

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/00466/2018

Wednesday, this the 10th day of February, 2021.

CORAM:

**HON'BLE Mr. P. MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr. K.V. EAPEN, ADMINISTRATIVE MEMBER**

P. Premalatha, 57 years,
W/o. Muraleedharan Nair,
Postal Assistant, Aluva Head Post Office,
Aluva – 683 101, Ernakulam District.
Residing at : “Latha Nivas”, Manikkamangalam (P.O),
Ernakulam District – 683 574. - Applicant

[By Advocate : Mr. T.C. Govindaswamy]

Versus

1. Union of India represented by the Secretary to the Government of India, Ministry of Communications (Department of Posts), New Delhi – 110 001.
2. The Director General of Posts, Ministry of Communications (Department of Posts), New Delhi – 110 001.
3. The Chief Post Master General, Kerala Circle, Thiruvananthapuram – 695 033.
4. The Senior Superintendent of Post Offices, Aluva Postal Division, Aluva – 683 101.
5. The Post Master General, Central Region, Kochi – 682 020.
6. N.R. Giri,
Ad-hoc Disciplinary Authority &
Senior Superintendent of Post Offices,
Ernakulam Postal Division, Kochi – 682 011.
7. Devi P. Vijayan,
Inquiry Officer & ASP, Office of the Superintendent,
Kerala Circle Stamp Depot, Department of Posts,
Kochi – 682 020. - Respondents

[By Advocate : Mr. Thomas Mathew Nellimoottil for R-1 to 5]

The application having been heard on 06.01.2021, the Tribunal on 10.02.2021 delivered the following:

O R D E R**Per: Mr. P. Madhavan, Judicial Member**

The applicant filed this O.A seeking the following reliefs:-

- "i. Call for the records leading to the issue of Annexures A-13, A-15, A-17 and A-19 and quash the same;*
- ii) Call for the records leading to the issue of A-1 and declare that the proceedings therein stand abated as on 02.12.2017 in the light of sub-rule 24 of Rule 14 of the CCS (CCA) Rules, 1965 amended by A-11 Notification.*
- iii) Call for the records leading to the issue of Annexures A-22 and A-23 and quash the same.*
- iv) Direct the respondents to drop all further proceedings in relation to A-1 charge memo and direct further to grant all the consequential benefits emanating there from."*

2. The applicant in this case is working as Postal Assistant in the Aluva Head Post Office under the 4th respondent. She is aggrieved by the issuance of major penalty charge memo on 23.01.2013 under Rule 14 of the CCS (CCA) Rules, 1965. According to her, she is going to retire on 28.02.2021 and the charge memo issued is without any sufficient reason and with malafides.

3. The applicant commenced her service as Reserved Trainee Pool Postal Assistant in the year 1983 and regularized during the year 1990 when she was working at Perumbavoor Head Post Office. While working there, she applied for a '*No Objection Certificate*' for getting a passport so as to proceed to join the applicant's daughter, who was in Oman. The request for No Objection Certificate was not acted upon by the 4th respondent for ulterior reasons and the applicant had to approach the Tribunal by filing O.A No. 28/2013. At the time of admission of the said O.A, the respondents had objected to the issuance of passport contending that a major penalty proceedings is contemplated against the applicant. Immediately, the respondents had issued a charge memo, which is produced as Annexure A-1. In the meanwhile, O.A No. 28/2013 was allowed in favour of the applicant on 15.02.2013.

4. Subsequently, R-4 – Disciplinary Authority appointed one Smt Devi P. Vijayan, Inspector of Posts, Muvattupuzha Sub-Division as Inquiring Authority. One Smt Sreejaya Moorthy was appointed as Presenting Officer. According to her, the 4th respondent who had issued the charge memo had written the APAR for the year 2013 drawing a pen picture against the applicant. It is also indicated that the applicant is facing a charge memo under Rule 14 of the CCS (CCA) Rules, 1965 on the allegation of fraud in RD. He had made adverse remarks against the applicant. It shows that the enemical attitude entertained by R-4 at that time. She submitted a representation against charge memo and it was not acted upon. Hence she filed O.A No. 1161/2013 challenging the charge memo issued against her. During the pendency of the O.A, the respondents appointed an ad-hoc Disciplinary Authority as per letter dated No. C-14015/8/2014-VP dated 04.04.2014, which is produced as Annexure A-5. Two Corrigenda were issued to the Charge Memo for correcting the mistakes.

5. During the pendency of the O.A, the respondents had opposed the interim order of stay and no interim order was granted by the Tribunal in that case against the disciplinary proceedings. O.A. No. 1161/2013 was finally decided on 03.10.2016 against the applicant. The applicant filed O.P.(CAT) No. 31/2017. During this period, nothing happened and no progress in inquiry took place. There was no impediment for the respondents to proceed with the inquiry. In the year 2016, the Government had amended the CCS (CCA) Rules as per notification dated 02.06.2017, and sub-rule (24) was added to Rule 14 stating that the *“Inquiry Authority should conclude the inquiry and submit his report within a period of six months from the date of receipt of order of his appointment as Inquiring Authority (b) Where it is not possible to adhere to*

the time limit specified in clause (a), the Inquiring Authority may record the reasons and seek extension of time from the Disciplinary Authority in writing, the disciplinary authority can extend the period upto six months.”

6. After the said amendment, the DoPT has also clarified that Clause 24 i.e., the newly amended portion has retrospective effect. As per clarification, if the inquiry is pending – such cases should have been completed as per time limit prescribed by the notification. If any of those cases are pending, the period of six months for completing the inquiry can be reckoned with effect from 02.06.2017 and the Authority should seek extension of time to continue beyond the time limit.

7. In this case, six months period as stated above was over on 02.12.2017 and the Inquiry Officer has not completed his inquiry. It is mandatory for the Inquiry Authority to conclude the inquiry within a period of six months. If this is not done, he is bound to obtain an extension of period by giving specific reasons. Since the Department has clarified that the amendment applies to pending inquiries also, the Inquiring Authority is bound by the amended Clause 24. So, according to the applicant, the charge memo must be deemed to have been abated as on 02.12.2017. But the respondents are again proceeding to conduct the inquiry and they had issued notice for appearance on 26.01.2018. The applicant had given a representation on 18.02.2018 to the 5th respondent stating that the present Senior Superintendent of Post Offices, Shri N.R. Giri of Aluva Postal Division is enemical to her as she had filed O.A. No. 604/2014. A true copy of the representation given to R-5 is also produced as Annexure A-14. According to the applicant, the respondents are not entitled

to proceed with the inquiry as per Annexure A-1 and according to her, Annexure A-17 order issued by the Post Master General directing the applicant to be present for inquiry - Annexure A-18 and A-22 granting extension of time for inquiry are illegal and liable to be set aside.

8. The official respondents entered appearance and filed a detailed objection admitting the employment of the applicant as Postal Assistant at Aluva Head Post Office, filing cases by the applicant, issuance of charge memo, Annexure A-1 appointment of inquiry officer, etc. According to the counsel for the respondents, the delay in completing the inquiry had occurred mainly due to the lapse on the part of the applicant herein as she was filing on O.As one after another and the inquiry could not be completed in time. The Disciplinary Authority was appointed under Rule 14 of the CCS (CCA) Rules taking into account the observations made by this Tribunal in the earlier O.A. No. 1161/2013. The applicant did not attend the sitting on 30.12.2013 and took leave from 27.12.2013 to 30.12.2013 on medical grounds. The request for change of adhoc Disciplinary Authority Shri N.R. Giri was not acceded to by the Post Master General. In view of the earlier directions of the Tribunal in O.As filed by the applicant, the applicant ought to have participated in the inquiry and should have completed the inquiry by the time. The applicant has filed this O.A only with an intention to prolong the disciplinary proceedings.

9. According to the respondents, the applicant while working as Sub-Postmaster at Angamaly South Sub-Post Office in 2011 did not bring into Post Office account an amount of Rs. 1000/- entrusted to the applicant by MPKBY agent and it was detected at the time of annual audit as per Annexure A-1.

10. The NOC for passport was not granted since there is a vigilance case contemplated against the applicant. There is no malafides in it. The charge memo was not issued with malafides as averred by the applicant. The O.A filed against the issuance of charge memo in O.A No. 1161/2013 was disposed of by the Tribunal and disciplinary authority was ordered to proceed with the inquiry. It is, at this stage, the present O.A was filed. The OP(CAT) No. 31/2017 filed by the applicant, which is produced as Annexure A-10 was dismissed by the Hon'ble High Court.

11. It was also contended that the amendment brought to Rule 14 has retrospective operation and even if it has retrospective operation, the respondents have already granted extension of time as per Annexure A-22 and 23. So, there is no merit in this case.

12. When the matter came up for hearing, the counsel for the applicant had filed a brief argument note stating events in chronological order and limiting his main contention to the legal question involved in the inquiry. According to the counsel for the applicant, Shri T.C Govindaswamy, on completion of six months, after the appointment, the Inquiry Officer has to complete the inquiry and submit his report. In this case, no extension of time was asked for or granted initially and the Inquiry Officer had obtained the extension of time only when it was brought to the notice, when the O.A was filed. Since the inquiry officer had not finalised or completed his inquiry within six months as per Rule 14(24) all further proceedings must be deemed to have been abandoned or closed and the whole proceedings dropped. There is no authority vested in the Inquiry Officer to proceed further. So, the O.A has to be allowed.

13. In reply, the counsel for the respondents would contend that the applicant in this case was filing O.As, R.As, O.P(CAT), etc., at every stage of the proceedings and it is because of that the disciplinary proceedings initiated in the year 2014 could not be completed. According to him, the Inquiry Officer had obtained permission to continue with the inquiry as per clarification issued by DoPT.

14. We have heard both sides and gone through the pleadings and documents produced by both sides. **The short question to be considered is whether the amendment brought to Rule 14 in the year 2016-17 has retrospective operation or not ?** Clause 24 under Rule 14 was incorporated into the Rules as per Notification F. No. 11012/9/2016 Estt. dated 02.06.2017 and it was published in the Gazette of India as GSR 548(E) dated 02.06.2017. On a reading of New Clause 24, it can be seen that “*(a) Inquiry Authority should conclude the inquiry and submit his report within a period of six months from the date of receipt of order of his appointment as Inquiring Authority (b) Where it is not possible to adhere to the time limit specified in clause (a), the Inquiring Authority may record the reasons and seek extension of time from the Disciplinary Authority in writing, who may allow additional time not exceeding six months for completion of inquiry at a time (c) The extension for a period not exceeding six months at a time may be allowed for any good and sufficient reasons to be recorded in writing by the Disciplinary Authority or any other Authority authorised by the Disciplinary Authority on his behalf*”.

The main contention of the applicant herein is that as per clarifications (FAQs) issued by the DoPT produced as Annexure A-12, the said amended rule applies retrospectively and if such cases are pending, the period of six months for

completing the inquiry can be reckoned with effect from 02.06.2017 and extension should be sought, if required.

15. We have carefully gone through Annexure A-12 and it appears that the DoPT has issued Office Memorandum on 08.12.2017 with a copy of FAQs on the time limit for disposal of disciplinary cases. The question asked to was:

“Question : Whether time limit of 6 months decided vide notification dated 02.06.2017 is also applicable to cases where Inquiring Authority was appointed prior to the 02.06.2017?

Answer: Yes. Ideally such cases should have been completed, as per the time limit prescribed in the said notification, if those cases are still pending, the period of six months for completing the inquiry can be reckoned w.e.f. 02.06.2017 and extension should be sought, if required.”

The main contention of the counsel for the applicant before us is that since the rule was amended and it was given retrospective effect, the period of inquiry granted is complete and no extension of time was granted. Citing the decision of Hon'ble Supreme Court in **Chandra Kishore Jha v. Mahavir Prasad and and Others 1999 KHC 1404**, the counsel would contend that :

“..... It is a well settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in a particular manner, then it has to be done in that manner and in no other manner”(Para 17)

16. Here the Rule strictly insists for completion of inquiry within a period of six months and authorities are bound by it. So, further proceedings in the inquiry is illegal and cannot be sustained. Now, we are concerned with the question - whether Rule 14 Sub-rule 24, which was added in the year 2017 has retrospective effect or not? The main ground taken by the counsel for the applicant is that the amendment has retrospective effect based on clarification issued by DoPT as per Annexure A-12. The normal rule is that unless there is specific words in the rule showing that it has retrospective operation, Court will not give retrospectivity to any rule.

17. We have gone through the Clause 24, there is nothing in it to show that the said mentioned portion has retrospective effect. In ***Income Tax Officer, Alleppey v. M.C. Ponnoose & Ors. 1970 AIR 385*** it was held that:

“The Parliament can delegate its legislative power within the recognized limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect.”

18. In ***Chandravathy P.K and Ors v. C.K Saji and Ors AIR (2004) SCC 2717*** the Hon'ble Supreme Court has held that :

“It need hardly be emphasised that even when there is power to make a retrospective rule or notification, the well accepted rule of interpretation is that in the absence of express words or necessary implication a rule or notification takes effect from the date it is issued and not from any prior date.”

XXXXXXXXXXXX

“The State in exercise of its power under Article 309 of the Constitution of India may give retrospective effect to a rule but the same must be explicit and clear by making express provision therefor or by necessary implication but such retrospectivity of a rule cannot be inferred only by way of surmises and conjectures.”

19. From the foregoing principles of interpretations, it can be seen that Rule 14 (24) has only prospective application if there is no express words indicating retrospective operation. When there is no indication to show that the amendment is brought for retrospective operation, such rule cannot be applied retrospectively. In this case, the disciplinary proceedings was initiated in the year 2013 and it was not covered by Rule 14, sub Clause 24. Clause 24 applies only to the proceedings initiated from the date on which the amendment was brought into effect. It has only prospective effect and Annexure A-12 is not sufficient to give retrospective effect to Rule 14 Clause (24). There is no merit in the case put forward by the applicant that disciplinary proceedings to be considered as abated and it has to be closed.

20. On a perusal of the records, we find that disciplinary proceedings against the applicant is considerably delayed mainly because of the filing of various O.As and O.P (CAT). It is high time to complete the disciplinary proceedings especially when the applicant is going to retire on 28.02.2021. In the result, we direct the Disciplinary Authority to complete the inquiry giving day to day sitting and complete the same within a period of two months from the date of receipt of a copy of this order.

21. The O.A is disposed of. No order as to costs.

(Dated, 10th February, 2021.)

**(K.V. EAPEN)
ADMINISTRATIVE MEMBER**

**(P. MADHAVAN)
JUDICIAL MEMBER**

ax

Applicant's Annexures

Annexure A-1	-	True copy of charge memo bearing No. F1-1/2011-12 dated 23.01.2013, issued by the 4 th respondent.
Annexure A-2	-	True copy of order dated 15.02.2013 in O.A No. 28/2013 rendered by this Hon'ble Tribunal.
Annexure A-3	-	True copy of Memo bearing F.No. F.1-1/2011-12 dated 25.02.2013, issued by the 4 th respondent.
Annexure A-4	-	True copy of APAR for the year ending 31.03.2013 communicated as per letter bearing No. SSP/ Con/APAR/2012-13 dated 30.09.2013 issued by the 4 th respondent.
Annexure A-5	-	True copy of letter bearing No. C-14015/8/2014-VP dated 04.04.2014, issued from the office of the 1 st respondent.
Annexure A-6	-	True copy of Corrigendum under memo bearing F.No.1-1/2011-12 dated 25.03.2013 issued by the 4 th respondent.
Annexure A-7	-	True copy of corrigendum under memo bearing F.No. 1-1/2011-12 dated 05.04.2013, issued by the 4 th respondent.
Annexure A-8	-	True copy of order dated 03.10.2016 in O.A No. 1161/2013 rendered by this Hon'ble Tribunal.
Annexure A-9	-	True copy of order dated 23.11.2016 in RA No. 62/2016 in O.A. No. 1161/2013 rendered by this Hon'ble Tribunal.
Annexure A-10	-	True copy of judgment in OP(CAT) No. 31/2017 dated 24.01.2017 rendered by the Hon'ble High Court of Kerala.
Annexure A-11	-	True copy of notification issued by the Government of India under No.GSR.548(E) dated 02 June 2017.
Annexure A-12	-	True copy of DoPT Office Memorandum bearing F. No.11012/09/2016-Estt. A-III dated 08.12.2017.
Annexure A-13	-	True copy of communication from the 7 th respondent Inquiry Officer under No. ASP/ KCSD/ Rule-14/2017-18 dated 14.02.2018.
Annexure A-14	-	True copy of representation dated 18.02.18, submitted to the 5 th respondent.
Annexure A-15	-	True copy of order sheet dated 26.02.2018 issued by the Inquiry Officer.
Annexure A-16	-	True copy of representation dated 05.03.2018 addressed to the 7 th respondent.

Annexure A-17 - True copy of letter bearing No. VIG/4-02/06/2017 dated 13.04.2018, issued by the 5th respondent.

Annexure A-18 - True copy of communication bearing No. ASP/KCSD/Rule-14/2017-18 dated 01.05.2018, issued by the Inquiry Officer.

Annexure A-19 - True copy of detailed representation dated 04.05.2018, addressed to the 3rd respondent Chief Post Master General.

Annexure A-20 - True copy of letter bearing No. ASP/KCSD/Rule-14/2017-18 dated 07.05.2018 issued by the 7th respondent.

Annexure A-21 - A true copy of letter bearing No. ASP/KCSD/Rule 14/2017-18 dated 25.09.2018 issued by the Inquiring Authority & ASP, KCSD, Ernakulam – 682 020, fixing the inquiry to be held on 05.10.2018.

Annexure A-22 - True copy of communication bearing No. ADA/SSPEKM/ALV-2017 dated 13.06.2018, issued by the 6th respondent, Senior superintendent of Post Offices, Ernakulam Postal Division.

Annexure A-23 - True copy of communication bearing No. ADA/SSPEMK/ALV-2017 dated 18.09.2018, issued by the 6th respondent, Senior Superintendent of Post Offices, Ernakulam Postal Division.

Annexure A-24 - A true copy of Order bearing No. F. No. 11012/09/2016-Estt. A-III dated 30.03.2020 issued by the Addl. Secretary to the Government of India, Department of Personnel and Training.

Annexures of Respondents

Annexure R-1 - A list containing details of events occurred in Rule 14 inquiry conducted against the applicant during the period from 25.02.2013 to 30.01.2014.

Annexure R-2 - A list of events occurred after disposal of the bias petition.

Annexure R-3 - A true copy of the communication bearing No. VIG/4-2/6/2017 (Pt.) dated 13.12.2017.

Annexure R-4 - A true copy of the representation dated 28.04.2017.

Annexure R-5 - A true copy of the request dated 09.06.2018 sent by the Inquiry Authority for extension.

Annexure R-6	-	A true copy of communication bearing No. ADA/ SSPEKM/ALV-2017 dated 13.06.2018.
Annexure R-7	-	A true copy of communication bearing No. ADA/ SSPEKM/ALV-2017 dated 18.09.2018.
Annexure R-8	-	A true copy of representation dated 05.10.2018 submitted by the misc. respondent/applicant.
Annexure R-9	-	A true copy of representation dated 05.10.2018 submitted by the misc. respondent/applicant.
Annexure R-10	-	A true copy of Inquiry notice dated 06.10.2018 issued by Inquiry Authority.
Annexure R-11	-	A true copy of representation dated 06.10.2018 submitted by the misc. respondent/applicant.
Annexure R-12	-	List of events that occurred in the Rule 14 Inquiry from 25.02.2013 (Date of appointment of Inquiry Authority & Presenting Officer in the Rule 14 Inquiry) to 01.12.2020.
Annexure R-13 (a) to - R-13(h) -		A true copy of the permissions issued by the Ad-hoc Disciplinary Authority at various stages of inquiry.
Annexure R-14	-	A true copy of the letter No. VIG/Misc-7/2019 dated 20.10.2020.
Annexure R-15	-	A true copy of the Department of Personnel & Training vide O.M F. No. 11012/03/2020/Estd. A-III dated 05.08.2020.
