

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO. 1481/83

DATE OF DECISION: 11/4/2000

Smti Chaudhary Dattatreya Gopal, "Applicant"

Smti S.P. Kulkarni

Advocate for  
Applicant

Vidya

Reply of India & S. O. Re.  
Respondent

Smti S.P. Kulkarni for Smti P.M. Reddy  
Advocate for  
Respondent

CORAM:

Hon. Smti Justice R.G. Vaidyanatha, Vice Chairman  
Hon. Smti D.G. Bawali Member (A)

1. To be lettered to the Reporter on 10/3
2. Whether it needs to be circuited to  
either because of the Tribunal's  
2. Tipper.

(R.G.VAIDYANATHA)  
VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION NO; 1491/95  
DATED THE 11TH DAY OF APRIL, 2000.

CORAM: HON'BLE SHRI JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN.  
HON'BLE SHRI D.S.BAWEJA, MEMBER(A)

Shri Chandrakant Dattatray Sonar,  
Sub-Postmaster,  
Khedgaon Post Office,  
Nashik Division,  
Nashik (Dist.) 422 205. .... Applicant.

By Advocate Shri S.P.Kulkarni

V/s.

Union of India,  
Through:

1. Member(Posts)  
Officer of the Director General(Posts),  
Department of Posts,  
Ministry of Communications,  
Government of India,  
Dak Bhawan, Sansad Marg,  
New Delhi-110 001.
2. Superintendent of Post Offices  
Shrirampur Division,  
Shrirampur - 413 709.
3. The Director of Postal Services,  
Pune Region,  
Pune - 411 001. .... Respondents.

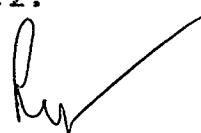
By Advocate Shri S.S.Karkera for  
Shri P.M.Pradhan.

(ORAL) (ORDER)

Per Shri R.G.Vaidyanatha, Vice Chairman.

This is an application filed under Section-19 of  
Administrative Tribunals Act. Respondents have filed reply  
opposing the application. We have heard Shri S.P.Kulkarni for  
Applicant and Shri S.S.Karkera on behalf of Shri P.M.Pradhan,  
Counsel for Respondents.

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2. The applicant was working as Office Assistant in the Postal Department and was issued a charge sheet on 11/8/1988 alleging certain misconduct. The allegation in the charge sheet is that the applicant was responsible for getting appointment to one Smt.P.S.Kulkarni by concealing her age, though she was under-age. Both the charges pertain to the same question of appointment of Smt.P.S.Kulkarni. A regular enquiry was held, three witnesses were examined on behalf of Administration. The applicant examined himself in defence. Some documents were taken on record. After regular enquiry, the Enquiry Officer submitted a report dated 25/2/1992, that both the charges are not proved. The Disciplinary Authority forwarded a copy of the Enquiry Report to applicant for his say. The applicant sent a reply. The Disciplinary Authority passed the Impugned order dated 30/3/1993 holding that the charges are proved after disagreeing with the Enquiry Officer and then imposed a penalty of reduction of pay of the applicant by three stages in the timescale of pay for a period of three years with immediate effect and without cumulative effect. By order dated 30/4/1993, the Disciplinary Authority modified that order stating that the pay is reduced by three stages stating that in continuation of reduction of pay by three stages, the applicant will not earn any increment during the period of reduction and after the expiry of three years, the reduction will not have the effect of postponing the effects of future increments. Being aggrieved by this order, the applicant did not file any appeal but filed a Revision Petition to the Competent Authority. According to the applicant, he has not



received any information about the disposal of Revision Petition. That is why he has filed the present application. The applicant has taken number of grounds challenging the Impugned order of the Disciplinary Authority.

3. The respondents in their reply have justified the action taken against the applicant. They have further stated that the applicant has not exhausted his statutory right of Appeal and they have further stated that the claim is barred by limitation.

4. At the time of arguments, the Counsel for Applicant pressed only one point namely that Impugned order is not sustainable in law since the Disciplinary Authority has not given any show cause notice to the applicant about its intention to disagree with the findings of the Enquiry Officer, therefore the order is liable to be quashed. On the other hand, the Learned Counsel for Respondents contended that the Application is barred by limitation and further the applicant has not exhausted statutory remedy of Appeal.

5. As far as the question of limitation is concerned, applicant has filed MP-917/95 for condonation of delay. Applicant has given some reasons as to why he could not file an appeal since he was in a dilemma as to who was the Disciplinary Authority since Original Disciplinary Authority is one and adhoc Disciplinary Authority is another and further he states that his Revision Petition has not yet been disposed of. In January, 1994, he addressed a Revision Petition to Member(Posts), Postal Services, but applicant has not received any communication about the disposal of application. Then he has

filed the present application in November, 1995. There is a delay of few months in filing application if we count the time from the date of Revision Petition. Applicant has given some reasons as to why and how the delay has occurred. In addition to this, we find that the Impugned order passed is not sustainable in law.

Hence, the respondents should not be allowed to take limitation as the ground of defence when the order passed by respondents is not legal and hence the same cannot be sustained in view of the law declared by the Apex Court.

In these circumstances, we hereby allow MP-917/95 and condone the delay in filing application.

6. As far as not exhausting statutory remedy, the argument is without merit at this stage. But the argument should have been addressed when the OA was admitted. The order sheet does not indicate whether this point was pressed at the time of admission. The OA has been admitted after hearing both sides. The OA is filed in 1995 and now we are in 2000, 5 years have lapsed. At the stage of Final Hearing, it will be too technical to counter about the applicant not exhausting statutory remedy of appeal. Reason is that if this point had been pressed at the earliest stage, we would have disposed of the application by giving liberty to applicant to exhaust the statutory remedy of appeal. Then, the applicant could have approached the appellate Authority but now after a lapse of 5 years of filing of OA, and the application reaching the stage of Final hearing, it will be too technical for respondents to take this plea to defeat the claim of the applicant.



Therefore, in the facts and circumstances of the case, we are rejecting this argument. It may also be mentioned that though the applicant did not prefer the appeal, he has filed a Revision Petition provided under the rules. The Competent Authority has not disposed of Revision Application.

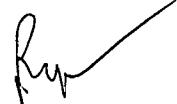
7. Now coming to the merits, the Learned Counsel for Applicant contended that since the Enquiry Officer has recorded his findings of exoneration, the Disciplinary Authority simply forwarded a copy of the Enquiry Report and nothing was stated as to whether he intends to disagree with the findings of the Enquiry Officer. Now the law is well settled by a judgement of Apex Court in Kunj Bihari Mishra's case, reported in AIR 1998 SC 2713, where the Apex Court after reviewing the case law on the point has held that if the Disciplinary Authority wants to disagree with the finding of the Enquiry Officer, he must record tentative reasons and tentative findings and give a show cause notice to delinquent official as to why he should not disagree with the Enquiry Officer's Report. And after getting reply from the delinquent official, the Disciplinary Authority can pass appropriate orders. In the present case, we have seen the covering letter dated 10/2/1993 (page-58 of the paperbook) where the Disciplinary Authority has simply stated that he is forwarding the Enquiry Report and after receiving reply from Delinquent official, take appropriate decision. He has not given his view of not agreeing with the Enquiry Officer's report. Merely sending the exoneration report will not serve any purpose since the applicant is not called upon to say anything except

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saying that he is happy with the exoneration report. But if an indication is given that the Disciplinary Authority is intending to take a different view, then applicant can come up with his defence and persuade the Disciplinary Authority not to take a different view and accept the Enquiry Report. That is why the Supreme Court has observed that Disciplinary authority must indicate his tentative reasons to disagree from report of Enquiry Officer. This decision has been subsequently followed in Yogenath v/s. Union of India reported in 2000(1)ATJ-208, were again the Supreme Court has reiterated that if the Disciplinary Authority wants to disagree with the report of the Enquiry Officer, the delinquent official should be issued a show cause notice and asked to show reason as to why the Disciplinary Authority should not disagree with the Enquiry Officer's report before passing any order.

9. In the present case, we find that no show cause notice has been given to the applicant. Disciplinary Authority has simply forwarded the Enquiry Report and no mention is made regarding disagreeing with the findings of the Enquiry Officer. Therefore, there is violation of Principles of natural justice. Hence, the Impugned order cannot be sustained. Since there is only an error of procedure, we feel that the matter should be remanded to the Disciplinary Authority and then he should proceed from that stage, namely he must decide whether he should accept the Enquiry Report or not. If he accepts the Enquiry Report, then he may simply close the case; but if he wants to disagree with the Enquiry Report, then he must record tentative reasons and

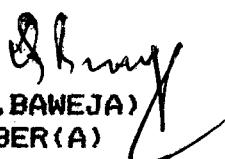


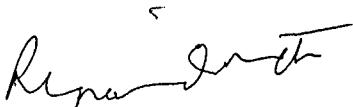
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tentative findings and then issue show cause notice to applicant about his intention to disagree with the Enquiry Report and ask him to show cause as to why he should not disagree with the findings of the Enquiry Officer. It is open to the applicant to give a detailed representation to the Disciplinary Authority and then after receiving the same, the Disciplinary Authority can proceed to pass appropriate order according to law.

10. In the result, application is allowed. MP-917/95 is allowed. The Impugned letters dated 30/3/93 and 30/4/94 are hereby quashed and set aside. The Disciplinary Authority should now proceed in the matter as observed in para-8 & 9. Till the Disciplinary Authority passes final order one way or other, no action should be taken as per impugned order. All contentions on merits which are taken in the OA are left open. No orders as to costs.

  
(D.S. BAWEJA)  
MEMBER(A)

  
(R.G. VAIDYANATHA)  
VICE CHAIRMAN

abp.