

(S1)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 960/89  
T.A. No.

198

DATE OF DECISION 24 June, 1992

Sri K. Vijaya Rao Petitioner

Sri KSR Anjaneyulu Advocate for the Petitioner(s)

Versus

Supdt. of Post Offices Respondent  
Nalgonda

Sri N. Bhaskara Rao Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.C. JAIN, MEMBER (ADMN) PRINCIPAL BENCH

The Hon'ble Mr. T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/36-3-12-86-15,000

T. C. R.  
(HTCSR)  
M(J)

CJ.  
(HPCJ)  
M(A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH  
AT HYDERABAD

ORIGINAL APPLICATION NO.960/89

DATE OF JUDGEMENT

24 JUNE, 1992

BETWEEN

Sri K. Vijaya Rao

.. Applicant

A N D

1. Secretary to Government  
Department of Posts, New Delhi
2. Superintendent of Post Offices  
Nalgonda
3. Sub Divisional Inspector (Postal)  
Ramannapet

.. Respondents

Counsel for the Applicant

:: Sri K.S.R. Anjaneyulu

Counsel for the Respondents

:: Sri N. Bhaskara Rao  
Addl. CGSC

CORAM:

HON'BLE SHRI P.C. JAIN, MEMBER (ADMN), PRINCIPAL BENCH

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

T. C. N. S.

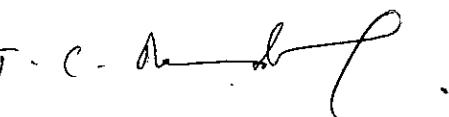
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JUDGEMENT OF THE DIVISION BENCH DELIVERED BY THE  
HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

This is an application filed by the applicant herein under Section 19 of the Administrative Tribunals Act to set aside the order of dismissal dated 10.5.89 passed by the Sub Divisional Inspector, Postal, Ramannapet, and confirmed by the Superintendent of Post Offices, Nalgonda as per the orders dated 20.10.89, who is the appellate authority and to direct the respondents to reinstate the applicant in service with all consequential benefits.

The facts giving rise to this OA in brief are as follows:

1. The applicant, at the relevant time was working as EDDA Manipumpula Branch Office. He was appointed in the said Branch Office on 18.7.83. While so, a money order for Rs.90, dated 28.6.88 was received on 2.7.88 in the said Manipumpula Branch Office and it was entrusted to the applicant for payment on the same day to the payee, duly taking the applicant's acquittance in the Branch Office journal on 2.7.88. But, the applicant did not pay the said money order amount of Rs.90 to the payee who was one Smt Sathir Sayamma and temporarily mis-appropriated the same. The applicant obtained the thumb impression of his wife over the said money order meant for Smt Sathir Sayamma to show that the same had been paid to the said Smt Sathir Sayamma, the payee. During the course of verification of MO payments by the Mail Overseer-II, Ramannapet on 26.7.88, he found that the said Money Order for Rs.90/- payable to Smt Sathir Sayamma, who was the addressee of the said money order, had not actually been paid by the applicant. Actually the applicant had paid the said amount 10 or 12 days after 2.7.88. .3

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So, a preliminary enquiry was conducted. During the course of preliminary enquiry, the statement of said Smt Sathir Sayamma dated 27.7.88 was recorded. During the course of the preliminary enquiry on 26.7.88, the statement of the applicant herein (marked as EXP 2) was recorded. During the preliminary enquiry the applicant in his statement dated 26.7.88 confessed that he did not pay the said amount of Rs.90/- to the addressee on the said date. As the respondents came to the conclusion that the applicant did not effect correct payment of the money order as required under Rule 10 of the Rules of Branch Office and thereby failed to maintain absolute integrity and devotion to duty as required by the applicant under Rules 17 of P&T EDAS (Conduct & Service) Rules, 1964, a charge sheet was issued against the applicant. An Enquiry Officer was also appointed.

2. During the course of the enquiry evidence was recorded on behalf of the Department and the respondents also gave an opportunity to let in evidence in support of the applicant's defence. The Enquiry Officer after taking into consideration the whole oral and documentary evidence before him, held the charge framed as against the applicant was proved and submitted his report to the Disciplinary Authority. The Disciplinary Authority after taking into consideration, the entire material, agreed with the findings of the Enquiry Officer and passed orders dated 10.5.89 dismissing the applicant from service. As against the said order an appeal was preferred to the Appellate Authority, who in this case, is the Superintendent

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of Post Offices, Nalgonda, <sup>who</sup> passed orders on 20.10.89 confirming the orders of the Disciplinary Authority. As already pointed out, the present OA is filed against the said order of dismissal passed against the applicant.

3. Counter is filed by the respondents opposing the OA.

4. We have heard Mr KSR Anjaneyulu, Counsel for the Applicant, and Sri N. Bhaskara Rao, Standing Counsel for the respondents.

5. It is the contention of the learned counsel for the applicant that there is no legal evidence as against the applicant in this case and that the findings of the Enquiry Officer as confirmed by the Disciplinary Authority and Appellate Authority are purely based on surmises and conjectures and hence, this is a fit case where the OA has to be allowed.

6. In AIR 1978 SC 1277 Nand Kishore Vs State of Bihar it is held as follows:

"Disciplinary proceeding before Domestic Tribunal are of quasi-judicial character. Therefore, the minimum requirement of the rules of natural justice is that the Tribunal should arrive at its conclusion on the basis of some evidence i.e. evidential material with some degree of definiteness, points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take place of of proof even in domestic enquiries. If the Disciplinary Enquiry has been conducted fairly without bias or pre-deliction in accordance with the relevant disciplinary rules and the constitutional provisions the orders passed by such authority cannot be interfered with proceedings under Article 226 of the Constitution merely on the ground that it was based on evidence which would be insufficient for conviction of the delinquent on the same charge at a criminal trial."

The learned counsel appearing for the applicant didno bring to our notice any   disciplinary rule   having been violated in the conduct of the enquiry.

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6. Now, we proceed to deal with whether there is evidence as against the applicant to show that the applicant had committed the alleged mis-conduct. As already pointed out, while narrating the case giving rise to this OA, the applicant, had been examined during preliminary enquiry. The statement of the applicant during the preliminary enquiry had been brought in evidence during regular departmental enquiry and the same is marked as EXP 2. EXP 2, as could be seen, is the statement made by the applicant to the Mail Overseer-II Ramannapet. Apart from the EXP 2, another confessional statement dated 16.8.88 had also been made by the applicant to the Mail Overseer which is EXP 4 and which had also been brought in evidence in the regular departmental enquiry. There is nothing on record to show that the said statements had been made by the applicant either under duress, coercion or undue influence. As could be seen from the statements exhibited in P2 and P4, the applicant had practically admitted all the facts that constitute the charge as against the applicant. Ofcourse, before using a statement which is of confessional nature, as against the applicant, one must be satisfied

1. that the said statement which is a confession is voluntary and that it is true and trust-worthy.
2. there is nothing on record to indicate that the said statement had been extorted from the applicant by using threat or force or that the applicant was made to give such statements by deceitful means.

So, from the reading of P2 and P4 and also taking into consideration the other material that is available in the OA, we do not have any hesitation to come to the conclusion that the confessional statements

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P2 & P4 made by the applicant herein to the said Mail Overseer were voluntary and that the said statements are true and trust-worthy. So, in view of the said confessional statements as against the applicant, it is rather difficult to hold that there is no evidence as against the applicant and that the Enquiry Officer and Disciplinary Authority have purely acted on surmises and conjectures. No doubt, the said confessional statements exhibits P2 & P4 are retracted by the applicant. As we are of the opinion that the exhibits P2 & P4 are true and voluntary statements of the applicant, they cannot be rejected merely because the applicant had retracted from them.

7. The ~~said Smt~~ Sathir Sayamma as already pointed out, was examined during the preliminary enquiry and her statement recorded during the preliminary enquiry is EXP 3. The said statement is also brought in evidence during the course of regular departmental enquiry. The said Smt Sathir Sayamma had been examined on 18.3.89 as PW 2 during the course of regular departmental enquiry. In the regular departmental enquiry, the earlier statement dated 27.7.88 made by her during the course of preliminary enquiry had been read over to her and she had admitted in her evidence that as having made the said statement. She had also stated in her statement EXP 3 that she was not paid the amount of Rs.90/- on the alleged date and later on only the said amount was paid to her and that on the alleged date she was out of village and had been to Hyderabad. She had confirmed in the Examination-in-Chief in regular Departmental enquiry that the contents of her earlier statement 27.7.88 were correct. But, during the course of cross examination on 18.3.89, the following questions were put on behalf of the applicant.

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Q:1 : Did you receive the amount of MO on the date affixing your thumb impression on the MO form?

Ans : I do not remember. I received the amount of MO.

Q:2 : Did you affix your thumb impression on the MO form on the date of payment of MO?

Ans : I have affixed thumb impression and took payment of MO.

Q:3 : Was there any witness at the time of payment of MO?

Ans : My nephew Sri Patteda Narasaiah was the witness for this payment.

8. The learned counsel appearing for the applicant, brought to our notice during the course of hearing this OA, the evidence of Smt Sathir Sayamma, and contended that the fact that the said MO was not paid to her on the said date cannot be accepted in view of the statements by the said witness during the course of cross-examination. To understand what the witness has stated in evidence during the course of regular departmental enquiry, both the examination - in-chief and cross-examination have got to be read together. By reading "examination-in-chief and cross-examination of the said Smt Sathir Sayamma together leaves no room to any doubt that the applicant had not paid the said amount of Rs.90, on the alleged date. So, the contentions of the learned counsel for the applicant that the said amount having been paid to the said Smt Sathir Sayamma by the applicant on the said date cannot at all be accepted. If the said amount has been paid as contended by the learned counsel for the applicant, we are unable to understand the necessity of the earlier statement dated 27.7.88 made by Smt Sathir Sayamma exhibited as EXP.3 that the applicant had not paid the amount of Rs.90/- on the said date to her. The respondents or the said Smt Sathir Sayamma absolutely had no motive to concoct a case of this nature which is of grave character as against the applicant. So, we are satisfied that the respondents have come forth with a true version as against the applicant.

To

1. The Secretary to Government,  
Department of Posts, New Delhi.
2. The Superintendent of Post Offices, Nalgonda.
3. The Sub-Divisional Inspector (Postal) Ramannapet.
4. One copy to Mr.K.S.R.Anjaneyulu, Advocate, CAT.Hyd.
5. One copy to Mr.N.Bhaskar Rao, Addl. CGSC.CAT.Hyd.
6. One copy to Hon'ble Mr.T.Chandrasekhar Reddy, M(J)CAT.Hyd.
7. One copy to Hon'ble Mr.P.C.Jain, Member(A)  (PfL.Bench)CAT.Hyd.
8. One spare copy.

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9. Unless the applicant had committed the said mis-conduct, there was absolutely no need for him to make confessions admitting his mis-conduct to which a reference had already been made. So, from the material that is placed before us, the conclusion arrived by the Enquiry Officer, by any stretch of imagination cannot be said to be arbitrary. The disciplinary authority as already pointed out agreed with the findings of the enquiry Officer and the said penalty of dismissal had been imposed on the applicant. The applicant had also exhausted the remedy of appeal. Under the said circumstances we see absolutely no grounds to interfere in this OA and hence, this OA is liable to be dismissed.

10. Even though, in the OA a ground is taken that the enquiry is vitiated due to the fact that a copy of the enquiry report had been served on the applicant along with the order of dismissal of the disciplinary authority, the said contention was not pressed before us by the learned counsel for the applicant in view of the recent decision of the Supreme Court in 1991 Supp(2) SCC 269 S.P.Viswanathan Petitioner Vs Union of India & others respondents.

11. So, for the reasons mentioned above, this OA is dismissed leaving the parties to bear their own costs in the circumstances of the case.

*T. Chandrasekhara Reddy*  
(T.CHANDRASEKHARA REDDY)  
MEMBER (JUDL.)

*(P.C. Jain)*  
(P.C. JAIN)  
MEMBER (ADMN)

mvl

Dated: 24 June, 1992

*Deputy Registrar (J)*  
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*Encl RM  
29/6/92 (a)*

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH.  
THE HON'BLE MR.

AND

*P.C. Jain*

THE HON'BLE MR. ~~R. D. A. S. SUBRAMANIAN~~ M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY : MEMBER (J)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (S)

Dated: 24-6-1992

ORDER / JUDGMENT

R.A./C.A./M.A. No.

in

O.A. No. 960/89

T.A. No.

(W.P. No.)

Admitted and interim directions issued

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for Default.

M.A. Ordered/Rejected.

No order as to costs.

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