

Sadhuram Vs. Engineer Telegraphs

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Court : Madhya Pradesh

Decided On : Nov-30-1956

Reported in : AIR1957MP52

Judge : Sen, J.

Acts : [Constitution of India](#) - Article 311(1) and 311(2); Posts and Telegraphs Manual Vol. II Regulations - Sections 12(B), 12C and 12(2)

Appeal No. : Misc. Petn. No. 519 of 1955

Appellant : Sadhuram

Respondent : Engineer Telegraphs

Advocate for Def. : M. Adhikari, Adv.

Advocate for Pet/Ap. : R.V.S. Mani, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Sen, J.bv

1. This is a petition by Sadhuram under Article 226 of the [Constitution of India](#) for adirection in the nature of certiorari to quash the order dated 31-8-1955, removing

him from service and for his reinstatement.

2. The petitioner was appointed as a temporary peon in the Ministry of Communication, Post and Telegraphs, by the Additional Chief Engineer, Jabalpur, by order Ex. P. 1, dated 16-3-1951, with effect from 7-2-1951, and was posted in the Office of the Additional Chief Engineer. On 11-3-1953, the Divisional Engineer Telegraphs passed an order Ex. P. 2 to the effect that as the petitioner was appointed on probation for one year with effect from the forenoon of 1-12-1951 and as he had already officiated for one year, he was confirmed in the aforesaid appointment with effect from 1-12-1951 forenoon.

3. The duty of the petitioner was to open and stamp official letters received by post and place them before the Office Superintendent, Shri A. K. Gupta. A cyclostyled letter dated 31-12-1954, regarding promotion and posting of some officers was received by post on 3-1-1955. This was opened by the petitioner, but was not put up before the Office Superintendent. The petitioner had shown this letter to Shri Krishnamurty, Sub-Divisional Officer, Telegraphs. Jabalpur, Shri S. C. Mukerji and some other staff of the Jabalpur Division and kept it in his possession. On 5-1-1955, while opening the letters received by post, he kept the cyclostyled letter received on the 3rd January 1955 with other letters.

4. On 5-1-1955, a memorandum Ex. P-3 was issued by the Divisional Engineer Telegraphs to the petitioner calling upon him to explain within 24 hours why disciplinary action should not be taken against him for 'pilfering' the official documents. The petitioner submitted his reply on 6-1-1955 containing the following explanation :--

'While stamping letters, the letter in question accidentally appears to have mixed up with my bill which I put into my pocket unnoticed, after giving the dak to the Office Superintendent.

When I went to Shri Pratap Singh, a friend of mine in the C.T.O. Jabalpur for getting the medical bill forms completed, I found one cyclostyled paper along with the bill. As I do not know English myself I showed that letter to the above-said Shri P. Singh who informed me that the letter in question was an official one,

addressed to the Additional Chief Engineer. The S.D.O. (T) Jabalpur also happened to be there. On the next day, I mixed that letter with other dak.

.....It is, however, admitted that the letter appears accidentally to have mixed up with my private bills through my negligence which is very much regretted. As this is the first mistake of its kind, I request that I may kindly be excused this time.'

5. On 22-2-1955, the Divisional Engineer Telegraphs gave a charge-sheet Ex. P-5 to the petitioner containing four charges under the following headings:--

1. Stealing official document, namely the letter dated 31-12-1954;
2. Showing official document of this office to outside persons on 3-1-1955 which was against office discipline and Government Servants Service and Conduct Rules;
3. Deliberately telling lies by denying knowledge of the letter in question, when questioned by the Office Superintendent, Shri A. K. Gupta; and
4. Stealthily mixing up the Director General's letter on 5-1-1955, without the knowledge of any office staff, with a view to show that the said letter was received on 5-1-1955 and not on 3-1-1955.

The petitioner was asked to submit his written explanation within 10 days and state if he wished to be heard in person in respect of the aforesaid charges. The charge-sheet further required the petitioner to show cause why he should not be dismissed from Government service. On 2-3-1955, the petitioner submitted his explanation Ex. P-6. A personal interview was also given to him on 16-3-1955 by the Divisional Engineer Telegraphs (Administration), respondent No. 1, in the presence of the Office Superintendent and the gist of the interview was recorded on 19-3-1955. There is a note to the effect that the minutes of the interview were explained to the petitioner in Sindhi and was admitted by him to be correct.

6. On 27-7-1955, another charge-sheet was given to the petitioner containing the same charges. There was only a difference in the wording of the fourth charge, its heading being 'tampering with official dak' instead of 'stealthily mixing up the D.

G.'s letter'. The petitioner was asked to give his explanation by 1-8-1955 and also to show cause why he should not be dismissed from service. On 1-8-1955, the petitioner asked for time (vide Ex. P-9) and for copies of statements of the prosecution witnesses. The Divisional Engineer Telegraphs supplied him with the statements of Shri R. Krishnamurthy, Shri S. C. Mukerji and Shri A. K. Gupta, and extended time till 4-8-1955. The petitioner submitted his explanation Ex. P-13 on 17-3-1955 and asked for a personal hearing which was granted. The record of the interview is Ex. P-14. It bears the signature of respondent No. 1, Shri A. K. Gupta and Shri P. D. Golani. A second interview was granted on 24-8-1955. Ex. P-16 is the record of the interview signed by respondent No. 1, Shri A. K. Gupta, Shri P. G. Golani and one Tarachand.

7. By order Ex. P-17, dated 31-8-1955, respondent No. 1 ordered the removal of the petitioner from service. He found that all the four charges were fully established against the petitioner. The petitioner preferred an appeal (Ex. P-18). The Appellate Authority (respondent No. 2) dismissed the appeal of the petitioner and confirmed the punishment.

8. The first contention of learned Counsel for the petitioner is that the Divisional Engineer Telegraphs was not competent to order the petitioner's removal from service as he was appointed by the Additional Chief Engineer and could not be removed by an authority subordinate to him. The next contention is that the enquiry was held in contravention of the rules and the petitioner was not given adequate opportunity to meet the charges. He should have been allowed to cross-examine the prosecution witnesses and examine witnesses in defence. It is urged that there was breach of the provisions of Article 311(2) of the Constitution.

9. I do not accept the contention that the Divisional Engineer Telegraphs was not competent to order removal of the petitioner from service. It is true that he was originally appointed by the Additional Chief Engineer. That appointment was however temporary as will appear from the terms of the order Ex. P-1 dated 16-3-1951. The petitioner was appointed on a permanent basis with effect from 1-12-1951 by order Ex. P-2, dated 11-3-1953, of the Divisional Engineer in exercise of the powers conferred on him by the Director General on 25-6-1951. The orders of

appointment and removal were by the Divisional Engineer and there is no breach of Article 311(1) of the Constitution.

10. I am of opinion that the enquiry was not made in accordance with the regulations governing departmental enquiries laid down in Posts and Telegraphs Manual, Volume n. There was breach of Regulation 12-C (b) (2) as the Enquiring Authority failed to record the evidence of Shri A. K. Gupta, Shri Krishnamurthy, sub-Divisional Officer Telegraphs and Shri S. C. Mukherji, and afford opportunity to the petitioner to cross-examine them. The supply of their statements Ex. P. 10A, P. 10B and P. 10C did not fulfil the requirements of Regulation 12-C (B) (2) which is as follows:--

'At the oral enquiry it is incumbent on the authority concerned to have oral evidence as to such of the allegations as are not admitted and to give the employee charged an opportunity (a) to cross-examine the witness, (b) to give evidence in person and (c) to have such witnesses called as he may wish, though the officer conducting the enquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness.'

Cross-examination cannot be refused on the ground that no useful purpose would be served thereby. I do not agree with the following observation of the Appellate Authority:--

'In view of this, I am inclined to consider that the cross-examination of witness, i. e., the Sub-Divisional Officer, the Engineering Supervisor (Phones) and Shri Pratap Singh, could not have been brought out anything in favour of the official.'

11. Further, the manner in which Shri A. K. Gupta was allowed to participate in the enquiry at the time of interview was not proper. He was only a witness and not an enquiring officer.

12. The Enquiring Officer was in error in combining the notice to show cause against the proposed punishment of dismissal with the charge-sheet. Regulation 12-C (C) should have been strictly observed. It is as follows:

'After the enquiry against the employee has been completed and after the punishment authority has arrived at provisional conclusion in regard to the penalty to be imposed, the employee should, if the penalty proposed is dismissal, removal or reduction, be supplied with a copy of the report of the enquiring authority and be called upon to show cause, within a reasonable time not ordinarily exceeding one month, against the particular penalty proposed to be inflicted. Any representation submitted by the employee in this behalf should be duly taken into consideration before final orders are passed.'

It would appear from the order of the Appellate Authority that the third charge was not established.

13. It may also be pointed out that there was no reference to the censure administered to the petitioner on a previous occasion (para 18 of the order of the Enquiring Officer).

14. I hold that the enquiry was held contrary to the Regulations, In the circumstances, the order of removal of the petitioner from service cannot be upheld. The orders of respondent 1 and 2 are hereby quashed.

15. The petition is allowed with costs. Counsel's fee Rs. 50. The outstanding amount of security deposited by the petitioner shall be refunded to him.