

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT HYDERABAD

O.A.NO. 312 of 1987

Date of Order: 25-9-1989

John Krupa Rao.

...Applicant.

and

1. Union of India, represented by
The Director of Postal Services,
A.P. Eastern Region, Vijayawada-2.
Krishna Dt.
2. Senior Superintendent of Post Offices,
Prakasam Dv., Ongole - 523 081.

...Respondents.

FOR THE APPLICANT: MR. T. JAYANT: ADVOCATE.

FOR THE RESPONDENTS: MR. J. ASHOK KUMAR. S.C. FOR DEPARTMENT OF POSTS.

CORAM:

HON'BLE MR. B. N. JAYASIMHA: VICE CHAIRMAN

AND

HON'BLE MR. J. NARASIMHA MURTHY: MEMBER (JUDL)

(JUDGMENT OF THE BENCH DELIVERED BY SRI B. N. JAYASIMHA: HVC)

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ORIGINAL APPLICATION NO. 312 of 1987

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(Judgment delivered by SHRI B.N.JAYASIMHA: HVC)

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1. The applicant herein is a dismissed Extra Departmental Branch Post Master, Pasupugallu, and he has filed this application questioning the order of dismissal issued by the Senior Superintendent of Post Offices, Prakasam Division, in his proceedings no.F-3-4/85-86, dated 7-8-1986, as confirmed by the Appellate Authority viz., Director of Postal Services, A.P.E.R.Vijayawada - 1st respondent in his order no. ST-13/ED-6/86, dated 13-11-1986.
2. The applicant states that he was appointed as Extra Departmental Branch Postmaster, Pasupugallu, on ^a regular basis in 1982 and he has put in unblemished service throughout. By a memo dated 2-1-1986, the 2nd respondent placed him under put off on the plea that disciplinary proceedings are pending against him. Thereafter, the 2nd respondent by his memo dated 7-1-1986 directed the applicant to credit a sum of Rs. ⁴⁵⁰ (400) + M.O. Co = Commission Rs.13-50 total Rs.463-50 ps to unclassified receipt at Tallur Sub Post Office immediately and report compliance. Accordingly the applicant credited the said amount vide receipt no.89, dated 28-1-1986. The 2nd respondent issued

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a charge-memo dated 17-3-1986 under Rule 8 of the P & T EDAs (Conduct and Service) Rules, 1964, alleging that he accepted a sum of Rs.500/- + Rs15/- i.e. Rs.515/- in totalx being the value and commission of Money Order No.05 on 31-1-1983 but credited an amount of Rs.51-50 only, thereby violated the provisions of Rule 17 of P & T (EDAs (Conduct and Service) Rules, 1964. Thereafter, the applicant by his preliminary defence dated 28-3-1986, stated that the remitter wrote the MO for Rs.50/- only but he might have issued the receipt for Rs.500/- by mistake and that as per the orders of the 2nd respondent hex credited a sum of Rs.463-50. He requested therein to refund the said amount as he did not misappropriate the said amount. The 2nd respondent ordered an inquiry into the said charge by appointing an Inquiry Officer. The Inquiry was held on 14-4-1986, 25-4-1986, 13-6-1986, 14-6-1986 26/27-6-86 and 7-7-1986. During the enquiry, the applicant categorically maintained that the remitter remitted only Rs.50/- only and not Rs.500/- and that he credited the amount of Rs.463-50 ps under UCR on 28-1-1986 as per the orders of the 2nd respondent. He also stated that the complaint dated 16-12-1985, received after a period of three years is not maintainable. He

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also asserted that ~~that~~ the charge against him was not established in the enquiry as the very MO paid voucher which is vital, was not filed in the inquiry and the payee of the MO who is a material witness was not examined as a witness in the enquiry. Notwithstanding these assertions of the applicant, the 2nd respondent by his memo dated 7-8-1986 dismissed him from service. The applicant submitted an appeal dated 17-8-1986 which was also dismissed by an order dated 13-11-1986. Hence he filed this application.

3. The respondents in their counter say that the complaint dated 4-12-1985 was received from one Sri B.Raghavaiah of Pasupugallu village against the applicant complaining that his daughter remitted a Money Order for Rs.500/- on 31-1-1983 to her sister. The applicant as branch Post Master issued a B.O., receipt no.5 dated 31-1-1983 for Rs.515/-. The Money Order was ~~xxx~~ reported to have been paid only for Rs.50/-. The complaint was registered and on 30-12-1985, the SDI (P) Podili was directed to make enquiries into the complaint. The said SDI(P) Podili submitted his report on 2-1-1986. As a prima facie case was established against the applicant he was placed

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under put off duty on 2-1-1986. A memo of charges was issued and an enquiry officer was appointed to enquire into the charge. The enquiry officer conducted the enquiry and submitted his report to the disciplinary authority on 30-7-1986 holding the applicant guilty of the charge. On consideration of the enquiry report, the disciplinary authority agreed with the findings of Enquiry Officer and imposed the penalty of dismissal from service vide his proceedings no.F3-4/85-86, dated 7-8-1986. The other grounds urged by the applicant are denied. Hence, the respondents oppose this application.

4. We have heard the learned counsel for the applicant Shri T.Jayant and Shri Ashok Kumar, Standing Counsel for the Department.

5. The Principal point raised by Shri Jayant is that the disciplinary authority passed the impugned order imposing the penalty without giving the applicant an opportunity of representing against the Enquiry Officer's report. The disciplinary authority did not furnish him a copy of the enquiry Officer's report before imposing the penalty. He relied ^{on} ~~upon~~ the decision of

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the Full Bench decision of the Bombay bench of the Tribunal in Shri Premnath K. Sharma Vs. Union of India (1988) 6 Administrative Tribunals Case 904), in support of his contention.

6. We have considered the above submission. In the above-referred decision of the Bombay Bench, it was held as follows:

"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 dismissal from service upon the applicant dated 7-8-1986 as confirmed by the 1st respondent in his order dated 13-11-1986 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 same, the manner as to

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④ One copy to Mr. J. Ashok Kumar, SC Barr Department
- 8 posts, CAP, Hyderabad.

⑤ One spare copy

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how the period spent in the proceedings should be treated would depend upon the ultimate result.

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 proceeding. That is entirely left to the discretion of the Disciplinary Authority.

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

(Dictated in open court)

B.N. Jayasimha
(B.N. JAYASIMHA)
Vice Chairman

M.S.
(J.N. MURTHY)
Member (J)

Dt. 25th September, 1989.

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S. Venkatesh
DEPUTY REGISTRAR (J)
4/10/89

TO

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~~the~~ The Director of Postal Services, (Union of India)
AP Eastern Region, Vijayawada-2,
Krishna District.

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Senior Superintendent of Post Offices,
Prakasam Division, Ongole - 523081.

③

G.O. to Mr. T. Jayant, Advocate,
HIG II, Block 2, Flat 4, Besh Lingampally,
Hyderabad - 500044.

P.S. 2/1/89