

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 414/94
T.A. No.

199

DATE OF DECISION 30.10.95

Sujender Singh Petitioner

Mr. S.K. Jain Advocate for the Petitioner (s)

Versus

Union of India & Ors Respondent

Mr. K.N. Shrimal Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Gopal Krishna, Vice Chairman

The Hon'ble Mr. O.P. Sharma, Member (Adm)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes.
2. To be referred to the Reporter or not ? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgement ? No.
4. Whether it needs to be circulated to other Benches of the Tribunal ? No.


(O.P. Sharma)

Member (Adm)


(Gopal Krishna)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.414/94

Dt. of order: 30.10.1995

Sujendar Singh : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.S.K.Jain : Counsel for applicant

Mr.K.N.Shrimal : Counsel for respondents

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

Hon'ble Mr.O.P.Sharma, Member(Adm.)

PER HON'BLE MR.GOPAL KRISHNA, VICE CHAIRMAN.

Applicant Sujendar Singh in this application under Sec.19 of the Administrative Tribunals Act, 1985, has challenged the order Annex.A1 dated 29.1.93 by which the disciplinary authority imposed upon him the penalty of compulsory retirement as also the order at Annex.A2 dated 30.9.93 by which the aforesaid penalty imposed was upheld by the appellate authority.

2. The case of the applicant is that while he was serving as a Postal Assistant in the Head Post Office at Alwar, he was served with a charge sheet dated 12.3.92 (Annex.A3) for majorly penalty. The applicant filed his reply to the charge sheet on 16.4.92 denying the charges against him vide Annex.B2. An Inquiry Officer was appointed vide Annex.A7. On 15.6.92, the plea of the applicant was recorded vide Annex.A8. The contention of the applicant is that the respondents committed grave illegality in conducting the enquiry ex parte against him, since the date fixed for proceeding against the applicant on 27.7.92 was not communicated to him. However on 27.7.92, documents were taken on record and the enquiry was adjourned to 3.8.92 which date also was not communicated to the applicant. The applicant has therefore pleaded that the enquiry proceedings having been conducted ex parte are liable to be set aside as an opportunity to cross examine the witnesses was denied to him and the enquiry

C.Kishore

was conducted and concluded in haste resulting in the imposition of the penalty upon him.

3. The respondents however have stated in their reply that the applicant attended the enquiry on 13.7.92 and submitted an application that he was being advised by his Doctor for hospitalisation. It is also stated that he had neither submitted any proof for hospitalisation nor submitted any sick certificate. An intimation regarding postponement of enquiry to 27.7.92 was sent to the applicant under a registered letter dated 21.7.92 received back as undelivered with an endorsement thereon that the whereabouts of the applicant were not known. The main contention of the respondents is that the applicant himself avoided participation in the enquiry and he had been adopting delaying tactics during the course of enquiry proceedings.

4. We have heard the learned counsel for the parties and have carefully gone through the records of the case.

5. The point for determination is whether the letters intimating the dates fixed by the Inquiry Officer for enquiry on 27.7.92 and 3.8.92 were received by the applicant or served upon him. Either these letters should have been personally served upon the applicant or they could have come back before these dates undelivered to the applicant. It is borne out from the endorsement on these letters produced before us by the learned counsel for the respondents during the course of hearing that the letters had come back to the Inquiry Officer after these dates. So the Inquiry Officer could not have known on 27.7.92 and 3.8.92 that the letters have been served on the applicant or that the applicant's whereabouts were not known. Therefore, his proceeding with the enquiry ex parte on those dates was not justified, as on 3.8.92, witnesses were examined and the ~~Chennai~~ applicant had no opportunity to cross examine them. The

applicant having been denied an opportunity to defend himself the enquiry proceedings are liable to be struck down on this ground from the stage an opportunity to cross examine the prosecution witnesses was denied to the applicant.

6. In the result, the order of the disciplinary authority imposing upon the applicant the penalty of compulsory retirement dated 29.1.93 (Annex.A1) and the order of the appellate authority dated 30.9.93 (Annex.A2) are hereby set aside with the direction that the enquiry shall now proceed afresh from the stage after recording of the evidence of witnesses on 3.8.92 and the applicant shall be given an opportunity to cross examine the witnesses on the basis of their statements already recorded. Thereafter, the Inquiry Officer shall furnish a fresh report after considering the entire evidence recorded and the disciplinary authority shall pass a fresh order in accordance with law.

7. The O.A. is disposed of accordingly with no order as to costs.

O.P.Sharma
(O.P.Sharma)

Member (Adm)

Gopal Krishna
(Gopal Krishna)

Vice Chairman.