

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 423/2011

Thursday , this 19th day of January, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

E.T.Rajendran Nair,
S/o N Raghavan Nair,
Gramin Dak Sevak Branch Post Master,
Neeleswaram Branch P.O.
Omassery Post Office, Calicut District.Applicant

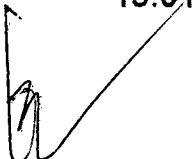
(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by
the Secretary to Government of India,
Ministry of Communications,
(Department of Posts), New Delhi-110 001.
2. The Chief Post Master General,
Kerala Circle,
Thiruvananthapuram-695 033.
3. The Director of Postal Services,
O/o the Post Master General,
Northern Region, Calicut-673 011.
4. The Sr. Superintendent of Post Offices,
Calicut Postal Division,
Calicut-673 011.
5. Shri P Ramakrishnan,
Sr. Superintendent of Post Offices,
Calicut Postal Division,
Calicut-673 003Respondents

(By Advocate Mr Sunil Jacob Jose, SCGSC)

This application having been finally heard on 13.1.2012, the Tribunal on
19.01.2012 delivered the following:



ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The applicant was initially appointed as Gramin Dak Sevak Branch Post Master (GDSBPM for short) on 31.3.1969. During the currency of his service in that capacity, the applicant was involved in a criminal case under Section 138 of the Negotiable Instruments Act and by a Criminal Court of Judicial First Class Magistrate-II, Thamarassery he was convicted and sentenced to simple imprisonment for 3 months and to pay Rs.5000/- as fine and in default of the same, simple imprisonment for for month. Based on the above order of conviction, the respondents had removed the applicant from service by invoking the invoked the provisions of Rule 11 of the GDS (Conduct and Employment) Rules 2001 which provides for non-applicability of Rule 10 where any penalty is imposed on Sevak on the ground of conduct which has lead to his conviction on a criminal charge, and the appointing authority may consider the circumstances of the case and make such orders thereon as it deems fit. Annexure A-1 refers.

2. When the applicant appealed against the conviction and sentence in the criminal matter in Criminal Appeal No.89/2001, the Session Court Kozhikode Division vide its judgment dated 26.4.2004 has held as under:

"The appellant is found not guilty of the offence punishable u/s 138 of the Negotiable Instruments act and he is acquitted. The conviction and sentence passed both trial court is set aside (Pronounced by me in open court, this the 20th day of April, 2004.)"



3. The applicant filed appeal to the competent authority on the strength of Annexure A-2 judgment for reinstatement and as he was not reinstated, he filed O.A.No.33/2009 which has decided on 23.6.2010 holding as under:

"Hence we feel that the attitude of the Senior Superintendent of Post Offices, Calicut Division issuing Annexure A-5 is not legal and not justifiable. If so, we are of the view that the Original Application can be allowed by directing the concerned authority to consider the representation/appeal of the applicant and pass appropriate orders thereon, within sixty days from the date of receipt of a copy of this order."

4. Respondents have filed Review Application N-34/2010 O.A.33/2009. The said R.A was disposed of by order dated 6.10.2010 (Annexure A-4) holding inter-alia that the R.A can be answered to the effect that the rejection of the appeal filed by the applicant on the reason of delay can be considered on merit on treating the delay as having been condoned in the light of the order passed in the O.A and thus the proceeding is to be completed within 60 days from the date of receipt of a copy of the order.

5. It was only after a Contempt Petition was filed that the respondents had passed Annexure A-6 order whereby an order of reinstatement of the applicant with immediate effect was passed by the Director of Postal Services, Northern Region, Calicut. As by that time, another incumbent was posted in the place of the applicant, notice under Rule 8 GDS (Conduct & Employment Rules, 2001 was served upon the new incumbent giving a period of one month for his termination to implement the order of the Tribunal and the applicant was permitted to resume duties on

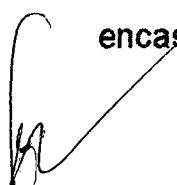


12.2.2011.

6. As rules provide for treating intermediate period (from the date of acquittal till the date of reinstatement) as duty, the applicant moved Annexure A-8 application requesting for grant of maximum TRCA. This was followed by Annexure A-9 representation dated 1.4.2011. As there was no joy, this O.A has been filed seeking the following reliefs:

- (i) Declare that the respondents are bound to treat the intervening period from the date of removal from service to the date of reinstatement i.e. from 1.1.2004 to 12.2.2011, as one spent on duty and the respondents are bound to pay the applicant the pay and allowances and all other monetary benefits the applicant would have received had he not been removed from service from 1.1.2004 and direct the respondents accordingly;
- (ii) Direct the respondents to treat the period from 1.1.2004 to 12.2.2011 as one spent on duty and direct further to grant the pay and allowances and other service benefits as if he had not been removed from service on 1.1.2004."

7. Respondents have furnished their reply. The facts have not been disputed by them. They have stated that Annexure A-8 representation is still under consideration of the respondents. They have rebutted the contention of the applicant that the period between removal and reinstatement should be treated as duty for all purposes of payment of allowances, increments, bonus etc. Delay in submission of his appeal and subsequent rejection of appeal as barred by limitation have all been attributed to the applicant only. According to them, the applicant cannot encash his own mistakes.



8. Counsel for the applicant submitted that admittedly, applicant's removal from service was on account of conviction and once the conviction is set aside and the applicant is acquitted by the Session Court, he is entitled to not only reinstatement, but also to pay and allowances for the period of absence. Counsel suggested that in his case, the applicant is prepared to accept half the back wages.

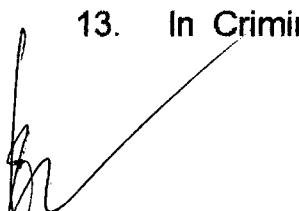
9. Counsel for the respondents reiterated the fact that there has been delay in preferring appeal which was dismissed on account of limitation.

10. Arguments were heard and documents produced.

11. Admittedly, the order of removal from service vide Annexure A-1 dated 26.12.2003 is based on the conviction of the applicant. No formal enquiry under GDS (Conduct & Employment) Rules, 2001 was conducted. Reinstatement was ordered in the wake of the judgment of the Court of Sessions, Kozhikode Division whereby the applicant's conviction was set aside vide Annexure A-2 judgment dated 26.4.2004. The order of reinstatement, however, was passed only on 15.12.2010 and actual reinstatement took place only on 12.2.2011.

12. The claim of the applicant is that he must be paid the wages for the period of his absence from duty which is from 1.1.2004 to 12.2.2011.

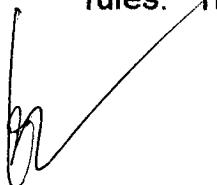
13. In Criminal Appeal No.80/2001 the judgment was passed by the

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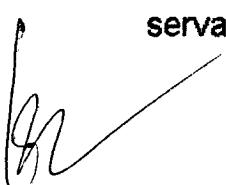
Session Court on 26.4.2004. It was on this day that the conviction against the applicant was set aside. It has been held in the case of **B.R.Kapoor v. State of Tamil Nadu** [(2001) 7 SCC 231] that if the appeal of the accused succeeds, the conviction is wiped out as cleanly as if it had never existed and the sentence is set aside. A successful appeal means that the stigma of the offences is altogether erased. But that is not to say that the presumption of innocence continues after the conviction by the trial court. That conviction and the sentence it carries operate against the accused in all their rigour until set aside in appeal, and a disqualification that attaches to the conviction and sentences applies as well.

14. The above decision of the Apex Court may be telescoped on the facts of the case of the applicant herein. The applicant was convicted earlier on 30.1.2001 and his appeal was allowed vide judgment dated 26.4.2004. The penalty order of removal was passed on 26.12.2003. Conviction continued upto 26.4.2004, till the date of acquittal by judgment by the Session Court and as such the disqualification that attaches to the conviction also remains upto the date of acquittal i.e. 26.4.2004. It is thereafter that there is no conviction and as a logical corollary, the disqualification on account of conviction would also not exist beyond 26.4.2004.

15. The period between 26.4.2004, the date of acquittal and 12.2.2011 the date of reinstatement is required to be regularized under the prescribed rules. The GDS rules do not prescribe any provision therefor. However,

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provision laid down in the CCS(CCA) Rules can easily be adopted since the entire Conduct and Employment Rules of GDS are based upon the corresponding CCS(CCA) Rules. Rule 19 of the CCS(CCA) rules deals with special procedure in certain cases and the very first case relates to where penalty is imposed on Government servant on the ground of conduct which led to his conviction of a criminal charge. The guiding principles for dispensing with enquiry in case of conviction and other special circumstances have been prescribed in Government of India DoPT OM No.11012/11/85-ESTT(A) dated 11.11.1985 and 4th April 1986. This has been incorporated in the GDS Rules also vide Government of India Instructions underneath Rule 11. In yet another O.M dated 29.11.1966 as amended by O.M dated 19.9.1975, action when appeal/revision against conviction exists has been explained. The said order is appended as Government of India Instruction No.5 underneath Rule 19. According to this O.M, when an order of conviction by the trial court is set aside and the accused is acquitted, the Department may consider whether the acquittal should be challenged in a still higher court or whether departmental enquiry against a Government servant on the basis of the allegations on which he was previously convicted could be taken. When the judgment of acquittal is challenged before the higher court, the penalty imposed shall not be set aside during the pendency of such proceedings if the department decides to conduct departmental enquiry then a formal order should be made setting aside the order imposing the penalty on the basis of conviction, and ordering such departmental enquiry. The Government servant, if suffering from the penalty of dismissal, removal or compulsory



retirement from service, shall be deemed to have been reinstatement and kept under suspension with effect from the date of such removal etc.

16. Instead of adopting any of the aforesaid two courses of action, if the individual is reinstated in service then the procedure to be adopted is given in para 3 of the aforesaid OM dated 29.11.1966 as amended and the same reads as under:

"3. In cases where neither of the courses mentioned in Paragraph 3 is followed, a formal order should be issued setting aside the previous order imposing the penalty (Standard Form for such order is annexed – Form at the end of this chapter). In cases where the penalty imposed was dismissal, removal or compulsory retirement from service, full pay and allowances will be paid from the date of acquittal to the date of rejoining duty and the period counted as duty for all purposes whereas for the period from the date of suspension/removal/dismissal to the date of acquittal, pay and allowance will be allowed as directed by the Competent Authority under FR 54(3) and the period treated as duty or non-duty under FR 54(4) or FR 54(5), as the case may be."

17. In the instant case, the applicant has been reinstated and as such the period from 26.4.2004 till 12.2.2011 has to be taken as duty. In fact the counsel for the applicant submitted that the applicant is prepared to accept even 50% of the back wages.

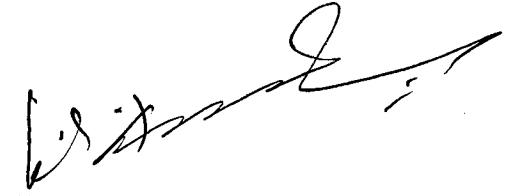
18. Taking into account the submission made by the counsel and also the rule position as extracted above, this O.A deserves to be allowed with the direction to the respondents to pay the applicant 50% of TRCA for the period from 26.4.2004 till 12.2.2011. Ordered accordingly. The period in question shall be treated as duty for all purposes. The applicant shall also

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be entitled to half the bonus, if applicable to him during the period from the date of acquittal till the date of reinstatement.

19. This order shall be complied with, within a period of four months from the date of receipt of copy of this order.

20. No order as to costs.



Dr K.B.S.RAJAN
JUDICIAL MEMBER

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