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CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH AT
HYDERABAD.

O.A.No. 306 of 1987.

Date of Judgment: 20th October, 1989.

Between:

G. Bala Raj, S/o Balalah, Time Scale Driver,
P & T Motor Service, Hyderabad. .. Applicant.

Vs.

1. Senior Superintendent, R.MS. Hyderabad
Sorting Division, Hyderabad
2. Director of Postal Services, A.P. Northern
Region, Hyderabad. .. Respondents.

Shri B. Tarakam, Counsel for the Applicant.

Shri J. Ashok Kumar, Additional Standing Counsel for POSTS
for Central Government.

CORAM:

Hon'ble Shri B.N. Jayasimha, Vice-Chairman.

Hon'ble Shri J. Narasimhamurthy, Member (Judicial).

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for Central Government.

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Hon'ble Shri B.N. Jayasimha, Vice-Chairman.

Hon'ble Shri J. Narasimhamurthy, Member (Judicial).

(Judgment of the Bench delivered
by Hon'ble Shri B.N. Jayasimha,
Vice-Chairman.)

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This application is filed by a Time Scale Driver
in the Postal and Telegraphs Motor Service Unit, Hyderabad,
against the order No. SSRM/Adhoc/Disc/MMS/5 dated 22--9--1986
issued by the Senior Superintendent, R.M.S., Hyderabad
Sorting Division ~~xxxx~~ removing him from service for his
unauthorised absence.

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The applicant states that on 10--1--1985 he had applied for 8 days earned leave from 6-1-1985 to 13--1--1985 and sent the leave application through his brother Sri Gyaneshwar and later submitted a medical certificate.

The Manager, P & T Motor Service, Hyderabad issued a Memo No. MSE/70/PF/85-86/2 dated 19--6--1985 proposing to hold an enquiry against the applicant for his unauthorised absence from duty from 6--1--1985 to 15--1--1985. The applicant submitted his explanation dated 9--7--1985 denying the charges levelled against him. An enquiry was conducted and the Enquiry Officer submitted his report dated 19--3--1986 to the Disciplinary Authority. Based on the report of the Enquiry Officer, the respondent issued Memo No. SSRM/Adhoc/Disc/MMS/5 dated 22--9--1986 removing him from service with immediate effect. Aggrieved by the said order of removal, the applicant preferred an appeal to the Director of Postal Services, Respondent No.2 who without going into the merits of the case dismissed the appeal by his orders in Memo No. RDH/ST/21-3/64/86 dated 19--3--1987. Hence this application.

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The respondents filed their counter contending as follows:

The applicant stayed away from duty on 6-1-1985 without applying for leave of absence or atleast prior approval of the competent authority. On account of his absence there was dislocation in the conveyance of mails. On 10--1--1985, the applicant sent an application seeking grant of earned leave for 8 days from 6-1-1985 to 13-1-1985. He mentioned that the leave was on medical grounds against column 9 of the application. No medical certificate was attached to the leave application. He reported for duty on 16--1--1985 along with the Medical Certificate of fitness issued by Dr.B.P.Mathur, Civil Asst. Surgeon, Osmania Medical Hospital, Hyderabad. He was placed under suspension on 16--1--1985 pending disciplinary action. Thereafter, a Memo of charge was issued and an enquiry was conducted. As the applicant was appointed by Group 'A' Officer, the SSRM Hyderabad, Sorting Division was appointed as Adhoc Disciplinary Authority ~~by the President~~ vide DG, P&T Memo No.4/47/Vig.III dated 17--10--1985. Based on the Enquiry Officer's report, the applicant was removed from service.

The respondents contend that there is no irregularity

in the enquiry. The applicant has not given his explanation for not taking prior approval or non-submission of the leave application in time. Hence the penalty order has been issued.

We have heard the ~~learned~~ counsel for the Applicant and Shri J. Ashok Kumar, Additional Standing counsel for Central Government.

At the outset the learned counsel for the applicant states that the Disciplinary Authority did not furnish a copy of the Enquiry Report before imposing the penalty and no opportunity was given to the applicant to make his representation on the report of the Enquiry Officer. In support of this contention he relies upon

Full Bench
the/decision ~~reported in~~ of the Bombay Bench of the Central Administrative Tribunal reported in SHRI PREMNATH K. SHARMA V. UNION OF INDIA (1).

We have considered the above submission. In the above referred decision of the Bombay Bench, it was

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held as under:

"Even after the amendment of Article 311(2) by the 42nd Amendment, the Constitution guarantees a reasonable opportunity to show cause against the charges levelled against the charged officer during the course of the enquiry. In order to fulfil the constitutional requirement he must be given an opportunity to challenge the enquiry report also. The Enquiry Officer enquires into the charges, the evidence is recorded and the charged officer is permitted to cross-examine the witnesses and challenge the documentary evidence during the course of the enquiry. But the enquiry does not conclude at that stage. The enquiry concludes only after the material is considered by the Disciplinary Authority, which includes the Enquiry Officer's report and findings on charges. The enquiry continues until the matter is reserved for recording a finding on the charges and the penalty that may be imposed. Any finding of the Disciplinary Authority on the basis of the Enquiry Officer's report which is not furnished to the charged officer would, therefore, be without affording a reasonable opportunity in this behalf to the charged officer. It therefore follows that furnishing a copy of the enquiry report to the charged officer is obligatory.

Following the above decision, we hold that the enquiry is vitiated and the orders imposing the penalty of removal from service upon the applicant dated 22-9-1986 as confirmed by the respondent No.2 by his order dated 19.3.19 is quashed. This, however, will not preclude the respondents from supplying a copy of the enquiry report to the applicant and give him an opportunity to make his representation and proceeding to complete the disciplinary proceedings from that stage. If the respondents choose to continue the disciplinary proceedings and complete the

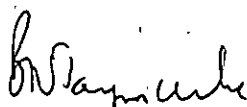
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the manner as to how the period spent in the proceedings should be treated would depend upon the ultimate result of the application. Nothing said herein would affect the decision of the Disciplinary Authority. At the same time, this order is not a direction to necessarily continue the disciplinary proceedings. That is entirely left to the discretion of the Disciplinary Authority.

In the result, the application is allowed to the extent indicated above. No costs.

Dictated in open Court.


(B.N. JAYASIMHA)
Vice-Chairman.


(J. NARASIMHAMURTHY)
Member (Judicial)

Dated: October 20.1989.


Deputy Registrar (A)

SSS.