filed their reply.

7. We will first deal with Application No. 1646/86.

8. Shri K.J.Shetty, learned counsel for the applicant, contends that the appellate order made by the Superintendent that does not conform with the requirements of Rule 15 of the Rules, was not a speaking order and is illegal. In support of his contention, Shri Shetty strongly relies on the ruling of the Supreme Court in Ramachander Vs. Union of India 1986(2) SLR page 608.

9. Shri M.Vasudeva Rao, learned Additional Standing Counsel, appearing for the respondents,

sought to support the order of the Superintendent.

10. In support of his appeal, the applicant had urged a large number of grounds both on facts and law. But the Supt. after briefly noticing the facts disposed of the same by 2 paragraphs which read thus:

> "5. Distinct and specific charges were framed against the appellant from the proceedings of the enquiry I find that the appellant was given fair and reasonable opportunity to defend himself and the IO conducted himself objectively and dispassionately during the procedural stages of enquiry and dealing with the evidence while drawing up the enquiry report. The findings of IO on each of the three charges have rested on unassailable and conclusive documentary and oral evidence and it is also seen that the appellant did nothing to shake the evidence of the prosecution and to establish his innocence. In the face of such irrefutable facts the contention of the appellant that the enquiry was not conducted according to the provision of evidence act and criminal procedure code cannot hold water. The charges levelled against the appellant are not from penal code and the enquiry is a departmental one where the considerations are preponderance of probability and not compliance of legal technicalities.
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> 6. From the foregoing analysis of the facts of the case it is clear that the three charges faced by the appellant were established conclusively as held by the disciplinary authority. Considering the quantum of punishment it may be said that the charges proved against the appellant are of serious character which certainly merit deterrent punishment. It is really very deplorable that an official entrusted with the duty of delivery of letters to the members of public should have indulged in such nefarious activity like writing obscene remarks in letters passing through the post posted with full faith on the P&T Dept by the members of the public. The credibility of the department is dependent on the behaviour of the public servant."

In the concluding paragraph, the Supt. only dismissed the appeal.

11. The entire discussion and consideration of the grounds urged by the applicant in his appeal which runs to as many as 11 pages, are contained in the two small paras set out by us. Even here the Supt had disposed of the appeal on very general grounds and observations only. We are of the view that the Supt had not really riveted his attention to the material contentions urged by the applicant in his appeal both on facts and law and the same is not really a speaking order at all.

12. Even otherwise, the Supt had not complied with the requirements of Rule 15 of the Rules which is in pari-materia with Rule 22 of The Railway Servants (Discipline and Appeal) Rules, 1968 that came up for consideration before the Supreme Court in Ramachander's case. On this ground the order of the Supt is liable to be quashed.

13. We find that the order made by the Supt suffers from the very infirmities found by the Supreme Court in Ramachander's case. In this view, we have no other alternative but to quash the order of the Supt and direct him to restore the appeal of the applicant to its original file and redetermine the same.

14. As observed by the Supreme Court in Ramachander's case, it is necessary for the Supt to afford an

opportunity of oral hearing to the applicant before deciding the appeal before him.

15. In Application no. 196/86, the applicant had sought for a direction to take him back to duty, which relief, on the terms of the order made by the IPO on 29-3-1982 cannot at all be granted and the same has necessarily to await the disposal of the appeal by the Supt.

16. In the light of our above discussion, we make the following orders and directions:

Application no. 1646/86

(1) We quash order no. Memo.No.APP/1/SP/82-83 dated 3rd August, 1982 (Annexure 'J') of Supdt of Post Offices.

(2) We direct the Superintendent of Post Offices to restore the appeal filed by the applicant to its original file, afford him an opportunity of oral hearing, and then dispose of the same in accordance with law and the observations made in this order with all such expedition as is possible in the circumstances of the case and in any event within a period of 4 months from the date of receipt of the order of this tribunal.

(3) We direct the Superintendent to modulate the question of re-instatement of the

applicant in the light of the order to be made by him on the appeal restored to file.

17. Applications are disposed of in the above terms. But in the circumstances of the cases, we direct the parties to bear their own costs.

18. Let this order be communicated to the respondents within 15 days from today.

Sd/- Sd/-

VICE CHAIRMAN MEMBER(AM)(R)

Central Administrative Tribunal Additional Bench Bangalore

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14/11/86

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE