

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD
O.A.1633 OF 1997

Dated, the 12th April, '99

BETWEEN

G. Nagaiah

... Applicant

A N D

Union of India represented by :

1. The Chief Post Master General,
AP Circle, Hyderabad.
2. Director of Postal Services,
O/o Post Master General, Kurnool Region, Kurnool.
3. The Superintendent of Post Offices,
Kurnool Postl Division,
Kurnool.

... Respondents.

COUNSELS:

For the Applicant : Mr. KSR ANJANEYULU

For the Respondents : Mr. B.N. Sarma

CORAM:

THE HON'BLE MR. R. RANGARAJAN, MEMBER (ADMIN)

THE HON'BLE MR. B. S. JAI PARAMESHWAR, MEMBER (JUDL)



O.A.1633/97

-: 2 :-

O R D E R

(PER: HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL))

1. Heard Mr. D.Subrahmanyam for Mr. KSR Anjaneyulu learned counsel for the applicant and Mr. MC Jacob for Mr. B.N. Sarma, Learned Standing Counsel for the respondents.
2. This is an application under Section 19 of the Administrative Tribunals Act, 1985. The application was filed on 2.12.97.
3. During the year 1994-95, the applicant was working as BPM, Jonnagiri BO a/w Juggali S.O. in Kurnool District. On 10.1.95, the SDI(P), Dhone, paid a surprise visit/and checked registers/ in the BO. The SDI(P) noticed variations in the physical verification of cash and stamps with the details of balances shown as per the BO Accounts dt. 10.1.95. He also noticed certain financial irregularities and dereliction of duty committed by the applicant during the tenure of his BPM in the said Branch Office.
4. The applicant was put off duty in January, 1995 pending disciplinary action against him.
4. The respondent No.3 by his proceedings No.F 6-1/95 dt. 7.4.95 issued a charge memo, under Rule 8 of the P&T EDA(Conduct & Service) Rules, 1964 (in short "the rules 1964") for violation of Rules 17 and 20 of the Rules 64 and Rule 104 and 174(2) and 177(2) of the Book of the Branch Office Rules (IVth edition).
5. The details of the misconduct alleged against the applicant are in the Articles of Charges annexed to the O.A. at pages 27 to 31).
6. The applicant denied the charges. A detailed enquiry was conducted into the charges by the ASO (HQ) O/o SPOs Kurnool Division. The applicant participated in the inquiry. The inquiry was conducted between 28.7.95 to 25.1.96. The

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O.A.1633/97

-: 3 :-

Inquiry Officer submitted his report dt. 4.5.96 holding the charges of misconduct alleged against the applicant as proved. A copy of the report of the Inquiry Officer is at pages 52 to 64 of the O.A.

7. A copy of the report of the Inquiry Officer was furnished to the applicant. The applicant submitted his representation dt. 20.5.96 against the findings of the Inquiry Officer. However, the respondents denied to have received the representation of the applicant. A copy of his representation is at Annexure-12 (pages 65-66) of the O.A.

8. The respondent No.3 after considering the report of the Inquiry Officer and the records of the inquiry agreed with the findings of the Inquiry Officer. The respondent No.3 by his proceedings No.INV/F6-1/95/I dt. 31.5.96 imposed the penalty of removal of the applicant from service with immediate effect.

9. The applicant submitted an appeal dt. 27.7.96 to the respondent No.2. The respondent No.2 considered the appeal and by his proceedings No.ST/III/14-10/KNL dt.28.11.96 rejected the appeal and confirmed the punishment.

10. The applicant has filed this O.A. for the following reliefs :

- to call for the records relating to the case of removal of the applicant and declare the order of removal and issued by Superintendent of Post Offices, Kurnool in his Memo No.Inv/F6-1/95/1 dated 31.5.1996 (Annexure-1 Page 12) and upheld by the Director of Postal Services, Office of Post Master General, Kurnool in his Memo No.ST/III/14-10/KNL dt.28.11.96 (Annex-2, page 22) as arbitrary, illegal and unsustainable in law offending articles 14, 16 and 311(2) of the Constitution of India and set aside the same and consequently to direct the respondents to reinstate the applicant with all consequential benefits.

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O.A.1633/97

-: 4 :-

11. The applicant has challenged the impugned orders on the following grounds :

(a) The Inquiry Officer conducted the inquiry on 11.1.96 and 12.1.96 ex parte while he was hospitalised.

(b) The Inquiry Officer denied access to the additional documents.

(c) Examination of all the witnesses on a single day was not justified.

(d) The Inquiry Officer ^{declined} ~~desired~~ to summon the defence witnesses.

(e) The Inquiry Officer failed to comply with the rules 14(16) and 14(15) of the CCS CCA Rules, 1965.

(f) The Inquiry Officer while putting questions to the applicant, virtually cross-examined him and based his report on such answers extracted from him.

(g) There was no proper and legal evidence to connect him with the misconduct; and

(h) There was no proper evaluation of evidence by the respondent authorities.

12. The respondents have filed a reply denying the ~~averments~~ ^{allegations} made by the applicant in the O.A. They submit that every opportunity was given to the applicant to defend himself in the inquiry. The Inquiry Officer has followed the principles of natural justice and that there are not justifiable grounds to interfere with the impugned orders. Thus they prayed for dismissal of the O.A.

13. The applicant has challenged the manner of inquiry conducted by the Inquiry Officer. It is only on these grounds, the applicant has challenged the impugned orders.

14. It is now to be seen whether the Inquiry Officer conducted the inquiry in accordance with the Rule 65 adhering to the principles of natural justice.

O.A.1633/97

-:5:-

15. It is only on perusal of the inquiry records, if we are satisfied that the Inquiry Officer has conducted the inquiry in accordance with the rules 1965 and following the principles of natural justice, then we feel that there are absolutely no reasons to interfere with the impugned orders.

16. The main irregularities committed by the Inquiry Officer, according to the applicant, are these :

i) The Inquiry Officer conducted the inquiry on 11.1.96 and 12.1.96 ex parte.

ii) The Inquiry Officer declined to summon the witnesses to be examined on his behalf.

iii) The inquiry officer, while recording his statement under Rule 14(18) of the Rules 1965, virtually cross-examined him, which is not proper.

17. As already observed the inquiry was held between 28.7.95 and 25.1.96. The preliminary inquiry was held till 10.11.95. The Inquiry Officer had set down the inquiry for recording the evidence of witnesses on behalf of the disciplinary authority on 11.1.96 and 12.1.96. On that day, the applicant was absent. His AGS was present. On that day, from the proceedings sheet, it is clear that the applicant had submitted an Out-Patient Chit through his son to the Inquiry Officer stating that he was not well and was not in a position to attend the inquiry. However, the Inquiry Officer on going through the OP Chit issued by the Hospital authorities at Gooty formed an opinion that it did not disclose anything to show that the applicant was ill and that there was no justification to adjourn the inquiry. On that day, he examined one witness on behalf of the disciplinary authority. However, at the close of the day, he received a telegram from the applicant stating that he was not well and the inquiry be post-poned.

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O.A.1633/97

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18. On 11.1.96, the Inquiry Officer examined one witness in part. That means, he recorded the examination-in-chief portion of the said witness. Probably, he did so with the idea to provide an opportunity to the applicant to cross examine the said witness on a later date and as the AGS was present. On that day the AGA^S was also present. So the AGS might have consented to the Inquiry Officer to examine the said witness in part. So we cannot find any fault or irregularity in conducting the inquiry proceedings on 11.1.96.

19. In the proceedings of the said date, the Inquiry Officer himself has recorded that he received a telegram from the applicant praying for an adjournment. When that was so, the Inquiry Officer should have been lenient enough to post-pone the inquiry to a few days ahead, instead of adjourning it to the very next day.

20. Subsequently, the applicant produced documents to show that on 11.1.96 and 12.1.96, he was an in patient at A.P. Vaidya Vidhana Parishad Community Hospital, Gooty.

21. Without considering the genuineness of the telegram sent by the applicant which was received by the Inquiry Officer on the latter part of the day i.e. on 11.1.96 adjourned the proceedings to 12.1.96 and examined the other two witnesses. Actually, only 3 witnesses were examined on behalf of the disciplinary authority. All these 3 witnesses were examined on 11.1.96 and 12.1.96 and admittedly during the absence of the applicant.

22. The normal rule is that the witnesses must be examined in the presence of the delinquent employee. We have no doubt that the Inquiry Officer for the reasons recorded by him rejected the out-patient chit produced by the son of the applicant on 11.1.96 and examined one witness. But when he received a telegram on the latter part of the day on 11.1.1996 he should have adjourned the proceedings to a day other than 12.1.96.

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O.A.1633/97

-:7:-

23. Heavens would not have fallen down had the Inquiry Officer been just and lenient enough to adjourn the proceedings a few days ahead to ascertain the actual state of health of the applicant, whether his prayer for postponement was justified or not and whether the out patient chit and the telegram sent by the applicant on 11.1.96 were based on real state of affairs.

24. In this connection, the learned counsel for the applicant has relied upon the observations made by the Hon'ble Supreme Court in the case of Union of India and Others Vs. I.S. Singh (reported in (1994) 28 ATC 53). The observations made in para 2 of the judgment in the above case by the Hon'ble Supreme Court are extracted below :

"On a later date the respondent sent an application stating that he is suffering from unsoundness of mind and that the inquiry may be postponed till he regains his mental health. The respondents also states that he sent his medical certificate along with his application. (Indeed, according to him, he sent not one but three letters to the said effect). The report of the Enquiry Officer, however, does not show that he paid any attention to these letters. If, indeed, the letters were not accompanied by medical certificates, as is now asserted by Shri Mahajan, learned counsel for the appellants, the proper course for the Enquiry Officer was to have called upon the respondent either to produce a medical certificate or to direct him to be examined by a medical officer specified by him. The Enquiry Report does not even refer to the request contained in the said application nor does it mention why and for what reasons did he ignore the said plea of the respondent. The Enquiry Officer proceeded ex-parte, in spite of the said letters and made his recommendations on the basis of which the aforesaid ~~enquiry~~ penalty was imposed. It is evident from the facts stated above that the Enquiry Officer has not only conducted in manner contrary to the procedure prescribed by Rule 14(2) of CCS CCA Rules, but also in violation of principles of natural justice. The result of the finding would have been to set aside the order of punishment and allow the authority to proceed with the inquiry afresh."

24. In the case of State of Madhra Pradesh V. Chintaman Sadashiva Waishampayan (reported in AIR(1991) 14 SC 1623) has observed as follows :

"Stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be

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O.A.1633/97

-8-

given the opportunity of corss-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity to exaplaining them. The right to cross-examine the witnesses who give evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the Enquiry Officer by not giving to the officer relevant documents to which he is entitled, that inevitably would mean that the enquiry had not been held in accordance with the rules of natural justice."

25. In our humble opinion, the proceedings conducted on 12.1.96 ex parte was not justified. When the applicant has now established that he was hospitalised on 12.1.96 at AP Vaidya Vidhana Parishad Community Hospital at Gooty.

26. The other ground is that the Inquiry Officer refused to summon the defence witnesses.

27. As a normal rule, the delinquent employee has to submit to the Inquiry Officer the list of documents which he may rely in support of his defence and the list of witnesses whom he may desire to examine on his behalf. Sometimes, the delinquent employee may reserve his right to submit the list of witnesses at a future date. This future date cannot be beyond the stage of the disciplinary authority closing its side. That means when the Inquiry Officer calls upon the applicant to enter upon his defence, at least, then he ^{shall} ~~should~~ furnish the list of witnesses whom he wishes to examine in support of his defence and also the list of documents to be secured.

28. Admittedly, the evidence on behalf of the disciplinary authority was concluded on 23.1.96. On that day, the Inquiry Officer enquired the applicant whether he wants to examine himself as a witness or not. At that time it was the stage when the Inquiry Officer had called upon the applicant to enter upon his defence. At that time, the applicant produced the list of witnesses to be examined on his behalf. The Inquiry Officer holding that the applicant failed to submit the list of witnesses during the preliminary inquiry, without recording any reasons--just stating "that stage was over" rejected the application of the applicant. He has not disclosed any reasons for not summon^{ing} the witnesses to be examined on behalf of the applicant. No doubt, the Inquiry

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O.A.1663/97

-:9:-

Officer has a right not to summon the witnesses stated by the delinquent employee, if he feels that the evidence of that person is irrelevant. In this connection, the letter No.141/14/67-Disc (Part.I) dt. 6.2.68 of the DGP&T is relevant. It is stated as follows :

"An oral enquiry which the enquiry officer is bound to hold if so requested by the charge-sheeted employee, can very well be regulated by him in his discretion, exercised by him in a judicial manner. If the charge-sheeted employee starts cross-examining the departmental witnesses in an irrelevant manner, such cross-examination can be checked and controlled. If the employee desires to examine witnesses whose evidence may appear to the enquiry officer to be thoroughly irrelevant, the enquiry officer may refuse to examine the witness; but in doing so he will have to record his special and sufficient reasons, so that the record, would ex facie, show that the enquiry officer, in refusing permission, had exercised his discretion in a judicial manner and not in an arbitrary and perfunctory manner. The enquiry officer would then be justified in conducting the enquiry in such a way that its proceedings are not unduly or deliberately prolonged."

29. The Inquiry Officer was not justified in refusing the to summon the witnesses stated by the applicant. This in our opinion is a gross violation of the principles of natural justice.

30. The other ground taken by the applicant is that the Inquiry Officer while examining him under rule 14(18) of the Rules 65, the applicant was cross examined and the answers extracted by the applicant for such questions was made the subject matter of the report.

31. No doubt the object of examining the applicant under the said rule is only to bring it to the notice of the delinquent employee the evidentiary material that is ^{appearing} ~~available~~ _{and for explanation.} against him. In this connection, the observations made by the Bangalore Bench of this Tribunal in the case of M.K.Varadarajan Vs. Senior Deputy Director General, AMSE Wing, Geological Survey of India (reported in(1991) 16 ATC 822) are reproduced below :

"The object of questioning the delinquent Government servant by the IO is only to give him an opportunity to explain the incriminating circumstances appearing in the evidence adduced against him. But, in this case, we see that the IO has cross-examined the applicant in regard to the particulars

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O.A.1663/97

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of the charges levelled against him. This is clearly prohibited. There is no provision for compulsory examination of a delinquent Government servant. The Government servant may, if he chooses, examine himself on his side. But there is only a provision for questioning him, for the purpose of giving him opportunity to explain the evidence appearing against him after the evidence is closed. So, the cross-examination of the applicant by the IO is irregular and that naturally has caused prejudice to his case. From the IO's report itself it is evident that though the applicant had sought permission to examine 14 witnesses, the IO has refused permission to examine 8 witnesses and permitted examination of only 6 witnesses. No reason has been stated as to why the IO has refused permission to examine the remaining witnesses. The person who can decide what evidence is to be adduced in his favour is the delinquent Government servant and not the IO. So, his refusal to permit the applicant to examine all the witnesses whom he wanted to examine without assigning any reasons as to why he has not permitted to defend his case. The documents in this case, as is evident from Annexure III are voluminous.

31. In the said decision the Bangalore Bench of this Tribunal also considered the effect of non-examining the witnesses on behalf of the delinquent employee.

32. Further, in the case of State Bank of Patiala Vs. S.K. Sharma (reported in AIR 1996 SC 1669) the Hon'ble Supreme Court in para 32 has clearly indicated certain guidelines as to the principles of natural justice to be observed by the Disciplinary Authorities. It has been clearly stated by the Hon'ble Supreme Court that orders passed by the Disciplinary Authority should not be set aside on mere technicalities. The Hon'ble Supreme Court has observed that in case procedural irregularities affecting the rights of the delinquent employees are noticed, the orders passed by the Disciplinary Authority can even be set aside. (Para 32 (3) p.1683)

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O.A.1633/97

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33. Considering all these factors and also after going through the inquiry records we feel that the inquiry conducted into the charges levelled against the applicant was not in accordance with the principles of natural justice and in accordance with the rules 1965.

34. The Inquiry Officer, in fact attempted to justify that he had given fullest opportunity to the applicant to defend himself, but on verifications he has violated the principles of natural justice in examining the witnesses on behalf of the disciplinary authority in the absence of the applicant and in not giving an opportunity to the applicant to examine his defence witnesses.

35. In that view of the matter we are of the opinion that the impugned orders cannot be sustained. Hence, the O.A. is liable to be accepted.

36. Hence, we pass the following order :

- a) The impugned orders are hereby set aside.
- b) The applicant shall be reinstated ~~forthwith~~ in accordance with the rules.
- c) The period of absence from the date of removal (31.5.96) of the applicant till the date of his the reinstatement shall be regularised as per rules 1964.
- d) The respondent authorities shall proceed from the stage stage of recording evidence on behalf of the disciplinary authority in accordance with the rules 6
- e) The respondent authorities shall conclude the proceedings within 3 months from the date of receipt of a copy of this order.


37. No order as to costs.

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O.A.1633/97

-: 13 :-

38. The inquiry records produced by the respondents are perused and returned to the respondents.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL)

12/4/99


(R RANGARAJAN)
MEMBER (A)

Dated, the 12th April, '99.

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COPY TO:-

1. HHHND
2. HHRP M(A)
3. HBSJP M(J)
4. B.R.(A)
5. SPARE

26-4-99
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TYPED BY
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APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR :
VICE - CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD :
MEMBER (A)

THE HON'BLE MR. R. RANGARAJAN :
MEMBER (A)

THE HON'BLE MR. B.S. JAI PARAMESWAR :
MEMBER (J)

DATED: ~~26-4-99~~ 12-4-99

ORDER / JUDGEMENT

MA./R.A./C.P.No.

IN

C.A. No. 1633/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED.

C.P. CLOSED.

R.A. CLOSED.

DISPOSED OF WITH DIRECTIONS.

DISMISSED.

DISMISSED AS WITHDRAWN.

ORDERED/REJECTED.

NO ORDER AS TO COSTS.

SRR

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
दिल्ली / DESPATCH

22 APR 1999

(8 copies) HYDERABAD BENCH