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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A.NO.216 of 1987

Date of Order: 12.4.1990.

V.Narayana

....Applicant

Versus

Union of India, represented by
Member (Personnel), Postal Service
Board, New Delhi and 4 others

...Respondents

...

For Applicant: Party-in-person

For Respondents: Mr.J.Ashok Kumar, SC for the Department

...

C O R A M:

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

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

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(Judgment of the bench delivered by Hon'ble Shri B.N.
Jayasimha, VC)

1. The applicant was a Postal employee and he has filed this application against order of dismissal passed by Respondent no.3 and modified by Respondent no.1 to one of compulsory retirement by the order dated 31-3-1986.

2. The applicant was appointed as a Postal Clerk in 1971. He passed PO & RMS accountants examination

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in 1979 and was appointed as an accountant thereafter. His initial appointment was on the basis that he is a Scheduled caste. On a complaint received that he is not a Scheduled caste, the matter was referred to the Collector, Nizamabad, who after verification stated that the applicant is not a Scheduled Caste. Disciplinary Proceedings were initiated against the applicant for producing a false certificate and seeking employment on that basis, by issue of a Charge Memo by the Superintendent of Post Offices, Nizamabad. An enquiry was held under Rule 14 of the CCS(CCA) Rules and thereafter he was dismissed from service. The applicant's appeal was considered by the appellate authority who modified the punishment to one of removal from service by his order dated 9-12-1985. The applicant thereafter preferred a petition to the Postal Service Board and the Member (Personnel), further modified the penalty to one of compulsory retirement. It is against these orders that the applicant has filed this application.

3. The applicant has challenged these orders on the following grounds:

- (a) Respondents 3 and 5 were prejudiced against the applicant and they have acted mala fide in getting the charge framed against him.
- (b) The enquiry was conducted by Respondent no.4 without giving time to the applicant and without allowing time to the applicant to avail of the services of Government Servant as his defence assistant.

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- (c) The request of the applicant for appointment of an adhoc disciplinary authority in the place of the Senior Superintendent of Post Offices, was rejected without giving any reasons.
- (d) The witnesses called by the applicant and the important documentary evidence against the applicant viz., Report sent by Tahsildar was not given to the applicant.
- (e) The Tahsildar had conducted an one sided enquiry which is illegal;
- (f) The enquiry was concluded by the Enquiry Officer without calling upon the applicant to file his written brief;
- (g) The enquiry itself was conducted exparte; and
- (h) The applicant did not have an opportunity of making a representation against the enquiry officer's report as the disciplinary authority passed his orders on receipt of the Enquiry officer's report.

4. We have heard the applicant who argued the case in person and Shri J.Ashok Kumar, Standing Counsel for the Department.

5. The main contentions urged by the applicant are that the entire case was initiated against him because of the prejudice on the part of the then Senior Superintendent of Post Offices with whom he had ^{come to} clash due to his trade union activities. He also contended that the enquiry

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was farcical, malafide and one-sided and no reasonable opportunity was given to him to participate in the enquiry. The enquiry relating to the determination of his caste was conducted by the Tahsildar behind his back and that report was made use of by the Enquiry Officer in giving his findings on the charge memo. The applicant at length gave details of the various activities in which he was involved as an office bearer of the Union and how the Superintendent of Post Offices was prejudiced against him. He had given all the details to the higher authorities in his representation seeking change of Presenting Officer and appointment of adhoc disciplinary authority. None of his contentions were considered properly by the authorities. He also high lighted all these aspects in his appeal to the Director of Postal Services and in his representation to the P & T Board. The respondents, on the other hand, contend that the applicant was given every opportunity to defend himself but despite repeated notices given to him, he did not participate in the enquiry. The applicant did not cooperate by participating in the enquiry and absented himself from the enquiry. In regard to his request for change of Presenting Officer and appointment of adhoc disciplinary authority, they were duly considered by the appellate authority. It was found that there was no substance in his allegations. The charge memo related to the question whether he is a scheduled caste or not and this was enquired into by the Tahsildar concerned. The Senior Superintendent of Post Offices

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or other authorities did not have any role to play in so far as the subject matter of the charge is concerned. If the applicant wanted the Tahsildar or other district authority to be called, the enquiry officer would have called them. Instead the applicant, knowing the contents of the report made by the Tahsildar, choose not to participate in the enquiry by giving one reason or the other. In the circumstances, the enquiry officer had no option except to proceed with the enquiry on the available material. In regard to the contention that the disciplinary authority proceeded to impose the penalty without giving any opportunity to the applicant to represent against the report of the enquiry officer, the respondents state that according to the CCS(CCA) Rules, it is not necessary to do so.

6. One of the grounds urged by the applicant is that the disciplinary authority passed the order against him without affording him an opportunity of making representation on the report of the Enquiry Officer and the impugned orders are vitiated on this ground. We find merit in this contention as the Bombay Bench of the Tribunal in Premnath K.Sharma Vs. Union of India (1988) 6 ATC 904) has held that failure to furnish a copy of the enquiry officer's report before the disciplinary authority passes the order vitiates the proceedings. In view of this, it is not necessary for us to deal with the various points urged by the applicant and the reply given by the respondents, as we are setting aside the orders of the disciplinary authority and directing disciplinary authority to give an opportunity to the

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applicant to represent against the report of the Enquiry Officer.

7. In Premnath K.Sharma Vs. Union of India's case, referred to above, the Bombay bench of the Tribunal 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"

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To

1. Member (Personnel), Union of India, Postal Services Board, N.Delhi-
-110001.
2. Director of Postal Services, A.P.Northern Region, Hyderabad-1.
3. Senior Superintendent of Post Offices, Nizamabad.
4. Inspector of Post Offices, Office of the Director of Postal ~~Office~~
services, Hyderabad -1.
5. Assistant Inspector of Post Offices, O/o. Director of Postal services,
A.P., N.R., Hyderabad-1.
6. One copy to Mr.V.Narayana (Party in person), 36, LIG, Housing Board Colony,
Bellampally-504251.
7. One Copy to Mr.J.Ashokkumar, SC for Deptt. of Posts, CAT, Hyderabad.
8. One spare copy.

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In accordance with the decision in P.K.Sharma's case cited above, we hold the enquiry is vitiated and the order dated 5-6-1985 imposing the penalty of dismissal from service by Respondent no.3 as modified by the 1st respondent vide his order dated 31-3-1986 to one of compulsory retirement are 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 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, it is made clear that this order is not a direction to necessarily continue the disciplinary proceedings. That is entirely left to the discretion of the Disciplinary Authority. The application is allowed to the extent indicated above. But, in the circumstances of the case, there is no order as to costs.

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

J.N. Murthy
(J.N.MURTHY)
Member (Judl.)

Dt. 12th April, 1990

SQH*

T. Venk 17/4/90
DEPUTY REGISTRAR(A).

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