

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.445/09

Monday this the 1st day of February 2010

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

K.U.Gopinathan,
S/o.E.P.K.Nair,
Postal Assistant (BCR),
Wadakkancherry H.O.
Residing at Kavunkaluchanathil House,
Erumapetty P.O., Thrissur – 680 709.

...Applicant

(By Advocate Mr.P.C.Sebastian)

V e r s u s

1. The Director of Postal Services,
Central Region, Kochi – 682 018.
2. The Senior Superintendent of Post Offices,
Thrissur Division, Thrissur – 680 001.
3. Union of India represented by its Secretary,
Ministry of Communications, Department of Posts,
New Delhi.

...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 1st February 2010 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by the Annexure A-1 Memo No.F1/Misc/4/06-07 dated 10.6.2008 of the Disciplinary Authority imposing the penalty of recovery of Rs.2001/-, alleged to have falsely claimed by him in his capacity as SPM, Andathode, from his pay in two instalments starting from June, 2008 and withholding of one increment for a period of 35



months without cumulative effect from the date of its falling due and the Annexure A-2 Memo No.ST/7-41/2008 dated 30.12.2008 of the Appellate Authority upholding the aforesaid penalty order of the Disciplinary Authority.

2. The brief facts necessary for the disposal of this case : The respondents, according to them, have got an enquiry conducted about the expenditure incurred by the applicant during the months of January/February 2006 on account of cash conveyance. According to them, it was revealed during the enquiry that taxis and autos mentioned in some of his money receipts were not actually utilised by the applicant for the purpose of conveyance. 10 vouchers for a total amount of Rs.2001/- were thus detected. In this regard, the respondents vide Annexure A-3 letter dated 17.10.2006 have sought an explanation from the applicant and directed him to deposit the said amount within two weeks. The applicant vide Annexure A-4 reply dated 28.10.2006 denied the aforesaid allegations made against him. Thereafter, the applicant was issued with the Annexure A-10 Memorandum dated 21.2.2008 proposing to take action against him under Rule 16 of CCS (CCA) Rules, 1965. The statement of imputations of misconduct/misbehaviour on which disciplinary action was proposed to be taken against him are as under :-

“ Sri.K.U.Gopinathan has been working as Sub Postmaster, Andathode Post Office with effect from 5.1.2006. The said Sri.K.U.Gopinathan while on duty during the month of January 2006 and February 2006 attended to the conveyance of cash between Andathode Post Office and Chavakkad Post Office and between Andathode Post Office & Kunnamkulam HPO. He charged Rs.2001/- (Rs.Two Thousand One only) towards cash conveyance as Autorikshaw and Taxi car hire fare for these journeys during the period from 30.1.2006 to 25.2.2006 and



submitted the following ACG-17 money paid receipts to Kunnamkulam HPO in support of payment of the amount shown in the said ACG-17 Money paid receipts to the drivers of Autorikshaw & taxi car.

1. ACG.17 Money paid receipt dated 11.2.06 for Rs.280/-
2. ACG.17 Money paid receipt dated 16.2.06 for Rs.117/-
3. ACG.17 Money paid receipt dated 30.1.06 for Rs.280/-
4. ACG.17 Money paid receipt dated 10.2.06 for Rs.117/-
5. ACG.17 Money paid receipt dated 8.2.06 for Rs.180/-
6. ACG.17 Money paid receipt dated 1.2.06 for Rs.170/-
7. ACG.17 Money paid receipt dated 21.2.06 for Rs.180/-
8. ACG.17 Money paid receipt dated 20.2.06 for Rs.117/-
9. ACG.17 Money paid receipt dated 18.2.06 for Rs.280/-
10. ACG.17 Money paid receipt dated 25.2.06 for Rs.280/-

SSP Thrissur, while reviewing the NPC bills of Andathode Post Office for the months of Jan 06 and Feb 06 observed that amount charged by the SPM Andathode for cash conveyance was at a higher rate. So, the ASP (OD) was directed to enquire into the genuineness of the claim. During the inquiry by ASP (OD) Thrissur, Sri.Shaher, driver of Autorikshaw No.KL8 S 6166 who had signed ACG.17 Money paid receipts dated 11.2.06, 20.2.06, 18.2.06 & 21.2.06 for Rs.280/-, 117/-, 280/- & Rs.180/- respectively and Sri.Mustaffa, driver of Taxi Car No.KL 10A 6797 who had signed ACG.17 Money paid receipt dated 1.2.06 for Rs.170/-, in their statements dated 15.9.06 before ASP(OD) Thrissur stated that no such amounts as shown in the above said ACG.17 money paid receipts were paid to them and that they had signed in the place provided for the signature of the payee in the money paid receipts as demanded by Sri.A.Sankaran,GDSMP, Andathode Post Office. They further stated that at the time of taking their signatures in the ACG.17 receipts, they were told by the above said GDSMP that their vehicles would be utilised afterwards, but never utilised for any Post Office work thereafter. Sri.A.Sankaran, GDSMP, Andathode PO in his statement dated 15.9.06 given before ASP(OD) Thrissur admitted that signatures of the above said drivers in the said ACG.17 money paid receipts were taken by him as instructed by the said Sri.K.U.Gopinathan, SPM, Andathode & amounts shown in the said ACG.17 receipts were not paid to them towards Auto/Taxi fare and also that their vehicles were not utilised for cash conveyance. Sri.Nowfal, Driver of Taxi Car No.KL 10 M 8057 who had signed ACG.17 receipts dated 16.2.06 and 30.1.06 for Rs.117/- & Rs.280/- respectively, in his statement dated 15.9.06 before ASP(OD) Thrissur also confirmed that his Taxi car was not utilised for Post office work & the amount shown in the said ACG.17 receipts were not paid to him. Vehicles with registration numbers as shown in ACG.17 money paid receipts dated 10.2.06, 8.2.06 & 25.2.06 for Rs.117/- Rs.180/- and Rs.280/- respectively were not traceable. Even though the ASP(OD), accompanied by Sri.Sunil, the then IP, Guruvayur questioned Shri.K.U.Gopinathan he refused to cooperate with the inquiry and also did not give any statement on the payment of auto/taxi fare for the said period when demanded by the ASP(OD).




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It is, therefore, imputed that Sri.K.U.Gopinathan made false claims of Autorikshaw & Taxi car fares for cash conveyance to the extent shown above by accounting the expenditure which were not actually incurred and thus failed to maintain absolute integrity and devotion to duty contravening the provisions contained in Rule 3 (i) (i) & 3 (i) (ii) of CCS (CCA) Rules 1964 and acted in a manner unbecoming of a Government servant violating Rule 3(1) (iii) *ibid.*"

3. The applicant, vide his Annexure A-4 reply, denied the charges and justified the receipt of Rs.2001/- towards conveyance expenditure. He has also requested the respondents to drop further proceedings in this matter. However, the Disciplinary Authority, after considering his representation, imposed the Annexure A-1 penalty. The applicant has made the Annexure A-12 appeal dated 26.7.2008 to the Appellate Authority stating that he was not given any reasonable opportunity to defend his case and to peruse the documents, in spite of the specific request made by him. The Appellate Authority, vide Annexure A-2 memo, did not accept his contention and upheld the penalty imposed upon him by the Disciplinary Authority holding that the quantum of punishment commensurate with the charges which are quite serious.

4. The learned counsel for the applicant has challenged the aforesaid impugned orders on the ground that the Disciplinary Authority and the Appellate Authority has failed to follow the principles of natural justice while imposing the punishment and upholding the same. In this regard, he has relied upon the judgment of the Apex Court in O.K.Bharadwaj Vs. Union of India and others (2002 SCC [L&S] 188) wherein it has been held that if the charges are factual and if they are denied by the delinquent employee, an enquiry shall be conducted as it would be the minimum requirement of



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the principles of natural justice and it cannot be dispensed with. The said judgment being very short is extracted as under :-

"1. Leave granted.

2. The High Court has recorded its opinion on two questions : (i) that the punishment imposing stoppage of three increments with cumulative effect is not a major penalty but a minor penalty; (ii) in the case of minor penalties, "it is not necessary to give opportunity to the employee to give explanation and it is also not necessary to hear him before awarding the penalty": a detailed departmental enquiry is also not contemplating in a case in which minor penalty is to be awarded.

3. While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with.

4. Learned counsel for the respondent, however, says that though the second proposition of the High Court may not be correct, yet so far as this case is concerned it does not make any difference for the reason that in this case, as a fact an opportunity was given to the appellant and that there has been adequate compliance with the principles of natural justice. But since the High Court has not considered the matter from the above angle that is on merits the proper course in our opinion is to remit the matter to the High Court to consider whether in the light of the facts and circumstances of the case, an enquiry was called for and if called for, was it held according to law and the principles of natural justice, and to dispose of the matter according to law. The appeal is allowed with the above directions. No costs."

5. He has also relied upon the order of the co-ordinate Bench of this Tribunal in OA 721/02 – P.Premalatha Vs. The Chief Post Master General, Kerala Circle, Trivandrum and others. In the said order also the order of the Disciplinary Authority and Appellate Authority were set aside. The operative part of the said order was as under :-



"4. We heard both sides and perused the pleadings. The applicant denied the charge against her in the written statement. The question whether the loss of Government money on account of burglary at the Post Office was due to the negligence, on the part of the applicant could have been established by an enquiry, more so in view of conflicting versions given by the applicant and the Sub Post Master. The Hon'ble Supreme Court in O.K. Bhardwaj v. Union of India and others reported in (2000) 9 SCC 180 held that if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for in case of minor penalty and that this is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with. However, no such enquiry was held though the imputations of misconduct in this case were entirely factual and the applicant unambiguously denied the charge of misconduct. In view of the law laid down by the Hon'ble Supreme Court in the aforesaid case, the disciplinary proceedings against the applicant were vitiated as no enquiry was held to establish the charge against her which was entirely factual. In view of the gross procedural irregularity, the impugned orders of the disciplinary authority and the appellate authority passed are liable to be set aside.

5. Accordingly the orders of the disciplinary and appellate authority at A-1 and A-2 are set aside. The amount, if any, recovered from the applicant consequent on the aforesaid orders will be refunded to her forthwith. The O.A is accordingly allowed. No costs."

6. The respondents in their reply has denied the contentions of the applicant in challenging this OA. They have submitted that before the applicant was directed to credit an amount of Rs.2001/- being the amount shown as paid for cash conveyance, necessary enquiries were made by the Assistant Superintendent of Post Offices and it was found that the applicant had not actually engaged the auto rickshaws for conveyance of cash and also had not paid cash to the auto drivers.

7. We have heard Shri.P.C.Sebastian for the applicant and Shri.Rajesh, on behalf of Shri.Sunil Jacob Jose,SCGSC for the respondents. The charges leveled against the applicant is, of course, quite serious. When there was a dispute regarding the charges, under Rule 16 (1) (b) of CCS

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(CCA) Rules, 1965 itself, the Disciplinary Authority could have held an enquiry in the manner laid down in Sub Rule (3) to (23) of Rule 14. The said rule is extracted below :-

"16 (1) (b) Holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary."

8. As held by the Apex Court in O.K.Bhardwaj (supra) when the charges are factual and when they are denied by the delinquent employee the Disciplinary Authority ought to have conducted an enquiry thereby satisfying the principles of natural justice. A mere one sided enquiry behind the back of the applicant by some departmental officials will not be sufficient to meet the principles of natural justice. We, therefore, allow this OA. Consequently the Annexure A-1 proceedings of the Disciplinary Authority dated 10.6.2008 and the order of the Appellate Authority dated 30.12.2008 are quashed and set aside. The amount of Rs.2001/- already recovered from the applicant's pay shall be refunded to him forthwith. The increments, if any, withheld so far from the applicant's pay shall also be refunded to him within a period of one month from the date of receipt of a copy of this order. However, the respondents are at liberty to hold an enquiry against the applicant as envisaged in Sub Rule 1(b) of Rule 16 of CCS (CCA) Rules, 1965, if so advised. There shall be no order as to costs.

(Dated this the 1st day of February 2010)


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER
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GEORGE PARACKEN
JUDICIAL MEMBER