

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 038.

Dated: **3 APR 1995**

APPLICATION NO. **1590 of 1994.**

APPLICANTS: **Mr.G.L.Naresimhan,**

V/S.

RESPONDENTS: **The Director of Postal Services,
S.K.Region,Bangalore and two others.,**

To

1. **Sri.M.Raghavendra Achar, Advocates, No.1074 & 1075,
Fourth Cross, Second Main, Sreenivasanagar,
Bangalore-560 0050.**
2. **Sri.M.Vasudeva Rao, Additional Central Government
Standing Counsel, High Court Bldg, Bangalore-1.**

Subject:- Forwarding copies of the Orders passed by the
Central Administrative Tribunal, Bangalore-38.

---xxx---

Please find enclosed herewith a copy of the Order/
Stay Order/Interim Order, passed by this Tribunal in the above
mentioned application(s) on 21-03-1995.

Issued on
3/4/95

Deputy Registrar
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

ORIGINAL APPLICATION NO. 1590/ 1994

TUESDAY, THE 21ST DAY OF MARCH, 1995

SHRI V. RAMAKRISHNAN ... MEMBER (A)
SHRI A.N. VUJJANARADHYA ... MEMBER (J)

Shri G.L. Narasimhan,
S/o Shri D.V. Gopal Iyengar,
Major, No. 49, 2nd Cross,
Gandhinagar,
Mandya-1. ... Applicant

(By Advocate Shri M.R. Achar)

vs.

1. The Director of Postal Services/ Post Master General, S.K. Region, Bangalore.
2. The Post Master General in Karnataka, Karnataka Circle, Bangalore.
3. The Member (P), Postal Services Board, Union of India, Ministry of Communications, Dak Bhavan, Sansad Marg, New Delhi.

... Respondents

(By Addl. Central Govt. Standing Counsel,
Shri M.V. Rao)

ORDER

Shri V. Ramakrishnan, Member (A)

The applicant, Shri G.L. Narasimhan, who is an employee of the postal department is aggrieved by the order of the department imposing on him the penalty of compulsory retirement from service.

2. The facts of the case as seen from the OA as also the relevant files of the department made available to us are as follows:

....2/-



The applicant was served with a charge-sheet by the Superintendent of Post Offices, Mandya Division on 2.3.90 where he was charged with certain irregularities, including shortage of cash etc. In response to this memo. the applicant sent a reply on 14.3.90 where he had admitted the charges. After getting this reply, the Superintendent of Post Offices, Mandya Division by memo. dated 5.4.90 referred to the admission by the applicant all the charges levelled against him and stating that the Superintendent of Post Offices provisionally came to the conclusion to impose penalty No. (vi) under Rule 11 of CCS (CCA) Rules and the applicant was given an opportunity to make any representation. To the show cause notice, the applicant replied on 16.4.90 requesting for a sympathetic consideration of the case and to reduce the quantum of punishment. The Superintendent of Post Offices subsequently on 24.4.90 issued a letter dropping the show cause notice dated 5.4.90. Some time later, the Ministry of Communications, Deptt. of Posts issued an order appointing the Director of Postal Services, S.K. Region as the adhoc disciplinary authority for the reasons that even though the Superintendent of Post Offices, Mandya is the appointing authority in respect of officials holding the post held by the applicant, Shri Narasimhan himself was initially appointed by the Director of Postal Services, S.K. Region. This order is dated 10.1.92 which obviously is a typographical error as the same was forwarded by the PMG, S.K. Region on 24.1.91. We are informed that the date of this order should read as 10.1.91 instead of as 10.1.92. Even though the applicant had admitted all the charges, but nevertheless an enquiry officer was appointed who had submitted his report holding the charges as proved. The adhoc disciplinary authority noticed these points and

held that on a careful study, she agreed with the findings of the enquiry officer. The adhoc DA sent a memo. dated 20.5.91 enclosing a copy of the report of the enquiry officer to the applicant and giving Shri Narasimhan an opportunity to make any representation. The applicant submitted his representation dated 5.6.91 and after considering the same the adhoc DA issued an order dated 28.6.91 (Annexure A-1) compulsorily retiring the applicant from service. The applicant filed an appeal to the Post Master General, S.K. Region which was rejected by the appellate authority by his order dated 20.11.91 (Annexure A-3). The applicant's subsequent petition to the revising authority was also rejected by the order dated 30.5.94 as at Annexure A-4. The applicant has filed the present OA against these orders.

3. We have heard Shri M.R. Achar for the applicant and Shri M.V. Rao for the department and gone through the relevant files.

4. Shri Achar submits that the applicant was given an assurance ^{view} by the concerned officer that a lenient will be taken and therefore he had admitted to the charges and he did not expect that this would result in compulsory retirement from service. The learned counsel also tells us that the appellate authority had referred to the conduct of the applicant while dealing with the appeal. He says that according to the ruling of the Supreme Court in State of Karnataka vs. Manche Gowda - AIR 1964 SC 506 if any reference is made with regard to the past conduct, an opportunity should be given to the delinquent official to explain the same and failure to do so would violate article 311 (2) of the Constitution. Shri Achar further submits that once the show cause notice indicating the mind of the disciplinary authority regarding the quantum of penalty was dropped by the Superintendent of Post Offices

by his memo. dated 24.4.90, the enquiry proceedings should have been deemed to have been dropped and it was illegal on the part of the department to have proceeded with the same. The learned counsel also refers to the circumstances that the department had imposed the penalty of withdrawing of one increment to one Shri Raghavendra who according to the applicant had committed a fraud to the extent of Rs. 10,000/- in the same office. The action of the department in compulsorily retiring the applicant, according to Shri Achar is discriminatory. Besides, the learned counsel submits that the quantum of punishment is grossly disproportionate to the alleged offence and he refers in this context to the decision of the Supreme Court in Bhagatram vs. State of Himachal Pradesh - AIR 1983 SC 454. For these reasons, Shri Achar contends that the orders of the disciplinary authority, appellate authority and revising authority are bad in law and have to be quashed.

5. Shri M.V. Rao, learned standing counsel brings out that the applicant had clearly admitted to the charges and the department had taken action entirely in conformity with the law and the rules. He also submits that the quantum of punishment is a matter which has to be left to the department itself. He argues that there is no merit in this application and it should be dismissed.

6. We have carefully considered the submissions of both sides. As regards the contention that the applicant admitted to the charges on an assurance that he would be leniently dealt with, we do not see how any such assurance, if at all given by the Superintendent of Post Offices, Mandya Division, would bind the various authorities of the postal department. From the concerned file, we notice that while the charge-sheet dated 2.3.90 was served on him, the applicant had sent a reply dated 14.3.90 where inter alia, he states as follows:

"I regret very much for my misdeeds. I do not want to be away from the track of truth by telling a story to conceal my misdeeds. I know well that I have not maintained a good record of service. I fully regret for the same. Passage of time and hard hits in my life has taught me a moral lesson. Therefore I plainly admit all the charges (i.e. 1 to 5) enumerated in your memo and pray for mercy."

The Enquiry Officer in his report dated 11.1.91 clearly states that the charged official admitted all the 5 articles of charge levelled against him without any reservation and pleaded guilty. This was done during the preliminary hearing held on 9.1.91. A copy of the enquiry report was made available to him and he was given an opportunity to submit a representation by the adhoc DA by order dated 20.5.91. To this, the applicant sent a reply where also he had clearly admitted ~~to~~ the charges. As such, we cannot accept the contention that the admission of the applicant was brought about through any inducements.

We do not agree with the submission that dropping of show cause notice issued by the Superintendent of Post Offices, Mandyā Division amounts to dropping the proceedings. It has clearly been stated in the letter dated 24.4.90 that only the show cause notice dated 5.4.90 have been dropped. We notice from the file that this was done as the Superintendent of Post Offices later on realised that issue of such show cause notice ^{had} ~~has~~ been done by him was contrary to the relevant instructions. It was not his intention to drop the proceedings.

We also do not find any force in the argument that the authorities had taken note of his past conduct while imposing the penalty and this should not have been done without giving him an opportunity to explain his conduct. The disciplinary authority in her order dated 28.6.91 as at Annexure A-1 does not refer to any past conduct of the

tenito
monduz 6/-

official. The appellate authority has not doubt referred to his past conduct but that was in the context of the applicant's plea for giving him a sympathetic consideration. The appellate authority had held that the plea for sympathetic consideration cannot be entertained as this was not an isolated instance which would warrant giving the official a second chance. As has been brought out by the revising authority, the appellate authority seems to have gone into this question only to see whether any sympathy would be justified and not with a view to coming to the conclusion as to whether the applicant was guilty of charges or not.

The applicant's contention that he has been discriminated against as another official who was charged with fraud was lightly let off is also without any substance. The other official one Shri M.G. Raghavendra was not involved in the same transaction as the applicant and we are not aware of the circumstances pertaining to his case. When the circumstances are not the same, the department is at liberty to take different views in two separate cases. We also do not agree with the contention of Shri Achar that we should interfere with the quantum of punishment which according to him is grossly disproportionate. The charges against the applicant include shortage of office cash to the extent of Rs.4,873.50 among others. The reference to Bhagatram's case does not help the applicant as the facts in that case are different. In any case, the position is well settled after the decision of the Supreme Court in Parmanand's case.

In the light of the position explained above, we see no merit in this application and accordingly dismiss the same. No costs.

TRUE COPY

103/495

Sd/-

Sd/-

(V. RAMAKRISHNAN)
MEMBER (A)

Central Administrative Tribunal

Bangalore Bench

Bangalore

(A.N. VUJJANARADHYA)

MEMBER (J)

27/7/77

1CV

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

R.A. No.53/95

OA 1590/94

FRIDAY THIS THE TWENTY FIFTH DAY OF AUGUST 1995

Shri P.K. Shyamsundar ... Vice-Chairman

Shri V. Ramakrishnan ... Member (A)

G.L. Narasimhan,
S/o Sri D.V. Gopala Iyengar,
Major, No.43, 2nd Cross,
Gandhinagar, Mandya.
... Applicant

(By Advocate Shri M.R. Achar)

v-

1. The Director of Postal Services/Post Master General, S.K. Region, Bangalore.
2. The Postmaster General in Karnataka, Karnataka Circle, Bangalore.
3. The Member (P), Postal Services Board, Union of India, Ministry of Communication, Dak Bhavan, Sansad Marg, New Delhi.
... Respondents

O R D E R

Shri Justice P.K. Shyamsundar, Vice-Chairman:

1. The arguments put forward by Shri Achar is that there must be parity in the matter of punishment of people and says that in a similar case where an official had admitted his guilt he was dealt with somewhat leniently, but in this case the applicant has been treated very harshly despite the fact that the applicant had pleaded guilty to the charges. The position may be as maintained by Shri Achar but the theory of precedent is not attracted herein. Merely because the D.A. took a lenient view on a particular set of circumstances he

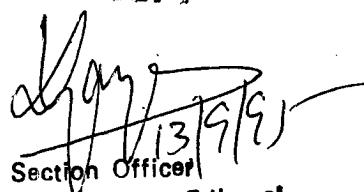
is not bound to repeat the same in another case albeit being similar. Punishment is a matter left to the discretion of the DA and this court does not interfere regards quantum of punishment imposed. That position is well accepted as pointed out by the Supreme Court in the case of UNION OF INDIA V. PARMANANDA (AIR 1989 SC 1185). In the result this RA fails and is dismissed.

MEMBER (A)

VICE-CHAIRMAN

TRUE COPY

bsv


13/9/91
Section Officer

Central Administrative Tribunal
Bangalore Bench
Bangalore