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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

ORIGINAL APPLICATION NO.:48/95

Dated this, _____ the ^{3rd} day of January 2001.

Shri S.R. Shivsharan

Applicant

Mr.G.K. Masand

**Advocate for the
Applicant.**

VERSUS

Union of India & Others

Respondents.

Mr.P.M. Pradhan

**Advocate for the
Respondents.**

CORAM :

Hon'ble Shri S.L. Jain, Member (J)
Hon'ble Smt. Shanta Shastry, Member (A).

- (i) To be referred to the Reporter or not ? yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? No.
- (iii) Library. yes

S.L. Jain
(S.L. Jain)
Member (J).

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(10)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO.48/95

Dated this Wednesday the 3rd Day of January 2001.

Coram : Hon'ble Shri S.L. Jain, Member (J)
Hon'ble Smt. Shanta Shastry, Member (A)

S.R. Shivsharan,
C/o. V.S. Gaikwad,
Gajanan Apartment Building No.3,
Hotagi Road, Solapur-413 003.

.. Applicant.

(By Shri G.K. Masand, Advocate)

Vs.

1. Union of India, through
the Secretary in the
Ministry of Telecommunications,
Department of Post, New Delhi.
2. Director of Postal Services,
Pune Region, Pune-411 001.
3. Senior Superintendent of Post,
Solapur Division,
Solapur - 413 001.

.. Respondents.

(By Shri P.M. Pradhan, Advocate)

O R D E R
[Per : Shri S.L. Jain, Member (J)]

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside the order of the Enquiry Officer dated 18.12.1986 (Exhibit B), the removal order of the Disciplinary Authority - Respondent No.3 dated 31.3.1993 (Exhibit A) and order of the Appellate Authority - Respondent No.2 dated 10.12.1993 (Exhibit A-1) with a direction

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to the respondents to reinstate the applicant as Postman with full back wages and consequential benefits viz. seniority, promotion etc.

2.....The Disciplinary Authority vide order dated 13.1.1987, on the basis of the enquiry officer's report dated 18.12.1986, passed the penalty order of removal of the applicant; appeal against the same was rejected on 28.12.1987. Being aggrieved by the same, the applicant filed O.A.No.671/88 in the Central Administrative Tribunal, Mumbai Bench which was decided on 22.4.1992, by quashing and setting aside the order of removal on the ground that applicant was not served in advance the findings of the enquiry officer to make his representation against the same to the disciplinary authority, before the disciplinary authority has passed the final order. The respondents were given liberty to proceed ^{with} a fresh inquiry against the applicant, if they wish, from the point illegality has occurred vide letter dated 9.9.1992, the applicant submitted the representation against the enquiry officer's report to the disciplinary authority - Respondent No.3 but it did not find favour with the Disciplinary Authority and order of removal was passed on 31.3.1993. An appeal against the same was filed which was rejected vide order dated 10.12.1993 which was served on the applicant on 10.1.1994.

3.....The applicant was posted as Postman in the office of Respondent No.2. The Assistant Superintendent of Posts issued the charge sheet dated 25.10.1985 to the applicant. The

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allegation of charges relates to 1.8.1983 to 10.8.1985. The applicant denied the said charges levelled against him vide his letter dated 31.10.1985. Shri S.U. Akul, and Shri H.G. Made, both Senior Post Master (HSG II) Solapur Market and Zilla Nyayalaya Solapur were appointed as the enquiry officer and the Presenting Officer respectively. Shri P.N. Jagarwal acted as Defence Assistant, on appointment by the applicant. The preliminary hearing was held on 8.2.1986, thereafter final hearing took place on 24.2.1986, 8.7.1986, 7.10.1986 and 4.12.1986. Shri R.P. Risbud, Shri R.N. Phadke, PRI (P), Solapur Head Office, Shri D.G. Grade-D of Indira Nagar Post Office were examined during the course of the enquiry. The presenting Officer and the applicant submitted the brief. After submission of the enquiry report, the Disciplinary Authority passed the order of Removal and appeal against the same is also rejected.

4. The grievance of the applicant is that Shri B.S. Gajare on whose statement the charge sheet was issued, Shri Phadke, the addressee of the said letters were not examined during the course of enquiry for no reason. The pieces of the letters found in the drainage of bathroom were not seized after preparing the Panchanama or an inventory on the date of incident 17.10.1985. He never admitted any of his faults before the Secretary, Shri B.S. Gajare or Shri U.N. Jadhava or Assistant Superintendent of Post Office or before Shri R.N. Phadke. The authorities relied on extraneous material. The statement of the witnesses who were never examined, copies of the statement of the said witnesses were never furnished to the applicant. The applicant was not

P. J.

generally examined after closure of the ^{examination of} prosecution witnesses which suggests that there was no incriminatory evidence against the applicant, Inquiry Officer not examined but reliance placed on his report. The evidence adduced is hearsay, unreliable and the case is of no evidence. The conclusion of the Enquiry Officer, Disciplinary Authority and the Appellate Authority is based on surmises conjectures, without application of mind and thus perverse.

5.....The respondents have resisted the claim of the applicant and alleged that Shri R.N. Phadke is examined during the course of the enquiry on 8.7.86^h. The cause of non examination of the witness Shri Gajare and other witnesses is stated to be that material witnesses Shri H.D. Risbud, Shri R.N. Phadke, Shri D.G. Dhage were examined as departmental prosecution witnesses in the said case. In para 7 of written statement it is further stated that the applicant has clearly admitted his fault of the said incident on 19.8.1985, in his statement before A.S.P. North Solapur. Copy of the said statement of the applicant admitting his fault is hereto annexed and marked as Ex.R-1. These respondents state that admission of the fault of the applicant itself is a vital evidence which clearly ^{goes} show that the applicant has committed misconduct. These respondents further say and submit that said admission of the fault committed by the applicant was already taken into consideration by the enquiry officer in his report dated 18.12.1986. Hence prayed for

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dismissal of the O.A. alongwith costs.

6. On perusal of the reply filed by the respondents it is clear that they do not claim to examine the applicant under Section 14 (18) of CCS(CCA) Rules, 1965.

7. Rule 14(18) of CCS(CCA) Rules, 1965 is as under:-
"(18) The inquiry authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him".

On perusal of the same, we are of the considered opinion that the disciplinary authority has discretion to examine the charged Government servant wherein he examined himself but no discretion is left to the inquiry authority where the Government servant has not examined himself and in such a case he is duty bound to examine the said charged Government servant in respect of the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain in any circumstances appearing in the evidence against him.

8. In 1994(3) All India Law Journal at page 400 Mr.S.B. Ramesh Vs. Ministry of Finance, Government of India and another, the Central Administrative Tribunal, Hyderabad Bench has held as under:-

"Under Sub Rule 18 of Rule 14 of the CCS (CCA) Rules, it is incumbent on the Enquiry authority to question the officer facing the charge, broadly, on the evidence appearing against him in a case where the officer does not offer himself for examination as a witness. This mandatory provision of the CCS (CCA) Rules, has been lost sight of by the Enquiry authority. The learned Counsel for the respondents argues that as the

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inquiry itself was held ex-parte as the applicant did not appear in response to notice, it was not possible for the Enquiry authority to question the applicant. This argument has no force because, on 18.6.1991 when the enquiry was held for recording the evidence in support of the charge, even if the Enquiry officer has set the applicant ex-parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate in the enquiry thereafter or, even if the inquiry authority did not choose to give the applicant an opportunity to cross examine the witness examined in support of the charge, he should have given an opportunity to the applicant to appear and then proceeded to question him under sub-rule 18 of Rule 14 of CCS(CCA) Rules, 1965".

9. We have carefully perused the charge sheet particularly Annexure III which deals with list of documents by which articles of charges framed against the applicant are proposed to be established. On perusal of the same, we find that the statement of the applicant dated 19.8.1995 was not included in the said chargesheet. The defence raised by the respondents in the written statement in this respect^{is} that the applicant has admitted guilty before Senior Superintendent of Post Offices Shri B.S. Gajare and Shri R.N. Phadke. As the said document was not part of the chargesheet and no evidence of the witnesses has been recorded in this respect, reliance by the inquiry officer, disciplinary authority and appellate authority on the said document and evidence in respect of the same ^{amounts to} ~~reliance~~ ^{on} extraneous matters which can not be done in view of 1993 SCC (L&S) 109 State Bank of India Vs. D.G. Aggarwal and another.

10. The Learned Counsel for the applicant argued that Shri B.S. Gajare, a material witness is not examined and even the inquiry officer has stated in his report about the small pieces

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of Exhibits (postcards and letters) that full name and address of the addressee or the senders name or the date of posting or delivery date stamp impression etc. can not be ascertained. We are in agreement with the submission of the learned Counsel for the applicant.

11. We agree to the proposition of law laid down by the Apex Court in case of Govt. of Tamil Nadu and others vs. S. Veekaj reported in 1997 (1) SC SLJ 226 that Tribunal can not transgress its jurisdiction in examining the evidence as ^{it} it is an appellate authority.

12. In the result we do not find that the applicant is guilty of the charges levelled against him, it is a case of no evidence, the inquiry officer, disciplinary authority and appellate authority ^{have} relied on extraneous matters and thus there is ~~an~~ infringement of rule 14 (18) of CCS(CCA) Conduct Rules, 1965. Hence the inquiry is vitiated. Inquiry Officer's ^{order} ~~report~~; Disciplinary Authority and Appellate Authority's ^{order} ~~report~~ deserves to be quashed.

13. The incidence appears to be of 17.8.1985. The applicant had earlier filed O.A.1086/92 which decided on 13.8.1993. we do not propose to remit the case back to the disciplinary authority for any further inquiry as no further inquiry is necessary ^{it should} ~~not~~ serve any fruitful purpose.

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14.....In the result, the O.A. is allowed, the ^{report} of the Inquiry Officer, ^{and order of the} Disciplinary Authority, Appellate Authority dated 18.12.1996, 31.3.1993 and 10.12.1993 respectively deserves to be quashed and set aside and are quashed and set aside. The respondents are ordered to reinstate the applicant as Postman within a period of 3 months from the date of receipt of the copy of the order with all consequential benefits . No order as to costs.

Shanta
(Smt. Shanta Shastry)
Member (A)

S.L. Jain
(S.L. Jain)
Member (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

C.P. 36/2001 in
ORIGINAL APPLICATION NO:48/95

TRIBUNAL'S ORDER

DATED:3.8.2001

Shri G.K. Masand learned counsel for the applicant. Smt. H.P. Shah learned counsel for the respondents.

2. On 3.1.2000 this Tribunal while deciding OA 48/95 allowed the OA. The operative portion of the order is as under:

In the result the OA is allowed, the report of the Inquiry Officer and orders of the Disciplinary Authority, Appellate Authority dated 18.12.1996, 31.3.1993 and 10.12.1993 respectively deserve to be quashed and set aside and are quashed and set aside. The respondents are ordered to reinstate the applicant as Postman within a period of 3 months from the date of receipt of the copy of the order will all consequential benefits. No order as to costs.

3. Despite the specific order Shri N.S. Katti, respondent No.3 did not implemented the order during his tenure. The learned counsel for the respondents states that Shri N.S. Katti has retired on 30.4.2001 by which time the time granted by this Tribunal did not expire.



4. This C.P. has been filed on 3.5.2001. The learned counsel for the respondents contended that the respondents were waiting the out-come of the Writ Petition filed in the High Court. The

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learned counsel for the respondents further argued that after dismissal of Writ Petition on 23.7.2001 the order stands complied with.

5.....It is a serious matter where the officer of respondent department have committed gross contempt by not implementing the order within the time granted. Admittedly, there were no interim order passed by the Hon'ble High Court, therefore there is no justification for respondents for not giving effect and complying the order. However, according to the learned counsel for the respondents the order stands complied with and the officer Shri M.A. Pathan, Senior Superintendent of Post, Solapur Division is present before the Court and tendered apology. We do not consider it necessary to punish any officer of respondent department as we are informed that on retirement of one officer, another took over and then again another officer has been posted in May 2001. Considering all these aspects we discharge the notice and drop the proceedings, but the applicant has been made to run to this Court for implementation of the order and therefore we award Rs. 2000/- as cost payable to applicant. Respondents are directed to pay Rs. 2000/- as costs to the applicant within a period of three months from today. It

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will be open to respondent Nos 1 to 3 to fix the responsibility and recover the cost which is being awarded from the officer, if it so desire. C.P. is disposed of.

MP

(M.P. Singh)
Member(A)

B. Dikshit

(B. Dikshit)
Vice Chairman

NS

03/8/01
order despatched
to Applicant/Respondent(s)
on 17/8/01

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