CENTRAL ADMINISTRATIVAE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 46/08

Tuesday this the 20th day of January, 2009

C O R A M

HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

T.M. Girija, wife of late Venugopalan
Chankalath House PO, Panamkattukara
Wadakkanchery,
Thrissur District, Pin 680 6223 .. Applicant

By Advocate M/s Boby Mathew & Meera K.

Vs.

1 Director of Postal Services
O/o the Postmaster General
Central Region
Kochi-682 016

2 Senior Superintendent
O/o the Senior Superintendent of Post Offices.
Thrissur Division,
Thrissur-680 001

3 Sub Divisional Inspector of Post Offices
Wadakkancherry Sub Division
Thrissur Division-680 582

4 Union of India represented by
Secretary to Government
Ministry of Communications, Department of Posts.
Dhak Bhavan, Sansad Marg
New Delhi-1 ..Respondents

By Advocate Mr. M. M. Said Mohamad.

The Application having been heard on 12.12.2008 the Tribunal delivered the following

O R D E R

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant challenges Annexure A-2 order of the 2nd respondent dated 29.11.2002 removing her from service and Annexure

A4 order of the 1st respondent dated 24.2.2003 rejecting the appeal preferred by her.

2 The facts in short are as follows. The applicant has been working as an Extra Departmental Branch Post Master of the Panamkattukara Post Office, Wadakkanchery, Thrissur Division since 1986. While so, on 6.7.1999 the 3rd respondent conducted an inspection of the Branch post office and noticed fraud committed by the applicant. The 3rd respondent issued a memo dated 28.12.2000 levelling two charges against the applicant (i) that the BPM failed to produce the entire closing balance of Rs. 12976.65 on 6.7.1999 for verification of the SDI and that on verification a shortage to the tune of Rs. 8366.05 was observed and (ii) that the BPM failed to effect payment in time of a money order dated 1.6.1999 for Rs. 1500/- and deliberately detained the payment. The applicant submitted a reply denying the charges. An enquiry was conducted and the Inquiry Officer submitted his report. In the enquiry report charge No.1 against the applicant was stated to be proved and charge No.2 was stated to be partially proved. Applicant submitted her representation against the findings in the inquiry report and requested for leniency. However, the 2nd respondent imposed the punishment of removal from service with immediate effect. The applicant preferred an appeal Annexure A-3 against the order of punishment. Without offering an opportunity to the applicant the appeal was dismissed by Annexure A-4 appellate order. Hence she has filed this Application to quash Annnexure A-2 and A-4 orders and to reinstate her in servicce with full backwages.

3 The main grounds urged by the applicant in the O.A. are that:-

(i) There is no legal and factual basis for the findings in Annexure A-1 inquiry report, that the charges against the applicant have not been proved.

(ii) The first respondent did not consider Annexure A-3 appeal of the applicant properly and the appellate order was passed without hearing the applicant that the appellate authority did not examine and appreciate the evidences before the Inquiry Officer as well as the points raised in the Appeal.

(iii) The punishment imposed on the Applicant is highly excessive and disproportionate to the offencess alleged. The criminal action set in motion against the applicant on the very same charges much prior to the issuance of charge memo and disciplinary action speaks volumes about the bias and malafide against the applicant.

(iv) The applicant was fully absolved of the criminal charges and was acquitted.

4 The respondents have filed reply statement rebutting the averments in the O.A. They have stated that the Sub Divisional Inspector, Wadakanacheri Sub Division conducted inspection of the Branch Post office on 6.7.99 and found a shortage of Rs. 8366.05 and the applicant in her statement before the SDI stated that she used temporarily the office cash for her personal use. As per her request the shortage was permitted to be credited on 6.7.99 itself. It is also found that she deliberately did not give intimatiion of arrival of the money order No. 2137 dated 1.6.99 for Rs. 1500/- till 10.6.99. She also admitted that rolling of office cash by her was going on. She was put off from duty and proceeded against under Rule 8 of P&T ED AGents (Conduct & Service) Rules, 1964. A full fledged inquiry was conducted by the department in which she was found guilty of the charges framed against her and was subsequently removed from service. Her appeal was considered taking in to account all the points raised by her and rejected by the Appellate

authority. They have also submitted that the departmental enquiry and the case which came up for trial before the Judicial First Class Magistrate, Wadakancheri are entirely on different charges and hence the judgment of the trial court has no bearing on the departmental inquiry conducted. They have submitted that the action of the respondents is quite in order and in accordance with the rules and procedures.

5 The applicant has filed a rejoinder reiterating the averments in the O.A. She has further submitted that no loss or prejudice has been caused to the Department on account of the alleged acts of the applicant. The personal and official life of the applicant has been shattered on account of the criminal and disciplinary proceedings simultaneously initiated against her and such proceedings were not justified.

6 The respondents have filed an additional reply statement.

7 We have heard Shri Boby Mathew and Shri M.M. Saildu Muhammed ACGSC and perused the records produced before us.

8 The learned counsel for the applicant argued that there is no legal or factual basis for findings in the inquiry report. There is no allegation of misappropriation. The Disciplinary and Appellate authorities erred in properly appreciating the evidences before the Inquiry Officer as well as the points raised in the appeal and therefore the impugned orders are laible to be interfered with. The respondents have also relied on the statement made by the applicant much earlier to the inquiry. The counsel argued that the punishment imposed on the applicant is highly excessive and disproportinate to the offence alleged.

9 The learned counsel for the respondents aruged that the article of charge No.1 is proved beyond doubt. As regards the second charge *the Enquiry Officer held that there is procedural lapse on the part of the*

applicant in not maintaining proper records to show the date of preparation of "Intimation Slips" and that she prepared and caused service of intimation only on 10.6.99. But the Inquiry Officer came to the conclusion that to hold whether the delay in the preparation of service of 'intimation slip' is attributable to deliberate detention of the money order value personally by the EDA is not adduced by evidence in the inquiry. The learned counsel for the respondents have relied on the decisions of the Hon'ble Supreme Court in State of TN Vs. M.A. Waheed Khan (1999 SCC (L&S) 257) and in Union of India and Others Vs. Sunil Kumar Sarkar (2001 SCC (L&S) 600)

10 The Enquiry Officer in his report after analysing the evidences adduced before the enqiry came to the conclusion that the first charge was proved and the second charge was partly proved. The Disciplinary authority in its order of punishment has inter alia held that even in the written representation with reference to the inquiry report, the applicant had admitted that there was a real shortage in the cash balance. Therefore from the totalilty of evidence available, there is no doubt about the fact of shortage of cash at the time of verification by the Inspector. The present plea that the cash found short was kept in the charged official's house does not stand to reason. Such a plea had not been raised by the charged official when the shortage was noticed or immediately after the incident. All along she maintained that the cash had been taken for her personal use. It is also difficult to believe that the charged official would forget to take the major portion of cash balance while coming to office and at the same time a portion of cash balance of Rs. 4110.60 could be produced for verification at the time of visit of inspector. Their is no logic in keeping the money at home when CEDA

got the money from the post office to effect payment of money orders which were with her from 1.6.1999 onwards, as recorded in the BO journal whilch was produced for perusal. If the plea of keeping the cash at house was true, the charged official could have informed the fact either to the Inspector or to the SSP immediately after the incident. Moreover, it is evident from the statement given by SW-5 that an amount of Rs. 9000/- was lent to the CEDA on 6.7.1999 for making good the amount of shortage. The charge No.1 stands proved. Therefore there is no illegality in the action of the respondents in accepting the findings of the Inquiring Authority. As regards the charge No. 2 the benefit of doubt has been granted to the CEDA. The Disciplinary authority after going through the inquiry report and the evidence adduced in the enquiry, agreed with the findings of the Enquiry Officer, concluded that the charged official has committed grave offence and imposed the penalty of removal from service. The appeal preferred by the CEDA has been carefully considered by the Appellate authority and agreeing with the findings of the disciplinary authority confirmed the orders of removal from service. There is no procedural irregularity alleged in the conduct of the enquiry. Acquittal in the criminal case cannot be urged as a ground for quashing the orders of the disciplinary/appellate authorities.

11 It is well settled law that the scope of judidical review of departmental proceedings is warranted only if there has been a violation of the principles of natuaral justice or the proceedings have been held in violation of statutory regulations prescribing the mode of such enquiry or the decision is vitiated by considerations extraneous to the evidence and merits of the case or if the conclusion made by the authority is ex facie arbitrary or capricious that no reasonable person could have arrived at

such conclusion or other similar grounds. It is also reiterated that if there is some legal evidence on which the findings could be based, then adequacy on even reliablity of such evidence would be outside the pale of judicial review. The factual findings of the disciplinary authority are, however, not open to challenge and the power of judicial review does not extend to examining the correctness or truth of the charges. While exercising powers of judicial review the Courts cannot embark upon an appreciation of evidence and arrive at a conclusion which is based on such evidence. In this view of the matter we do not find any reason to interfere with the orders of the Disciplinary authority.

12 As regards consideration of appeal it is the settled position of law that the appellate authority in a disciplinary proceeding acts in a quasi judicial capacity and the order passed by it has to be a reasoned one showing application of mind to the question raised by the appellant and if that is not done the appellate order is vitiated. The appellate authority has to keep in mind the following factors when an appeal is preferred to such authority (i) there should be proper application of mind and scruitiny of the records before it by the appellate authority to enable it to record its satisfaction in terms of the rules. (ii) it would pass a speaking order which would at least prima facie show that the authority concerned has applied its mind to the various contentions or points for determination raised before it and that it has particularly examined whether the penalty imposed is excessive and /or inadequate and (iii) the scope of applicability of the maxim ***audi alterem partem*** before the appellage authority depending upon the language of the relevant regulation/rule. The Hon'ble Supreme Court has reiterated this principle by observing that an Appellate Authorilty *while deciding a statutory appeal is not only required to give a hearing to*

the Government servant but pass a reasoned order dealing with the contentions raised in the appeal. In this case, the appellate authority has taken into consideration all the points raised therein and taken the decision to dismiss the appeal after durly considering the entire matter.

13 The applicant has raised another ground that the puinishment imposed on the two charges is highly excessive and disproportionate to the offence alleged. The principle of disproportionate punishment could be applied only if the evidence in the domestic inquiry is hopelessly inadequate. Mere statement that the punishment is disproportionate is not adequate. It is not only the amount involved but other factors like financial and moral responsibility vested on the aplicant as the head of the office, the faith of the public and commitment to duty reposed on the applicant by virture of the post she holds, mental set up and such other relevant considerations. Misconduct should be treated with iron hand in cases where a person deals with public finance act in fiduciary capacity. We reject this ground also.

14 In this view of the above discussion we do not see any merit in the O.A., it is dismissed. No costs.

20th January, 2009

K. NOORJEHAN
ADMINISTRATIVE MEMBER

DR. K.B.S. RAJAN
JUDICIAL MEMBER

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