

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 349/94.

Date of Decision: 22/7/99

S.K.Gonjare

Applicant.

Mr.S.P.Kulkarni

Advocate for  
Applicant.

Versus

Union of India & Anr.

Respondent(s)

Mr.S.S.Karkera for

Mr.P.M.Pradhan.

Advocate for  
Respondent(s)

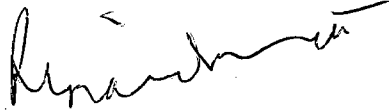
CORAM:

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

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

(1) To be referred to the Reporter or not? ~~~~~

(2) Whether it needs to be circulated to  
other Benches of the Tribunal? ~~~~~

  
(R.G.VAIDYANATHA)  
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.349/94

Thursday.....this the 22<sup>nd</sup> day of Jan 1999

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

S.K.Gonjare,  
119/3, Sangar Galli,  
Baramati District,  
Pune - 413 102.  
(By Advocate Mr.S.P.Kulkarni)

...Applicant.

Vs.

1. Union of India through  
Superintendent of Post Offices,  
Pune Mofussil Division,  
Swargate,  
Pune - 411 042.

2. The Director of Postal Service,  
(City) Office of the C.P.M.G.,  
Maharashtra Circle, G.P.O. Building,  
Bombay - 400 001.

...Respondents.

(By Advocate Mr.S.S.Karkera for  
Mr.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 Tribunal's Act, 1985. The respondents have filed reply opposing application. We have heard the learned counsels appearing on both sides.

2. The applicant was issued a minor penalty charge sheet dt.5.8.1992. The applicant gave a reply to the charge sheet and also made a prayer for a personal enquiry to be conducted. The Disciplinary Authority passed the order dt. 9.9.1992 and imposed a penalty of reduction of pay by one stage for a period of 35 months with immediate effect and that the applicant will not earn increments during that period. He has not passed any orders on

....2.



the request of the applicant's counsel for personal enquiry, though he has noted the request in his order. The applicant carried the matter in appeal before the Appellate Authority, who by order dt. 31.3.1993 rejected the appeal. Being aggrieved by these orders the applicant has come up with the present application taking number of grounds.

3. The respondents in their reply have justified the action taken by the applicant by narrating all the facts and circumstances of the case.

4. Among other grounds, one of the points pressed by the learned counsel for the applicant is that no enquiry was conducted inspite of a specific request made by the applicant which is provided in the Rules. He pointed out that normally in a minor penalty charge sheet there is no provision for holding a regular enquiry. But, in a given case, if a delinquent official may make a request for holding a regular enquiry and if such a request is made, the rule enjoins the Disciplinary Authority to consider the same and pass an appropriate order. The learned counsel for the applicant contended that the applicant's request has not been considered at all by the Disciplinary Authority and the Appellate Authority. The learned counsel for the respondents pointed out that it is not mandatory to conduct a regular enquiry in a minor penalty charge sheet.

5. As already seen, in reply to the charge sheet the applicant has made a specific request for an enquiry to be conducted by the Disciplinary Authority. The Disciplinary Authority has noted this request in his impugned order dt. 9.9.1992. He does not indicate whether the request should be granted or not. He does not reject the request of the applicant,

...3.



much less, give any reasons as to why the request has to be rejected. This shows non-application of mind on the part of the Disciplinary Authority.

6. When the matter was carried in appeal before the Appellate Authority, a specific ground is taken in the appeal grounds that the enquiry is not conducted inspite of the request of the applicant. This point has been noticed by the Appellate Authority in his order dt. 31.3.1993, where at internal page 2 he has pointed out the grounds taken in the appeal and the first ground itself is that applicant's request for enquiry has been rejected by the Disciplinary Authority. The Appellate Authority should have perused the record and applied his mind and then consider the correctness or otherwise of the ground taken by the applicant. On the other hand, the Appellate Authority summarily rejects this ground of appeal with the following observations:

"In fact, the applicant had never demanded the oral enquiry in this disciplinary case."

We have already seen that in the reply to the charge sheet the applicant had made a specific request to the Disciplinary Authority for personal enquiry. When this point was pressed before the Appellate Authority, he summarily rejected the contention stating that he had made no such demand to the Disciplinary Authority. This observation of the Appellate Authority is contrary to the materials on record. Applicant's reply to the charge sheet is produced and it is at page 40 of the paper book where there is a specific request for personal enquiry. How can the Appellate Authority make an observation that applicant never demanded an enquiry. This also clearly shows non-application of mind by the Appellate Authority to the case papers. If the Appellate Authority had gone through the



record, he would have noticed the applicant's request for personal enquiry.

7. It is not for this Tribunal to decide whether a regular enquiry should be conducted or not. Under the rules, discretion is given to the Competent Authority to accept or reject the request of an official for enquiry. We do not want to substitute our discretion on a matter like this. We therefore, feel that the matter should be remanded to the Appellate Authority who can apply his mind to the facts of this case and the request made by the applicant seeking personal enquiry into the matter. If the Appellate Authority feels after going through the facts and circumstances of the case that no enquiry is necessary, then he can pass an order to that effect and then consider the appeal on merits and then pass a speaking order. If the Appellate Authority comes to the conclusion that having regard to the facts and circumstances of the case a regular enquiry is necessary then he can set aside the order of the Disciplinary Authority and remand the matter to the Disciplinary Authority to hold a regular enquiry by himself or by appointing an Enquiry Officer as per rules. In the view we have taken of remanding the matter to the Appellate Authority we do not want to express any opinion on other contentions taken by the applicant. Hence, all contentions on merits taken by both sides are left open.

8. In the result, the application is allowed as follows :

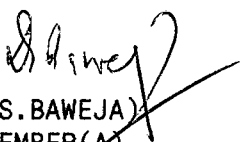
1. The impugned order of the appellate authority dt. 21.3.1993 is hereby set aside.
2. The matter is remanded to the appellate authority to consider the appeal of the applicant on merits and according to law.
3. The Appellate Authority shall give personal hearing to the applicant and then consider the appeal on merits including applicant's request for a regular enquiry, then the Appellate Authority shall pass a speaking order in the light of the observations made in para 7 above.
4. In the circumstances of the case, the Appellate Authority is required to pass the final speaking

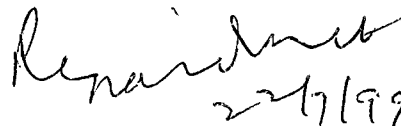
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order on the appeal within a period of four months from the date of receipt of copy of this order.

5. All contentions on merits taken on both sides are left open.
6. In the circumstances of the case, there will be no order as to costs.

  
(D.S. BAWEJA)  
MEMBER(A)

  
22/7/99  
(R.G. VAIDYANATHA)  
VICE-CHAIRMAN.

B.