

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00346/2021

Wednesday, this the 22nd day of September 2021

C O R A M :

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

K.P.Sathyaprakash,
Aged 45 years,
S/o.K.A.Purushothaman,
Postal Assistant, (dismissed from service),
Meenangadi Sub Post Office,
Kozhikode – 673 591.
Residing at BB2, Postal Staff Quarters,
East Hill, West Hill PO,
Kozhikode – 673 005. ...Applicant

(By Advocate Mr.Shafik.M.Abdulkhadir)

v e r s u s

1. Union of India represented by the Secretary,
Department of Posts, Ministry of Communications,
Sanchar Bhavan, New Delhi – 110 001.
2. The Postmaster General,
Northern Region, Kozhikode – 673 011.
3. The Director of Postal Service,
O/o.the Postmaster General,
Northern Region, Kozhikode – 673 011.
4. The Senior Superintendent of Post Offices,
Kozhikode Division, Kozhikode – 673 005. ...Respondents

(By Advocate Mr.N.Anilkumar, SCGSC)

This application having been heard on 13th September 2021, the Tribunal on 22nd September 2021 delivered the following :

ORDER

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

The applicant in this matter has prayed for a declaration that the actions taken following the impugned Annexure A-1 order are illegal as per the rules and that the 3rd respondent (Director of Postal Service, O/o. the PMG, Northern Region, Kozhikode) is debarred from issuing the said order without disposing the appeal pending before him as Appellate Authority in the disciplinary proceeding. He has prayed for quashing the impugned Annexure A-1 and Annexure A-2 orders and for a direction to the 3rd respondent to consider and dispose of Annexure A-7 appeal immediately.

2. The applicant was a Postal Assistant who has since been dismissed from service. He was working as Postal Assistant in the Meenangadi Sub Post Office, Kozhikode. An inquiry was ordered against him relating to charges of non credit in the RD Account of the cash brought in by an MPKBY agent attached to the Meenangadi SO. The Inquiring Authority who went into the charges submitted the inquiry report on 30.10.2017 finding the charges as 'proved'. Subsequently, the 4th respondent (R4) issued an order dated 28.12.2017, produced at Annexure A-6, dismissing the applicant from service with immediate effect. The applicant then submitted an Appeal under Rule 24(1)(ii) of the CCS (CCA) Rules, 1965 against the order of the Disciplinary Authority (R4 - the Senior Superintendent of Post Offices, Kozhikode) on 31.01.2018 to the Appellate Authority, namely, the Director of Postal Services, Central Region. The applicant claims that there

was no further action taken by the Appellate Authority for a period of one year and ten months, after which, the concerned Appellate Authority issued the impugned Annexure A-1 order dated 11.10.2019. It is the contention of the applicant that the action of the 3rd respondent (the Appellate Authority) in issuing the said Annexure A-1 order, which is a direction to verify his signatures, is akin to a procedure for collecting more evidence in the inquiry. He submits that such a direction to collect more evidence without a direction to conduct the inquiry de-novo from that stage is absolutely illegal, arbitrary and tainted with malafide intentions to harass him.

3. The applicant then submitted a representation on 14.12.2019 to the 3rd respondent (Appellate Authority) explaining these irregularities. This is produced at Annexure A-8. No orders have been passed on the same till date. The main contention is that there is no provision for passing such orders by an Appellate Authority which tantamounts to collecting further evidence or to comply with some procedure. He submits that as the inquiry process is over and a punishment of dismissal has been inflicted on him by termination of his service, the employer-employee relation has been severed. What is now being directed by the Appellate Authority thus amounts to gathering more evidence which is a procedure which can be done only during the actual inquiry proceedings. He submits therefore that Annexure A-1 order is a wrong procedure which warrants setting aside of the whole proceedings. He submits that, at best, the 3rd respondent, Appellate Authority, can order a de-novo inquiry, but the action of keeping

the punishment intact and keeping him outside the service while trying to gather further evidence in the proceedings has caused serious prejudice to him and is, therefore, beyond the scope of Rule 27(2)(c) of the CCS (CCA) Rules, 1965. Even assuming that the directions contained in Annexure A-1 are basically in the nature of an advice and a direction to correct some procedural lacuna, the impact of the same vitiates the entire inquiry proceedings. Thus even if the Appellate Authority issues a direction to send the signature to be verified by a valid and competent authority in case of a doubt, he should have done so by ordering the inquiry authority to re-conduct the inquiry from that particular stage, as such evidence, will have to be introduced in the inquiry proceedings and the charged officer has to be given a fair chance to contradict the same. In fact, if any certificate is given by any so called expert official regarding the signature, the Inquiring Authority has to examine the said official and, more important, the applicant should be given an opportunity to cross examine him. All this can be done only by conducting the proceedings de-novo.

4. It is therefore submitted that the present direction through the Annexure A-1 order is thus incorrect and is based on a mistaken notion that the inquiry proceedings are still going on. It is submitted that the proceedings have ceased to be so, once the Presenting Officers' and the charged officers' briefs were submitted. Further, if the procedure as directed in Annexure A-1 is to be done, the punishment order would have to be reckoned as suspended, at least for the time being. Without ordering this,

the 3rd respondent Appellate Authority has no authority to take the steps as indicated in Annexure A-1. The applicant submits that any order by the Appellate Authority when issued to conduct a specific procedural action, can only be validly done by remitting the entire case back to the Disciplinary Authority for de novo proceedings from a particular stage as per the Rules and Instructions in the P & T Manual. The punishment order should thus be deemed to be quashed, as that is the effect of de novo proceedings. The Hon'ble Apex Court has observed that once the basis of a proceeding is gone, all consequential acts, actions, orders etc. would also fall to the ground automatically. This principle is applicable to judicial, quasi judicial and administrative proceedings equally.

5. The Respondents have filed a statement against the prayer of interim relief which was to seek the stay of all actions pursuant to Annexure A-1. They submit at the outset that the O.A is hopelessly barred by limitation in respect to the orders under challenge. (This Tribunal has however allowed admission of the O.A as the issue is ongoing and a decision on the Appeal is pending). It is submitted by the respondents that the 3rd respondent Appellate Authority while considering the appeal given by the Charged Government Servant (CGS) who is the applicant in this O.A., arrived at a conclusion that a decision on the appeal preferred by the CGS cannot be taken unless the signature of the CGS available on the documents was verified by an expert. Accordingly, this decision was communicated to the CGS by the letter dated 11.10.2019 produced at Annexure A-1 with a copy

to Senior Superintendent of Post Offices, Kozhikode directing the latter for taking further steps. They submitted that under the CCS (CCA) Rules, 1965, Rule 27 (2) (c) (ii) empowers the Appellate Authority to remit the case “to any other authority with such a direction as it may be deem fit in the circumstances of the case”. Thus the direction to the 4th respondent by the Appellate Authority for obtaining the report of expert (CFSL, Hyderabad) was done on the basis of this Rule. This has been specifically necessitated by the fact that the applicant has indicated as follows at para (vi) of his Appeal dated 31.01.2018 produced at Annexure A-7 :

“The counter foil of the pay-in-slip for the deposits allegedly made by the MPKBY agent (PW6) have not been produced to proven entrustment of money with me by PW6. This is the only valid document to be relied upon for entrustment of money. The contention of the IO/DA that the entries made in the pertaining PBs (P3, P14 & P20) are sufficient evidence of entrustment of cash is acceptable, provided that the entries are authenticated with my initial or signature. It is not proved that the entries in P3, P14 & P20 PBs on the relevant dates are made in my hand. Apart from the dates are the disputed entries in the PB are not authenticated by the initial or the signature who made those entries. Therefore, there is hardly any evidence against me to come to a conclusion that the amount as reflected by P1, P2, P12 & P13 has been entrusted to me by PW6. None of the schedules viz., P1, P2, P12 & P13 bears my initial or signature. The mere presence of the date stamp impression on these schedules/PBs cannot be treated as an evidence to prove that the amount has been entrusted to me and the schedules were handled by me on those dates because the date stamp can be accessed by anybody working in the Post Office and got affixed on the copy of schedules/PBs on those dates or thereafter. Since the schedules are devoid of my signature, the responsibility for non-credit of the amount reflected by the schedules cannot be lawfully fastened on me as done by the IO/DA.”

6. It is submitted by the respondents that the applicant had not disputed the passbooks under question in the Inquiry or in the Appeal. But in his appeal he has stated that the signature against the entries in the passbook has not been 'proved' in the inquiry. It is submitted that the signature against the relevant entries in the passbook, allegedly of the CGS and his signature in the daily orders sheet and other records appeared same. However, in the interest of justice and to remove any possibility of miscarriage of justice, the opinion of the handwriting expert on the evidence already on record in the shape of the passbook has been found to be needed by the Appellate Authority, for conclusively evaluating the evidence already on record. In the interest of fair play it is submitted that a copy of direction issued in this regard to 4th respondent, was provided to the applicant. (However, we note, on the other hand, that the orders are passed addressing the CGS (the applicant) with a copy to the 4th respondent, even though the action was to be wholly carried out by the 4th respondent) Since then, the respondents submit that the CFSL Hyderabad report has been received and a true authenticated copy of the same has also been forwarded to the applicant. The respondents submit therefore that the interim prayer will thus not stand at this time, as the action ordered in the Appellate Order to carry out signature verification from CFSL Hyderabad for considering appeal has already been completed by the Department. Further, it is submitted that the appeal will be finally disposed within the shortest possible time. In addition, since the applicant has asked for personal appearance, he has been granted the same vide a letter dated 04.08.2021

produced at Annexure R-2. It is submitted that when the applicant appears for personal hearing with the Appellate Authority, he would be having a copy of CFSL report and if he has any concern on the issue it would be taken on record and considered before passing final orders on the Appeal. Thus, the O.A has become infructuous and may be dismissed.

7. We have heard learned counsel for the applicant Mr.Shafik.M.Abdulkhadir and learned counsel for the respondents Mr.N.Anilkumar, SCGSC in detail in this regard. Learned counsels have agreed that passing of the interim order at this stage in this matter is no longer relevant in the light of the subsequent action taken to produce the CFSL Report and receipt of the same and with a copy given to the applicant. It is agreed that final orders in the O.A may be passed in the light of the documents provided and arguments made during the final hearing. We have proceeded in this matter accordingly.

8. The para (3) of the impugned order produced at Annexure A-1 has the following contents :

“3. While considering the case as per provisions contained in 27(2) of CCS CCA Rules 1965, it is found that a decision on this appeal cannot be arrived unless the signature of the appellant available in the documents is verified by an expert. Hence, as per the provisions contained in DG P & T letter No.3/17/1/72-Disc-1 dated 09.02.1973; included in DG P & T orders (1) w.r.t Rule 27 of CCS CCA Rules 1965, the following is ordered :-

SSP Calicut will get the signatures available in the copy of RD LOT of Meenangadi SO dated 02.06.2014 and 07.05.2014 and the handwritings in the RD PBs 1386727/1386726/1386767 verified from CFSL Hyderabad and forward the report to the appellate authority for disposal of the appeal preferred by Sri.Sathyaprakash K.P. Final decision on this appeal will be taken thereafter.”

It is the contended position of the applicant that the above orders essentially are against the procedure laid down and envisaged in Rule 27 of the CCS (CCA) Rules, 1965 guiding the Consideration of appeal by the Appellate Authority. As brought out in the paragraphs (2) to (4) earlier, it is contended that this is having the effect of gathering further evidence in the proceedings and thus causing serious prejudice.

9. Rule 27 (2) of the CCS (CCA) Rules, 1965 is outlined below :

27. *Consideration of appeal*

(1) xxxxxxx

(2) *In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the Appellate Authority shall consider -*

(a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the Disciplinary Authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass orders -

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of these cases:

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It may be seen that the Rule clearly lays down the scope of the power of the Appellate Authority by specifying to what extent action may be taken by him. First, the Authority has to consider appeals only against an order imposing a penalty under Rule 11 or enhancing any penalty imposed under the said Rules. Second, the Appellate Authority has consider only three situations, (a) whether the procedure laid down in the rules has been complied with and if not, whether any such non-compliance results in a violation of any provisions of the Constitution of India or in the failure of justice (b) whether the findings of the Disciplinary Authority are warranted by the evidence on the record and (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe. These three considerations legally circumscribe the area in which an appeal has to be examined and disposed. Then, after this consideration the Appellate Authority has to pass orders as follows :

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of these cases :

10. It is the respondents' contention that what they have done is nothing but taken action under Rule 27 (2) (c) (ii) by remitting the case to any other authority with such direction as may deem fit in the circumstances. They say that action is supported by the Rule and thus they see nothing wrong in the Appellate Authority (3rd respondent) directing the 4th respondent (who in any case also happens to be Disciplinary Authority) to get the signatures and the handwritings verified by the CFSL Hyderabad. This is being done, they submit, for proper adjudication of the appeal and disposal of the same. Further, it is also their contention that no decision in this regard will be taken unless a full opportunity given to the applicant for expressing his concern on the same, which would also be considered before final orders on the Appeal. Accordingly, they have supplied the copy of the CFSL report to the applicant and have asked him to be ready to attend a personal hearing. Thus, they do not find anything wrong with the procedure taken by them, especially as the Rule itself allow remitting the case to any other authority with such direction as deemed fit in the circumstances. However, on the other hand, as noted earlier, the argument of the applicant is that this direction effectively amounts to re-examination of the evidence produced in the case and reopening of a closed inquiry proceedings. When additional evidence is sought for and procured it cannot be done by the Appellate Authority without remitting the case back to the Inquiring Authority to conduct 'de novo' proceedings from the specific stage of the inquiry which examined the evidence. Rule 27 does not give any such powers to Appellate Authority and he can only take the action as allowed under the Rule.

11. We have given our consideration to the above positions. As noted in paragraph (9) above, the power of the Appellate Authority has been legally circumscribed to the three different considerations indicated at 2(a), 2(b) and 2(c) of Rule 27, which, in short, is to examine whether the procedure was followed correctly, whether findings are warranted by the evidence and whether the penalty awarded is correct in the circumstances. Everything else in the Rule subsequent to this, flows from these three points of consideration. If, for example, the Appellate Authority has found that the evidence on record did not warrant the finding of the Disciplinary Authority or if he feels that the procedure was not properly complied with resulting in failure of justice, any further action in remitting the matter back to an authority only can be done keeping this in mind. He cannot thus adduce or request for additional evidence or information on his own for proving or disproving the case against the applicant or otherwise. If he finds there was a lacuna in the evaluation of evidence, it is for him to direct the Disciplinary Authority to reassess it from the proper stage. In any case, it is required for the concerned Appellate Authority to keep in mind that the principle followed in disciplinary proceedings while evaluating evidence against the charged government servant is “preponderance of probability” considering the circumstances rather than “proof beyond doubt”. Moreover, any direction should not have the effect as it turns out in this case of a part rehearing the matter with new evidence. We also note that the Government of India decisions brought out under Rule 27 in the Swamy's Compilation of CCS CCA Rules, particularly, the DG P & T order issued vide letter

No.3/171/72-Disc.I, dated 09.02.1973 has given Appellate Authorities certain instructions relating to the wording of the Appellate Orders conforming to provisions of rule. In the above letter it has been indicated, inter-alia, as follows :

“ xxxxxxx. In this connection, attention is invited to Rule 27 (2) (c). In Clause (i), it clearly envisages that the Appellate Authority shall pass orders confirming, enhancing and reducing or setting aside the penalty while in Clause (ii), as an alternative, it requires the Appellate Authority to remit the case to an authority mentioned therein with such directions as it may deem fit in the circumstances of the case. It is clear that Rule 27 (2)(c)(i) and (ii) ibid, do not empower the Appellate Authority to pass an order in which both these alternatives are ordered. The appellate orders should be quite clear and in conformity with the provisions contained in Rule 27 (2) (c) and Rule 29 of CCS (CCA) Rules, 1965.”

12. We note that in this matter that the Appellate Authority has made it clear that his orders at Annexure A-1 is not the final disposal of the appeal, but an interim direction inasmuch as it requires the authority to do certain things which will help to arrive at a conclusion while disposing the appeal. However, such a direction which amounts gathering more evidence is beyond the scope of the Rules which lay out the conditions for examination and subsequent directions flowing from them. This action also does not stand the test of clarity pointed out in the 1973 instructions. The Appellate Authority is not expected to pass a series of directions culminating in a final order. We agree that adopting this procedure is tantamount to finding that there was something wrong with the process of evaluation of evidence,

which lacuna is now sought to be corrected by the Appellate Authority itself. Such detailed evidence re-evaluation and interim directions seem beyond the action allowable under Rule 27. Thus, we find that the Annexure A-1 order cannot be taken as valid in the circumstances. Our next obvious consideration in this regard is whether this has the effect of derailing the entire action of the Appellate Authority. We hold that while the order at Annexure A-1 was not warranted in the circumstances, the effect is not of complete derailment since he has not disposed the appeal as yet. However, it is for the Appellate Authority to keep these observations in mind while finally disposing of the appeal.

13. We, therefore, agree with the contentions of the applicant that Annexure A-1 order needs to be quashed along with the follow up Annexure A-2 order. This means that the Appellate Authority should dispose the Appeal without taking into account any additional information procured as a consequence of the orders at Annexure A-1 and Annexure A-2. The Appellate Authority should consider the matter only taking into consideration the evidence procured and examined during the inquiry proceedings and then pass appropriate orders disposing the appeal within the confines of Rule 27 of the CCS (CCA) Rules and consequent executive instructions.

14. In the circumstances, we allow the O.A and direct the Appellate Authority to dispose of the appeal in full within a period of one month of receipt of this order. No order as to costs.

(Dated this the 22nd day of September 2021)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

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List of Annexures in O.A.No.180/00346/2021

1. **Annexure A1** - Copy of the Order No.STA/10-O/2017-18 dated 11.10.2019 issued by the 3rd respondent.
2. **Annexure A2** - Copy of the Letter No.GL-08/19-20 dated 09.12.2019 issued by the ASP, Kalpetta Sub Division.
3. **Annexure A3** - Copy of the Memorandum of Charges No.F1/1/2015-16 dated 14.10.2016 issued by the 4th respondent.
4. **Annexure A4** - Copy of the representation dated 03.11.2016 submitted by the applicant.
5. **Annexure A5** - Copy of the Letter No.F1/1/2015-16 dated 30.10.2017 issued by the 4th respondent.
6. **Annexure A6** - Copy of the Order No.F1/1/2015-16 dated 28.12.2017 issued by the 4th respondent.
7. **Annexure A7** - Copy of the appeal dated 31.01.2018 submitted by the applicant.
8. **Annexure A8** - Copy of the representation dated 14.12.2019 submitted by the applicant.
9. **Annexure R1** - Copy of the relevant pages of Swami's compilation.
10. **Annexure R2** - Copy of the Letter No.STA/30-10/17-18 dated 04.08.2021.
