CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 418/92

Tuesday, the seventh day of December, 1993

MR. N. DHARMADAN MEMBER(JUDICIAL)

MR. S. KASIPANDIAN MEMBER(ADMINISTRATIVE)

P.J. Sebastian S/o Joseph
Mail Man, Sub Record Office,
P & T, Cochin-16(Removed from
service)r/o Poothully House
Kaloor P.O.,Kochi-17 Applicant

By Advocate Mr. M.R.Rajendran Nair

vs.

1. The Sr. Supdt. of Post Offices
R.M.S., Ernakulam Division

2. The Director of Postal Services
Cochin Region, Cochin-11

3. The Chiarman, P & T Board,
New Delhi

4. Union of India represented by
its Secretary to Government,
Ministry of Communications,
Department of Posts,New Delhi Respondents

By Mr. C. Kochunni Nair, SCGSC

ORDER

N. DHARMADAN

The applicant while working as Sorting Assistant was issued with charge sheet containing the following charges:

> " That the said Sri P.J. Sebastian,Mailman, Sub Record Office, Cochin Sorting Air, exhibited utter misconduct in that he anauthorisedly entered in Cochin Sorting Air office on 24.3.84 at about 17.45 hours, abused, threatended and misbehaved with Head Sorter, Cochin Air/2 and staff in the office and damagedthe glass door of the office causing loss to the Department and thereby violated provisions of Rule 3(1)(iii) of CCS(Conduct) Rules, 1964."

2. The applicant didnot file any objection to the charge. When the enquiry was posted on 3.7.84, the charge was read over to the applicant. After hearing the charge, he admitted the same and it is evident from Annexure-V. The relevant portion is extracted below:

> "The memo of charges was read over to the charged government servant by the Inquiring Authority and

explained in detail. He was asked to state clearly whether he admits the charges or not. Shri Sebastian pleaded guilty to all the charges and said that he had no defence to make except to seek pardon."

3. On the basis of the admission, the enquiry report has been submitted by the enquiry officer on 3.7.84. The disciplinary authority after acceptingthe enquiry report passed the order impossing the penalty of removal from service. The applicant filed appeal which was also dismissed. Challenging the orders of removal passed by the disciplinary authority and confirming the same by rejecting the appeal by the appellate authority, he filed O.A.122/90 application under section 19 of the Administrative Tribunals Act. That original application was allowed as per judgment dated 25.6.90 in which the only question considered was application of the provisions regarding servingof copy of the enquiry report to the delinquent employee. Acceptingthe contention raised by the learned counsel for applicant, the case was allowed and remitted back to the disciplinary authority for continuing the proceedings from the stage of service of copy of the report. Thereafter, the applicant filed Annexure-VIII objections. The disciplinary proceedings were continued from that stage andthe impugned order Annexure-I() was passed by the disciplinary authority after considering the contentions raised by the applicant as also the evidence available in the enquiry xx the applicant was again removed from service with immediate effect. The appeal filed by the applicant was also dismissed as per Annexure-II order.

4. In this application, the applicant is challenging all these orders passed by the appellate authority as also the disciplinary authority.

5. The learned counsel for the applicant has raised two important grounds for attacking the orders challenged

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in this case:

i) the enquiry officer has not followed the procedure under Rule 14(8) and (9) and (10) of the CCS(CC&A) while conducting the enquiry;

ii) the punisnment imposed in this case does not commensurate with the offence levelled against the applicant.

6. The contention of the learned counsel for applicant that the procedure as per the provisions of Sub rule(8) (9) and (10) of Rule 14 have not been dealt with, has been considered by the disciplinary authority in detail. The relevant portion is extracted:

> "In this case Sri P.J. Sebastian had not submitted any written statement of defence either within the stipulated period of time or within the extended period granted tohim. When he appeared before the inquiring authority, he was asked whether he was guilty of the carge. Before asking whether he was guilty or not, the memo of charges was read over to him by the Inquiring Authority and explained to him in detail. All thse are done in conformity with the rules. Sri Sebastian pleaded guilty to all the charges and said that he had no defence to make except to seek pardon. He could have denied the charges before the inquirying authority. Similarly he could have sought assistance of anyother govt. servant to assist him. But Sri Sebastian did not deny the charges and seek for the assistance of any other govt. servant before the inquiring authority."

The apppellate authority also considered the same and observed as follows:

> "It was left to the appellant to deny the article of charge seek the assistance of another govt. servant and defend the case at the appropriate time. Having failed to do these tnings at the appropriate time, the present plea of the appellant that he did not consciously admit the charge that ne did not get an opportunity to nominate an AGS etc. can only be considered as an afterthough or lame execuse in the light of the proceedings of the inquiry. No opportunity to defend the case was denied to the appellant and hence there is no denial of naturaljustice. I also do not see any lapses in the proceedings followed by his disciplinary authority. There is no rule that the delinquent govt. servant should be heard in person by the disciplinary authority before imposing a penalty."

7. The contentions of the learned counsel for applicant that the procedure provided under Rule 14 had to be strictly followed, even if the admission as contained in Ann.V is

conceded, is a matter to be examined in the light of the provisions and the argument that the admission has not been made by the delinquent after fully realising the consequence of the same.

8. It is an admitted fact that the first respondent, Sr. Supdt. of Postoffices served memo on 6.4.84, Annexure-IV informing the proposal for holding an enquiry under Rule 14 of the CCS(CC&A) Rules. The charges and statement of imputations of misconduct were also served along with the memo calling upon him to submit his written defence within ten days. No objection or written defence was filed by the applicant. As indicated in Annexure-IV enquiry was held on 3.7.84. The enquiry authority read over the charges. After hearing the charges, the applicant pleaded guilty. There is no indication or supporting evidence to show that the pleading of guilty was made under coercion or other circumstances. He did not withdrew the same at any time immediately after the admission. Hence, under these circumstances, we are persuaded to reject the contention that the admission of guilty was made without really understanding the consequences or knowing the implications thereof.

9. Now let us examine whether under the rules it is necessary to give a opportunity to the applicant to seek the assistance or is it necessary for the enquiring authority to follow the procedure of the sub rules (8) to (10) of Rule 14. Under Rule 14(4) the concerned authority who conducted the enquiry has to deliver the articles of charges and statement of imputations so as to enable the delinquent to submit his defence statement or objections. The next sub rule provides that on receipt of the reply or defence statement, the authority may enquire the matter following further procedures. If no such defence statement

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or reply to the charges is filed, there is nothing wrong in presuming that the delinquent has no contention to defend the charges and provisions of sub rules(8),(9) and (10) need not be followed in such a case. It is not necessary for the enquiry authority to ask any further question whether any defence assistance is necessary todefend his case and follow all further proceedings as contained in Rule 14(8), (9) and (10) as contended by the applicant. This is a clear case of admission of the offence by the applicant and the authority is also satisfied that the contention raised by the applicant is only an afterthought to raise objections and that there is no bonafides in the contentions raised by the applicant.

10. After examining the facts in this case, we are also fully satisfied that the applicant has admitted the guilt when the charge was read over to him and the procedures under the rules have been duly complied with particularly when the applicant did not withdrew the admission even in the appeal memorandum which was filed on 19.8.84. The case of the applicant in the appeal was that he wasnot aware of the details of the incident which took place on 24.3.84 on account of effect of the medicine which he used to take at that time. The applicant was mentally sound enough to understand the charges and the consequence of his admission.

11. The next contention of the applicant seriously raised by the learned counsel for applicant is that the punishment imposed in this case does not commensurate with the gravity of the offence levelled against him. The applicant had not pressed this contention for getting a decision at the time when he filed earlier original application But it was not found necessary in the nature of the order passed in that case for the penalty was set aside. However, we are of the view that this question cannot be considered by this Tribunal at this stage particularly when we have

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arrived at the the conclusion that theadmission of the guilt is the basis of the penalty and that there is no procedural irregularity in the enquiry. The Supreme Court in Parmananda's case held that the quantum of punishment is not a matter strictly coming within the purview of the Tribunal and Courts. It isamatter to be decided by the disciplinary authority or the appellate authority having regard to the facts and circumstances of each case. Since we are satisfied that the orders passed by the disciplinary authority and the appellate authority are valid and in accordance with law, we are not inclined to interfere with the impugned orders. The decisions cited by the learned counsel at the bar were also examined by us in detail. The facts of these cases are distinguishable and they do not really support the proposition of law presented before us for consideration in this case.

12. In this view of the matter, we are unable to accept the contentions raised by the applicant in this original application. We reject all of them.

13. In the result, we see no merit in the application; it is only to be rejected. Accordingly, we dismiss the same.

14. There shall be no order as to costs.

S. Kasi

(S. KASIPANDIAN)
MEMBER (ADMINISTRATIVE

N. Dharmadan 7.12.93

(N. DHARMADAN)
MEMBER (JUDICIAL)

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