

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.43/2002

Tuesday this the 29th day of July , 2003.

C O R A M

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

K.Raghavan
Sorting Assistant
(Under orders of compulsory retirement)
Railway Mail Service 'EK' Division,
Ernakulam.
Residing at :
B.K.2, P & T Quarters,
Thevara ; Applicant

[By Advocate M/s Santhosh & Rajan].

Vs.

1. Union of India represented by
the Secretary
Ministry of Communications,
New Delhi
2. The Member Personnel,
Postal Service Board,
New Delhi
3. The Post Master General,
Central Region,
Kochi - 16.
4. The Director of Postal Services,
Northern Region,
Calicut.
5. The Senior Superintendent of Post Offices
Ernakulam.
6. The Senior Superintendent of Railway Main Services,
'EK' Division, Ernakulam.
7. The Assistant Superintendent of Post Offices,
Kochi Sub Division,
Kochi. : Respondents

[By Advocate Mr.K.Kesavankutty, ACGSC]

The application having been heard on 30.05.2003, the
Tribunal on 29.07.2003 delivered the following :

O R D E R

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant was working as Sorting Assistant in the Railway Mail Service, Ernakulam. He was residing in the P & T Quarters at Thevara which was adjacent to the quarter of Deputy Superintendent, Railway Mail Service. They were separated by a wicket gate where the employees quarters have another gate. The gates were never kept locked at any time. No board is exhibited to show that this gate is exclusively used by any particular person. So all staff employees used to enjoy ingress and agress through the wicket gate.

2. In October, 1996, an agitation/strike was called in the Postal Department which paralysed the mail movement. The majority of the employees in the Railway Mail Service participated in that strike. The applicant as a loyal worker had not participated in the said strike. On 28.10.96 night the applicant had an occasion to meet the Deputy Superintendent of Railway Mail Service, Ernakulam and expressed his desire to work in the strike period. When he saw the Director of Postal Services, (DPS,for short) Ernakulam coming to her quarters in a departmental vehicle, the applicant moved towards the vehicle thinking that his desire to work in the strike period could be brought to her notice. However, she was not happy with the applicant for approaching her at that time. She accordingly alleged that the applicant trespassed into her quarter and threatened her. Annexure A-1 is the copy of the complaint dated 29.10.96. After a week, another complaint was lodged against the applicant by an outsider alleging that he shouted

against him in a filthy language. The copy of the said complaint dated 8.11.96 is Annexure A-2. The applicant submits that he did not abuse the outsider but only objected his unauthorised entry to the compound. These complaints happened outside the course of his office duty. He was issued a charge sheet Annexure A-3 dated 3.6.97. The charge sheet was issued by adhoc disciplinary authority (the 5th respondent) as the Senior Superintendent, Railway Mail Service was the disciplinary authority of the applicant who conducted a preliminary enquiry into the matter. Thereafter, the disciplinary authority had appointed the 7th respondent as Inquiry Officer and the Inspector, RMS, 'EK' 1st Division as the Presenting Officer. Six witnesses on the prosecution side and one witness on the defence side were examined. Request of the applicant to cross examine the witnesses was rejected by the Enquiry Officer and witnesses to be examined on the defence side were not summoned. Therefore, the applicant contended that the enquiry was conducted in violation of the principles of natural justice. After the enquiry, the 7th respondent without properly appreciating the evidence in the enquiry submitted a report finding the applicant guilty in both the charges. Annexure A-4 is the copy of the enquiry report dated 24.4.99. The disciplinary authority (5th respondent) accepted the enquiry report and imposed the punishment of compulsory retirement from service on the applicant. The true copy of the penalty advice dated 31.12.99 is Annexure A-5. He was compulsorily retired from service with effect from 7.1.2000. The applicant submitted an appeal against Annexure A-5 advice

before the appellate authority i.e the Director of Postal Services, Southern Region, Trivandrum. Annexure A-6 is the copy of the appeal dated 20.1.2000. By the time, the Senior Superintendent of Post Offices, Ernakulam was promoted as Director of Postal Services, Trivandrum, therefore, another appellate authority was appointed viz., Director of Postal Services, Northern Region, Calicut. The Director of Postal Services, Ernakulam, who made Annexure A-1 complaint against the applicant, was promoted as Postmaster General, (PMG, for short) Calicut at that time. Thus a subordinate officer of the complainant became the Appellate Authority. The Appellate Authority rejected the appeal and confirmed the punishment. Thereafter, the applicant submitted a revision petition to the Postmaster General, Central Region, Kochi. The 2nd respondent by order dated 11.10.2001 rejected the revision petition. The copy of that order is Annexure A-9. Aggrieved by the said action and the orders Annexure A-4 enquiry report, Annexure A-5 penalty advice, Annexure A-7 Appellate Authority's order and Annexure A-6 revisional Authority's order, the applicant has filed this Original Application seeking the following reliefs:-

- i. call for the records leading to the issue of Annexure A4, A5, A7 and A9 and set aside the same;
- ii. declare that the penalty of compulsory retirement imposed upon the applicant is arbitrary and illegal;
- iii. direct the respondents to reinstate the applicant in service with all consequential benefits from 7-1-2000;
- iv. grant such other further reliefs as this Hon'ble Tribunal may deem just, fit and proper in the facts and circumstances of the case.

3. Respondents 1 to 7 have filed a detailed reply statement contenting that the application has been filed by the applicant on a belated stage and the Original Application is hit by limitation. On 28.10.98 at about 9.15 P.M the applicant trespassed to the courtyard of the Director of Postal Services, Central Region, Kochi, and threatened repeatedly in Malayalam construing the meaning 'Are you not the lady who defeated me? I know you are here. I will defeat you.' The alleged provocation to scold the PMG (complainant) was that she as an appellate authority had upheld the punishment imposed on the applicant on certain charges. He further threatened that the police will not apprehend him as the Circle Inspector was his brother-in-law. (i) The attempt of the applicant was a threat to her (DPS) life as well as to her discharging of duties as a Government servant. A complaint was lodged by her which was inquired into and found to be genuine. (ii) The Deputy Director (OL) Marine Products Exports Development Authority through his representation dated 8.11.96 complained that when he went to Ernakulam RMS on 6.11.96 to meet Shri P.A.Thomas, SA, a man in Civil dress shouted and pushed him back and also warned him and that man who misbehaved with him, was later identified as the applicant. That complaint was also inquired into and found to be genuine. Hence disciplinary action under Rule 14 of CCS (CCA) Rules, 1965 was initiated against him.

4. The SSRM, EK Division, the appointing authority of the applicant who made preliminary inquiry into the complaint of Director of Postal Services could not function as the disciplinary authority. Therefore, the Senior Superintendent of Post Offices, Ernakulam was appointed as the ad-hoc

disciplinary authority through presidential order dated 10.01.97. The DPS Southern Region, Trivandrum was designated as the appellate authority. Subsequently, memo of charges was issued by Senior Superintendent of Post Offices, Ernakulam Division. Two articles of charge were framed against him. Since the applicant did not submit any written statement in his defence, enquiry was ordered by Adhoc Disciplinary Authority appointing Shri PK Narayanan, ASPO, Kochi Sub Division as Inquiry Officer and Shri KK Davis, IRM, EK Ist Sub Divn. as Presenting Officer. The Inquiry Authority submitted the report on 24.4.1999. The report was sent to the applicant by the Adhoc Disciplinary Authority and the applicant submitted his representation on 2.11.1999. Considering that representation, the Adhoc Disciplinary Authority passed final orders imposing compulsory retirement on the applicant. The applicant preferred an appeal against the penalty to DPS, Southern Region. As he happened to be the same officer who issued the charge sheet, the Appellate Authority was changed and power to dispose of the appeal was delegated to DPS, Northern Region through presidential order. The Director of Postal Services, Calicut vide his order dated 19.10.2000 rejected the appeal. The applicant filed a revision appeal to PMG, Kochi and Member(P), Postal Services Board, New Delhi. By order dated 11.10.2001, Member(P), Postal Services Board, rejected the revision petition of the applicant.

5. The applicant participated in the strike from 25.10.1996 to 29.10.1996 producing Medical Certificate and availing fortnightly off on 23rd and 24th, October, 1996. The strike

was called off on 29.10.1996 and employees resumed duty on 30.10.1996. The intention to intimate his desire to work during the strike period to the DPS was not good as his way of approach as well as his tone of talking was very indecent. Annexure A1 narrates only about the intention of the applicant as to what and how the applicant talked to her in the previous night at the courtyard of her quarter. Annexure A2 is the complaint of an outsider who was holding a responsible post in Central Government Organisation, narrating the bitter experience he had with the applicant when he came to Ernakulam RMS to meet his friend. The claim of the applicant that the incidents happened outside the course of his office duty deserves no merit as in the first instance, the applicant went to the courtyard of the DPS during strike period and secondly, he has no authority even to obstruct entry of the outsider into Ernakulam RMS as the applicant was not actually on duty and other officials including the head of the unit on duty were available to look after all these things. His actions were therefore, violative of extant Service Rules. The impugned orders had been issued by the concerned authorities duly applying their mind and considering all records and aspect of the issue. The revision petition dated 5.2.2001 of the applicant to Member(P), Postal Services Board, New Delhi was forwarded through Senior Superintendent of Post Offices, Ernakulam Division, the Adhoc Disciplinary Authority. The claim putforth in Annexure A8, revision petition to Member (P), Postal Services Board, New Delhi (against ground 7) is that he learnt about the presidential order changing the Adhoc

Appellate Authority only through the appellate order of the Director of Postal Services, Calicut and that no copy of such an order was ever served on him, was false. It is delivered on 25.4.2000 and acquittance of the applicant receiving the order is produced as Annexure R6(h).

6. The applicant failed to attend the sitting of the enquiry held on 12.8.1998. The applicant did not utilise the chances given to him properly for engaging a Defence Assistant. The circumstances under which the applicant walked into the courtyard and uttering filthy language would definitely amount to trespassing and also affect the privacy of the officer. The word uttered do have a threatening attitude and tone. The applicant was not on duty during the particular time of visit of the complainant in the second case. Annexure A-4 inquiry report was passed after due application of mind and considering the evidence produced during the enquiry. Both the Appellate and Revisional Authorities have thoroughly analysed and discussed the points raised by the applicant before issuing the orders. Suspension is not resorted to in all major disciplinary proceeding cases. There is a clear misconduct on the part of the applicant as a Government servant. Both articles of charges are proved. The charges are of very serious nature which warrant punishment and the applicant is not a fit person to be retained in service. He acted in a manner quite unbecoming of a Government servant. The punishment is quite commensurate with the gravity of proven offence. The Tribunal cannot sit on judgement over the penalty.

imposed by Disciplinary Authority for good and sufficient reason. Therefore, the respondents pleaded that there is no merit in the Original Application and the Original Application deserves to be dismissed.

7. The applicant has filed rejoinder stating that he has not trespassed or threatened the Director of Postal Services. So also, in Annexure A-2 complaint, the applicant has not abused the Deputy Director (OL), Marine Products Export Development Authority. The enquiry was conducted in violation of principles of natural justice. One of the witnesses who made Annexure A-1 complaint was examined at Calicut despite the objection of the applicant and he was also not given an opportunity to cross examine the said witness. The documents sought for production were not produced before the enquiry. The Disciplinary Authority without properly considering the representation of the applicant and also without considering the enquiry report in accordance with the rules, imposed the punishment of compulsory retirement which is disproportionate to the alleged gravity of the offence. The Director of Postal Services, Northern Region is a subordinate officer who made Annexure A-1 complaint. The PMG, Kochi, is one of the Appellate Authorities as could be clear from the communication dated 7.08.90 of the Ministry of Communications, which is Annexure A-12. The applicant was directed to file petition before Member (P), which is against the procedure in vogue. The alleged incidents do not term as misconduct and is not violative of the service rules and, therefore, impugned orders are arbitrary, unjust and illegal.



8. The respondents have filed an additional reply statement reiterating the contentions already pleaded. Apart from that, they submitted that if the applicant had any complaint against the dealing of the Inquiry Officer or any other matter he could have filed bias petition against him to the appropriate authority. He did not do so. The applicant was given ample opportunity to furnish the list of defence witnesses and list of documents. The name which he has furnished, was summoned and examined. He did not request for any documents. This is borne out from the available records. The opportunities extended to him had not been availed properly and advance notice was given about the examination of the witness held on 7.10.98. The applicant neither attended the sitting nor requested to postpone the sitting. The respondents contended that the applicant misguided the authorities and there is no procedural irregularity and therefore, the Original Application is liable to be dismissed.

9. The respondents has also filed second additional reply statement contenting that the applicant was warned 22 times from 1974-75 to 1999. The list of punishments imposed on him is tabulated in Annexure R-6 (i) for reference. They were entered in the Service Book maintained by the respondents and the respondents expressed their willingness to produce the said documents before the Court at any point of time.

10. Shri P.Santhosh Kumar, learned counsel appeared for the applicant and Shri K.Kesavankutty, learned SCGSC appeared for respondents.



11. We have heard learned counsel for the parties. Learned counsel took us through the various pleadings, evidence and material placed on record. Learned counsel for the applicant argued that this is not a case which attracts disciplinary action under the rules since the alleged misconduct was not done during and at the time of working hours. The Appellate Authority being subordinate to the Annexure A-1 complainant, the action of the respondents was not justified and the same is in violation of procedural and natural justice. Reasonable opportunity was not afforded to the applicant in participating the enquiry.

12. Learned counsel for respondents on the other hand submitted that it was the duty of the applicant to have availed the opportunity which was granted to him for examination, cross examination and participation in the enquiry but he deliberately failed on some occasions for which the respondents should not be held responsible. If the previous punishments awarded to him which is innumerable in number be taken into consideration, the punishment presently awarded is not excessive and this is a reasonable punishment imposed on the applicant. Therefore, on the question of punishment, this Tribunal may not interfere.

13. We have given due consideration to the arguments, pleadings and material produced by the learned counsel. This is a case where enquiry report, appellate order and revision orders had got a concurrence in their findings. For better elucidation the articles of charges against Shri Raghavan, are reproduced as under :-

Article (1) :

That the said Shri K.Raghavan/5, Sorting Assistant HRO, RMA EK Dn.Kochi - 16 exhibited gross indiscipline and behaved in a manner quite unbecoming of a Government servant in that he trespassed into the courtyard of the quarters of Smt.Indira Krishnakumar, Director of Postal Services, Central Region, Kochi at Thevara at the odd hour of about 2115 hours on 28.10.96 and threatened her thereby violating Rule 3(i), (iii) of CCS (Conduct) Rules, 1964.

Article (2) :-

That the said Shri K.Raghavan/5, SA, HRO, RMS, EK Dn., Kochi - 16 behaved in a manner quite unbecoming of a Government servant in that he shouted against an outsider namely Shri K.Muraleedharan, Deputy Director (OL), Marine Products Export Development Authority, PB 4272 - 682036 and Secretary, Kochi Town official Language Implementation Committee, in a filthy language at about 6.45 P.M on 6.11.96 at EKM RMS/2 when Shri Muraleedharan came to see his friend Shri P.A.Thomas, LSC, SA working in Ernakulam RMS/2 and thereby violated Rule 3(i), (iii) of CCS (Conduct) Rules, 1964.

14. Imputation of misconduct and misbehaviour in support of articles of charges was also framed against the applicant. The imputation of misconduct passed on two complaints received from Smt.Indira Krishnakumar, Director Postal Services on 29.10.96 and from, Shri K.G.Muraleedharan Nair, Deputy Director (OL), Central Marine Export Development Authority, Kochi dated 8.11.96 respectively, as re-produced in Annexure A-4, disclose the misconduct which amounts to violation of 3 (i), (iii) of CCS (CCA) Rules, 1964. It is also evident that the applicant, the charged official participated in the disciplinary proceedings except to the sittings dated 17.08.98 and 7.10.98.

15. The main allegation against the enquiry report is that he was not given a chance to cross examine one of the witnesses. An opportunity was given to him but the applicant

did not choose to avail of the same. Therefore, it cannot be said that the enquiry report is vitiated by any irregularity. We are conscious of the fact that this Court cannot sit as an Appellate Authority for evaluating the evidence of the enquiry. The Hon'ble Supreme Court in a decision reported in (1995) 6 SCC 749 B.C.Chaturvedi Vs. Union of India & Ors. has made it clear that the scope of judicial review is very much limited and the Tribunal cannot interfere and constitute its own independent finding. If it is passed on some evidence, this Tribunal cannot re-appreciate the evidence and substitute its own finding. Therefore, as far as Enquiry proceedings are concerned, we do not find any irregularity since it is in conformity with the procedure and evidence and hence no interference is warranted by this Tribunal in the finding of the Inquiry Officer. This ruling is also reiterated in another case reported in AIR 1996 SC 2474, State of Tamil Nadu Vs.K.V.Perumal & Ors. The non supply of any documents, if any, had not prejudiced the applicant's interest. We find no reason to interfere with the enquiry report, on that ground. Non availing of the right to cross examine a witness, for no reason, is the fault of the applicant and therefore, that is also not a good ground for interference by this Court.

16. In the second additional reply statement the respondents have filed a tabulated form stating that the applicant has been awarded 22 punishments earlier and argued that the applicant is a nuisance to the department. We are not dealing with the punishments earlier given to the applicant as the same is not

within the scope of judicial review. What the Court looks into is that whether the present charge sheet and enquiry and further the impugned orders passed by the respondents, are justified or not with respect to legal or procedural confirmation. Taking into this aspect, we are of the view that earlier punishment awarded to the applicant, which according to the respondents attained finality, has no consequence in deciding this case and if, that was one of the consideration in awarding the punishment and that prejudiced the mind of the authorities which passed the impugned orders. we feel that it is a bad in law. However, we do not wish to adjudicate on this point since it is not very relevant at this juncture.

17. One of the limb of arguments that has been specifically pleaded by the counsel for applicant requires due consideration. The Director of Postal Services (Smt. Indira Krishnakumar) was promoted as PMG, Calicut at the time of enquiry. The subordinate officer of the complainant in Annexure A-1, which was the subject matter, has become the appellate authority. The Appellate Authority, 4th respondent by order dated 19.12.2000 rejected the appeal and confirmed the punishment. It is pertinent to note that justice not only to be done, but it should appear to have been done. Admittedly, the Director (Postal Services), Northern Region is junior in rank to the PMG (NR) and the PMG is having administrative control over the Director of Postal Services. In many respect, he is subordinate to the PMG. Therefore, the apprehension on the part of the applicant that in all probabilities, the

decision of the Appellate Authority, (4th respondent herein), is likely to be impartial has some force. This is because the PMG, the higher authority who made Annexure A-1 complaint, is being investigated by one of his immediate subordinates on appellate jurisdiction to decide the matter. It is found that the PMG, the controlling authority of Director of Postal Services is sitting on judgment on her complaint (annexure A-1) does not seem to be transparent and therefore, the decision will not be fair. It also puts a shadow that enquiry was conducted in Calicut under the domain of PMG. There would not have any difficulty in appointing the Director of Postal Services (SR) and if he is not available (for any other reason) somebody from other region who is not in her administrative control should have been appointed as Appellate Authority who could have reposed a better confidence to the procedure adopted by the respondents.

18. The averment in the rejoinder that the Appellate Authority, Director of Postal Services (SR) was changed without any intimation to the applicant and the allegation that the Appellate Authority has not properly considered the appeal of the applicant, deserves consideration. Therefore, the contention that natural justice has been denied to the applicant by the constitution of the Appellate Authority who is the subordinate of PMG, was the original complainant in Annexure A-1 has some weight. Therefore, we are, of the view that the appellate order is bad and for that reason the revision order is also not in good spirit and taste of law and procedure.

19. Apart from that, on going through Annexure A-7 Appellate Order we find that nothing has been mentioned by the Appellate Authority as to justify the Enquiry Report and it is mostly a verbatim reproduction of enquiry report (Annexure A-5 & A-6) and no application of mind is found in the said order. Our attention is invited to Annexure A-11 appeal (subsequently constituted as revision petition) in which the applicant had specifically taken the plea of jurisdiction and bias, the grounds of which are as under :

1. " The 'appointing authority', 'disciplinary authority' and 'appellate authority' of a government servant are specified in the Schedule annexed to CCS (CCA) Rules, 1965. This schedule has undergone an amendment on 17.8.90, w.r.t. Rule 9 and 24 of the CCS(CCA)Rules, 1965. On page 9 of the said amendment issued by the Ministry of Communications on 27.08.90 it is laid down under column 5 that the appellate authority of Gr.'C' officials in RMS Division shall be "Postmaster General/Director of Postal Services". As such your good self is one of the appellate authorities recognised under the statutory rules and hence this appeal is preferred to your good self.
2. The orders against which appeal lies are described in Rule 23 of CCS(CCA) Rules, 1965. Under the provision of Rule 23 (ii) a government servant can prefer an appeal against an order imposing any of the penalties specified in Rule 11, "whether made by the Disciplinary Authority or by any appellate/revising authority" (emphasis supplied). In this case original punishment orders have been made the disciplinary authority and it was practically confirmed by the appellate authority by his act of rejecting the appeal rather than considering the same. It therefore follows that an order passed by disciplinary authority or by any appellate authority is the subject matter of an appeal to the prescribed Appellate Authority. The word any before "appellate authority" mentioned in the rule presupposes jurisdiction by a higher authority as prescribed in the schedule for performing appellate function. Hence this appeal is submitted to your good self.

3. The legality, propriety and locus standi of the laconic appellate order passed by the adhoc appellate authority namely, DPS, Northern Region, Calicut falls to be considered by your good self. It is submitted that the order passed by the DPS, Northern Region is not sustainable in law. The term appellate authority is defined in Rule 24 of CCS (CCA) Rules, 1965. It is true that a special Presidential order can create an adhoc disciplinary authority, though it is doubtful if successive appointment of appellate authorities in obtuse direction is permissible. The fact however remains that such passing of special order is subject to a non-obstante clause. It is emphatically laid down in Rule 24 (2) (ii) as :-

Rule 24 (2) (ii) : "where the person who made the order appealed against becomes, by virtue of his subsequent appointment or otherwise, the appellate authority in respect of such order, an appeal against such order shall lie to the authority to which such person is immediately subordinate".

Whereas it is laid down that an appeal in the circumstance visualized in the above sub clause could only be disposed of by an authority to which the incumbent DPS, Southern Region, Trivandrum was immediately subordinate. In other words only the CPMG, Kerala Circle could invoke jurisdiction in the matter. For that reason the orders passed by DPS, Northern Region is not maintainable.

20. We are not satisfied with the procedure and the finding arrived at in the appellate order on the ground that the Appellate Authority was not competent to dispose of the appeal with special reference to Rule 23 (ii) and Rule 24 (2)(ii) of CCS (CCA) Rules, 1965. Then he was advised to file a revision petition which was disposed of by Member (Secretary). In that order also, the prejudice that has been caused in the appellate order has not been dealt with. In the circumstances, we are of the view that Annexure A-9 was passed without due application of mind, ignoring the rule position and hence Annexure A-9 is not sustainable.

21. In the facts and circumstances as discussed above, we find that Annexure A-7, A-9, the Appellate Order and that of the revisional authority's order respectively were issued not in accordance with the procedure and therefore, to be set aside. However, we make it clear that the respondents are at liberty to carry on the proceedings from the stage of appellate jurisdiction with an authority not now under the direct administrative control of the PMG (complainant) and also dispose of the revision petition, if filed, by a competent authority within the stipulated time.

In the result, we set aside Annexure A-7 and A-9 orders and direct the respondents to grant all consequential benefits, if any, to the applicant. No order as to costs.

Dated, the 29th July, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

vs