IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 670/93

Date of Decision: 16/2/99

Smt.B.S.Adhav. .. Applicant

Shri S.P.Kulkarni .. Advocate for Applicant

-versus-

Union of India & Ors. .. Respondent(s)

Shri S.S.Karkera on behalf of Shri P.M.Pradhan. .. Advocate for Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

The Hon'ble Shri D.S.Baweja, Member(A).

(1) To be referred to the Reporter or not ? NO

(2) Whether it needs to be circulated to other Benches of the Tribunal ? NO

(R.G.Vaidyanatha)
Vice-Chairman.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.670/93

Pronounced THIS, THE 16th DAY OF FEBRUARY 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

Smt. B.S.Adhav,
C/o. K.D.Kulkarni,
Pendsenagar Road 3,
Nandadeep-16,
Dombivali East,
Maharashtra. ... Applicant.
(By Advocate Shri S.P.Kulkarni)

V/s.

1. Union of India through
Director Postal Service,
Panaji Office of the
Post Master General,
Goa Regionk,
Panaji - 403 001.
2. The Senior Superintendent
of Post Offices Kolhapur Divn.
Kolhapur - 416 003.
3. The Post Master,
Kolhapur Head Post Office,
Kolhapur - 416 003. ... Respondents.
(By Advocate Shri S.S.Karkera for
Shri P.M.Pradhan)

: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed their reply. We have heard the learned counsels appearing on both sides.

2. The applicant was appointed as a Sweeper, which is a Group 'D' post in the Postal Department. She was attached to the Head Post Office at Kolhapur.

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Due to certain allegations of mis-conduct, a charge sheet dt. 27.11.1989 was issued to her. An enquiry was held on 24.7.1990. The Enquiry Officer submitted a report dt. 25.7.1990 holding that the charge is proved due to the admission of guilt by the applicant. Then the Disciplinary Authority furnished a copy of the Enquiry Report to the applicant and asked her comments. In the reply the applicant denied having made admission of guilt before the Enquiry Officer and she further pleaded that she could not submit a written statement on the charge sheet since it was in English. The Disciplinary Authority considered the representation of the applicant and the report of the Enquiry Officer and by a detailed order accepted the report of the enquiry officer and then by an order dt. 27.8.1990 imposed a penalty of dismissal from service. The applicant preferred an appeal before the Appellate Authority taking some grounds. However, the Appellate Authority by an order dt. 31.12.1990 rejected the grounds raised by the applicant in her appeal petition and confirmed the order of the Disciplinary Authority, but however, converted the penalty from "dismissal from service" to one of "removal from service".

Being aggrieved by the orders of the respective authorities, the applicant has approached this Tribunal taking number of grounds. One of the grounds is that the charge sheet was in English and the applicant being illiterate she cannot understand English and therefore, she could not file written statement. She has also denied the allegation that she admitted guilt before the Enquiry Officer. It is stated that without explaining the charges and interpreting them in the language known to her, her signature has been taken in some papers. It is also alleged that the Appellate Authority

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has not given a personal hearing to the applicant. It is also alleged that the entire proceedings are prejudiced amd biased, hence applicant wants the orders of the respective authorities should be quashed and she should be reinstated in service with full backwages.

3. In the reply, the respondents have asserted that the enquiry has been done as per rules. That the charges were read over to the applicant and explained in Marathi and she pleaded guilty to the charges. They have supported the report of the Enquiry Officer and the orders of the Disciplinary Authority and the Appellate Authority. It is alleged that no case is made out for interfering with the orders of the respective authorities.

4. Mr.S.P.Kulkarni, the learned counsel for the applicant has urged some grounds before us for challenging the orders of the respective authorities. On the other hand, the learned counsel for the respondents Mr.S.S.Karkera on behalf of Mr.P.M.Pradhan supported the orders of the authorities and refuted the contentions of the applicant's counsel. Now we will consider the contentions of the applicant's counsel one by one.

5. The first contention of the learned counsel for the applicant is that the charge sheet was issued in English which language is not known to the applicant and therefore this is bad in law. Reliance was placed on a decision of the Ahmedabad Bench of this Tribunal in the case of Shri Teja Nonghar V/s. Union of India and Ors. (1992(1) SLJ (CAT) 161). That was a case where the applicant pleaded that he did not know English, but he can follow Gujarati and no translation in Gujarati was given inspite of his request. In that case, after receiving the charge sheet the applicant had made a written request that he wants the charge sheet and documents to be translated into Gujarati, so that he can give a proper reply. But, it appears the

administration did not supply translation on the ground that there is no facility for translating the documents into Gujarati. In those circumstances, the Tribunal has held that there is violation of principles of natural justice. In that case the rules were not produced to show as to in what manner the charge sheet can be issued. In our view, this decision is not applicable to the facts of the present case on more than one ground. Firstly, that was a case where after receiving the charge sheet there was a written request by the applicant asking for translation of the documents. In that case it was a case of ex-parte enquiry. The other point in that case is that there were no Rules on the point.

In the present case, the rules are clear as could be seen from Rule 70 of Postal Manual, Vol-III, where there is a specific provision that the charge sheet can be issued either in English or Hindi. In this case, the administration has issued the charge sheet in English. Therefore, there is no violation of the rule in issuing the charge sheet in the present case. Further there was no request by the applicant after receivng the charge sheet asking for a translation in a language known to her as was the case before the Ahmedabad Bench of the Tribunal mentioned above. Further it is the case of the applicant that except putting signature in Marathi, she is illiterate and cannot read or write any language. In such a case, sending a charge sheet either in English, Hindi, Marathi or in any language would be of no consequence when admittedly the applicant herself claims that she is illiterate. In other words, she will have to take the help of some other relative or official or Lawyer to know the contents of the charge sheet and then give a reply. Since the charge sheet was issued in English and she being

an illiterate she cannot read any language, she should have approached some relative or official or Lawyer and take advise and give a reply to the charge sheet which she has not done. Therefore, in the circumstances of the case no fault could be found with the administration for issuing a charge sheet in English. Admittedly, the applicant made no attempt to send a reply to the charge sheet.

6. The next point pressed before us is that the enquiry has proceeded on the basis that the applicant pleaded guilty, but this is not correct. The applicant herself has produced the proceedings before the Enquiry Officer (at page 28 of the paper book) we have the order sheet of the Enquiry Officer dt.24.7.1990 when the applicant, Enquiry Officer and Presenting Officer were present. It is clearly mentioned in the order sheet that the contents of the Articles of Charges were read over to the applicant and she pleaded guilty for all the charges levelled against her. Then we have (pages 30, 31 and 32 of the paper book) which contains the Articles of Charges and below it for every charge plea of the applicant is recorded in Marathi which means that she is admitting the charges.

The fact that the Officer has recorded applicant's plea in Marathi shows that the Officer must have explained the contents to the applicant in Marathi. The order sheet clearly mentions that the charges were read over to the applicant and she fully understood the charges and then pleaded guilty. Then what is more? On the very next day viz. 25.7.1990 the Enquiry Officer has sent his report where he has clearly mentioned that the charges have been read over and explained to the applicant in Marathi. Taking all these circumstances into consideration and particularly the plea having been

recorded in Marathi we can reach the conclusion safely that the Enquiry Officer has explained the charges to the applicant in Marathi and recorded her pleas in Marathi. Therefore, the contention of the applicant that she was also not made aware of the contents and her signatures were simply taken has no meaning and has to be rejected.

We may also note that similar contentions were raised by the applicant before the Disciplinary Authority and the Appellate Authority and they have also rejected that contention. In view of the concurrent findings of the Enquiry Offricer, the Disciplinary Authority and the Appellate Authority that the applicant has signed the pleas after it was fully explained to her in Marathi and pleaded guilty, it is not possible for this Tribunal while exercising judicial review to upset that finding of fact: for the reasons already mentioned we have gone through the record and also the original file produced by the learned counsel for the respondents and we are satisfied that proper procedure has been followed and the applicant has pleaded guilty to the charges after the charges were read over to her and explained in Marathi. In this connection, we may also refer to the Judgment of the Supreme Court reported in JT 1996 (1) SC 207 (Additional District Magistrate (City) Agra V/s. Prabhakar Chaturvedi & Anr.), where the Supreme Court has observed that charges stands proved in view of the clear admission of the delinquent officer and accordingly the order of punishment was confirmed by the Supreme Court.

7. Another point urged by the learned counsel for the applicant is that out of three Articles of Charges, for one charge, the Post Master himself is a witness and therefore he could not have issued the charge sheet. It must be

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noted here that though the charge sheet is issued by the Post Master he has not passed the order of punishment. The order of punishment is passed by higher officer viz. Senior Superintendent of Post Offices. Then we find that the applicant had preferred an appeal before a still higher officer viz. the Director of Postal Services who has again perused the record and passed a detailed speaking order concurring with the order of the Senior Superintendent of Post Offices.

If this was the case decided after recording evidence and if the Post Master had been examined as a witness, then probably there would have been some justification for the applicant to say that the charge sheet is defrective since the witness himself has issued the charge sheet. But, here is a case where the applicant was pleaded guilty and it has been accepted and on that basis higher officer has levied the penalty and it is confirmed by a still higher authority. Therefore, in the facts and circumstances of this particular case the inclusion of the name of the Post Master as a witness in the charge sheet has not resulted in illegality since the case is decided on the basis of the applicant's admission of the charges.

8. The next submission of the learned counsel for the applicant is that the Appellate Authority has not given any personal hearing to the applicant and therefore, the order of the Appellate Authority is bad in law. Even if we agree with this contention, the only thing that we can do is that the matter should be remanded back to the Appellate Authority to hear the applicant and pass a fresh order. But having gone through the facts and circumstances of the case, this is not a fit case to set aside the order of the Appellate Authority on this ground. The learned counsel for the applicant relied on a decision of the Supreme Court reported in 1986 SCC (L&S)

383 (Ram Chander V/s. Union of India & Ors.). That was a case where the main contention before the Supreme Court was that the Appellate Authority has not passed a speaking order about the merits of the case inspite of a specific statutory requirement as provided in Rule 22(2) of the Railway Rules. The Supreme Court went into the question in detail and perused the Rule and then after detailed consideration came to the conclusion that the Appellate Authority has not applied its mind and has not passed an order as required by the statute and on this ground the order is liable to be quashed. Then in the end of the Judgment the Supreme Court also has observed that principles of natural justice may be followed and the party should be given an opportunity by the Appellate Authority for personal hearing. They have placed reliance on Tulsiram Patel's case ((1985) 3 SCC 398), where the question was the scope of appeal in a case where the Disciplinary Authority has passed the order by dispensing with the enquiry under Article 311(2) of the Constitution of India. Further, in the case before the Supreme Court it was a case of ex-parte enquiry, where number of witnesses had been examined and the Appellate Authority without applying its mind to the facts of the case simply passed a cryptic order. In our view, the observations of the Supreme Court must be read with the facts of that case.

In the present case the facts are different. Here is a case where the applicant has pleaded guilty to the charges. The plea is accepted by Enquiry Officer and a report has been submitted. Both the Disciplinary Authority and the Appellate Authority have considered the contentions taken by the applicant in her representation and they have held that her admission is true and voluntary and the punishment is just and proper. Since it is a case of an order of punishment on the basis of the applicant's admission no prejudice is

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caused to the applicant if personal hearing was not given by the Appellate Authority. We are also fortified in our view, by a Judgment of the Jaipur Bench of this Tribunal in the case of Mahesh Babunath V/s. Union of India (1994 (8) SLR 497), where it is held that if there was no request by the delinquent officer in the appeal seeking personal hearing, then the appellate authority will not be committing any irregularity or illegality in not giving a personal hearing on his own. This is not a case where the applicant sought for personal hearing and it was rejected by the Appellate Authority. This is a case where the applicant sent just an appeal petition raising certain grounds and never sought for any personal hearing and the appellate authority has gone through the appeal grounds and has written a lengthy speaking order meeting all the grounds. In such a case principles of natural justice are observed and particularly so when the case is dependent on the admission of the charges by the applicant. Therefore, this is not a fit case for remanding the matter again to the Appellate Authority.

9. As far as allegations on merits are concerned, serious allegations are against the applicant and they are admitted by her. The Competent Authority has imposed penalty. The scope of judicial review is very very limited. Even regarding punishment, this Tribunal cannot interfere like an Appellate Court, when the Competent Authority has applied its mind and after holding enquiry has passed a speaking order observing the principles of natural justice. This Tribunal cannot interfere even regarding the quantum of penalty. No other contentions were urged before us.

After considering the facts and circumstances, we are satisfied that the applicant had a fair enquiry and she has admitted guilt and she has been

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properly punished and no case is made out for our interference.

10. In the result, the application fails. It is dismissed. No orders as to costs.

(D.S.BAWEJA)
MEMBER (A)

(R.G.VAIDYANATHA)
VICE - CHAIRMAN

16.2.95

B.