

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

O.A.No.5/09

Friday this the 22<sup>nd</sup> day of January 2010

**C O R A M :**

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER.**  
**HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

E.K.Isha,  
Ex-EDSPM,  
Kumarakom North EDSO, Kottayam Division.  
Residing at Korrikattu House,  
Pallipuram P.O., Cherthala, Alappuzha District.

...Applicant

(By Advocate Mr.E.M.Joseph)

**V e r s u s**

1. Union of India represented by the Secretary,  
Ministry of Communications & Information Technology,  
New Delhi - 1.
2. The Senior Superintendent of Post Offices,  
Aluva Division, Aluva - 683 101.
3. The Director of Postal Services,  
Central Region, Kochi - 682 016.
4. The Post Master General,  
Central Region, Department of Posts,  
Kochi - 682 016.

...Respondents


(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 22<sup>nd</sup> January 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-2 order dated  
13.3.2001 of the Disciplinary Authority imposing upon her the penalty of  
dismissal from service with immediate effect and the Annexure A-5 order



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dated 31.12.2003 of the Revisional Authority confirming the aforesaid penalty. She has prayed for quashing those orders and also for directing the respondents No.2-4 to reinstate her as Extra Department Sub Post Mistress with back wages and all other service benefits. In the alternative, she sought a direction to the respondents to conduct a de novo enquiry by giving reasonable opportunity to her and to pass appropriate orders in accordance with law, after quashing the said orders.

2. One of the grounds taken by the applicant to challenge the aforesaid orders and to seek the reliefs prayed for is that the impugned orders were passed in violation of the principles of natural justice as she was denied the reasonable opportunity to defend the case and thereby violated Article 311 of the Constitution. She has specifically stated that the enquiry proceedings were held in violation of Sub Rules (8 a) and (18) of Rule 14 of CCS (CCA) Rules, 1965. The other ground taken by her is that she was acquitted in the criminal case initiated against her on the same charges as in the departmental proceedings and, therefore, she is entitled to be reinstated in service.

3. The applicant has also filed M.A.12/09 to condone the delay of 1825 days in filing this O.A., in the interest of justice. According to the applicant, after her dismissal from service, she was in acute financial crisis as she has no resources for her livelihood itself. Her only source of income was the salary and allowances she was receiving during her service as her husband was not earning any income due to his sickness. All those factors have contributed for the postponement of the filing of the O.A.



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Ultimately, left with no other alternatives, she approached the Ernakulam District Legal Services Authority seeking its help and it was with the assistance of the counsel appointed by them, this OA has been filed.

4. The respondents have filed a reply. They have submitted that as per Sub Rule 8 (a) of Rule 14 of CCS (CCA) Rules 1965, the charged Government servant may take the assistance of any other Government servant, but such an Assisting Government Servant has to obtain the permission of his controlling Authority to absent himself from the office to assist the accused Government servant during the inquiry. In the instant case, the controlling Authority of the nominated Government servant, after due consideration, informed the inquiring Authority that his services could not be spared to work as Assisting Government Servant, in the interest of service. The Inquiring Authority in turn informed the applicant accordingly and asked her to nominate another official as her Defence Assistant. According to the respondents the Ministries of Law and Home Affairs have issued instructions to the effect that the refusal by superior officer to grant permission to nominated Government servant on reasonable grounds would not amount to denying the right of representation of the delinquent Government servants under CCS (CCA) Rules, as it is open to them to nominate any another Government servant. They have, therefore, submitted that the direction given by DPS, Central Region, Kochi to the applicant to nominate any other Government servant as her Defence Assistant, vide Memo dated 12.1.2000, was strictly according to the rules.



5. They have relied upon the judgment of the Apex Court in **Indian Overseas Bank Vs. Indian Overseas Bank Officers Association** (2002 SCC [L&S] 1043) in which, it has been held as under :-

“ The issue ought to have been considered on the basis of the nature and character or the extent of rights, if any, of an officer – employee to have, in domestic disciplinary enquiry, the assistance of someone else to represent him for his defence in contesting the charge of misconduct. This aspect has been the subject matter of consideration by this Court on several occasions and it has been categorically held that the law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and there is no right to representation by somebody else unless the rules and regulation and standing orders if any regulating the conduct of disciplinary proceedings specifically recognizes such a right and provide for such representation. (N.Kalindi Vs. Tata Locomotive & Engg Co. Ltd. (AIR 960 SC 914), (1960) 2 LLJ 228) Dunlop Rubber Co. (India) Ltd. Vs. Workmen (AIR 965 SC 1392, (1965) 1 LLJ 426), Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi (1993) 2 SCC 115, 1993 SCC (L&S) 360) and Bharat Petroleum Ltd. Vs. Maharashtra General Kamgar Union (1999) 1 SCC 626, 1999 SCC (L&S) 361). Irrespective of the desirability or other wise of giving the employee facing charges of misconduct in a disciplinary proceeding to ensure defence does not get debilitated due to inexperience or personal embarrassments, it cannot be claimed as a matter of right and that too as constituting an element of principle of natural justice to assert that a denial thereof would vitiate the enquiry itself.”

6. The respondents have also submitted that as the applicant has denied the charges, a detailed inquiry was held by the Inquiring Authority but on one plea or other, she chose to keep away from the inquiry. However, in consonance with the principles of natural justice copies of the daily order sheets, copies of depositions of witnesses and proceedings and the copy of the inquiry report holding that the charges have been proved against her were furnished to her from time to time. In fact, the applicant has sought time to file representation against the said inquiry report sent to her by SSPOs, Aluva Division vide memo dated 28.12.2000. Thereafter, the SSPOs, Aluva Division, after careful consideration of all points raised




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in her various representations and after observing all mandatory procedures as laid down in the CCS (CCA) Rules, 1965 dismissed her from service. The appeal submitted by her was rejected by the DPS, Central Region, Kochi after carefully going through the relevant records of the case. The Revision Petition filed by her was also dismissed on 31.12.2003. They have further submitted that the applicant has not challenged those orders for several years and this OA has been filed only after she was acquitted in the criminal case pending against her. According to them, this OA is very badly delayed and it is liable to be dismissed on the same ground alone.

7. They have also submitted that the subsequent acquittal of the applicant in the criminal case is not a reason for reviewing her case for reinstatement in service. In this regard they have relied upon the judgment of the Apex Court in Union of India Vs. Sunil Kumar Sarkar (2001 SCC [L&S] 600) wherein it has been held as under :-

“ The respondent in this case has been punished for the same misconduct both under the Army Act as also under Central Rules. Hence a question arises whether this would tantamount to 'double jeopardy' and is in violation of Article 20 of the Constitution of India. Having considered the arguments addressed in this behalf we are of the opinion that so far as concurrent proceedings initiated by the organisation against both under the Army Act and Central Rules are concerned, they are unexceptionable. These two proceedings operate in two different fields though the crime or misconduct might arise out of the same act. The court martial proceedings deal with the penal aspect of misconduct while the proceedings under Central Rules deal with the disciplinary aspect of the misconduct. These proceedings do not overlap.”

8. We have heard learned counsel Shri.E.M.Joseph for the applicant and Shri.Sunil Jacob Jose,SCGSC for the respondents. We have also




perused the records of the disciplinary proceedings. The main contention of the counsel for the applicant is that the applicant was denied the opportunity to defend her case properly before the Inquiring Officer as the department has not relieved the Defence Assistant Shri.C.Gopalakrishna Pillai nominated by her. He has, therefore, submitted that the inquiry was held in violation of the principles of natural justice. We do not find merit in the aforesaid contention of the learned counsel. It is seen from record that the respondents have not spared the services of Shri.C.Gopalakrishna Pillai only because of the exigencies of service. However, it was open to the applicant to nominate any other person to act as her Defence Assistant in terms of sub rule 8 (a) of Rule 14 of the CCS (CCA) Rules, 1965 which is extracted below :-

"8(a). The Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner, or, the Disciplinary Authority, having regard to the circumstances of the case, so permits :

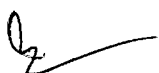
Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the Inquiring Authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits."

9. The DG P&T vide their letter No.6/4/66 – Disc. Dated 6.8.1966 and letter 10/1/68 – Disc. dated 23.7.1969 have also issued further instructions in this regard. According to the said letters, for compelling reasons, if it is not practically possible for the Controlling Authority of the Assisting General Servant to relieve him, he should inform the Inquiry Officer about it with reasons, for being communicated to the accused



official and the Government servant chosen for assisting the accused official so that the accused official could choose any other Government servant to assist him. In this case, the Controlling Officer of Shri.C.Gopalakrishna chosen by the applicant to assist her, informed the Inquiry Officer about his inability to relieve him in the interest of service and the Inquiry Officer in turn has intimated the position to the applicant. As the applicant did not choose any other Government servant to assist her, the respondents cannot be later accused of denying natural justice. Moreover, it is seen that the Appellate Authority has rejected her appeal by order way back on 19.1.2002. The applicant has not challenged the same even in this Original Application. Once the applicant has accepted the appellate order she cannot agitate the issue again before this Tribunal. Secondly, the Revision Petition was filed by the applicant on the ground that in the criminal case initiated against her was based on the same charges and she was acquitted. It is a well established principles of law that criminal case and the departmental proceedings are not akin to each other. The Apex Court in the case of State of Rajasthan Vs. B.K.Meena and others [(1996) 6 SCC 417] held as under :-

"17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the case a are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed."



10. In Lalit Popli Vs. Canara Bank and others [2003 (3) SCC 583] the Apex Court has held as under :-

"16. It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him; whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. [See *State of Rajasthan v. B.K. Meena and Ors.* (1996) 6 SCC 417]. In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct."

11. In Ajit Kumar Nag Vs. General Manager (PJ), Indian Oil Corporation Ltd., Haldia and others [(2005) 7 SCC 764], the Apex Court has held as under :-

"11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of





'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."

12. We also find that there is inordinate delay in approaching this Tribunal by the applicant. The reason given by the applicant is not convincing. If she is poor and had no means of livelihood, she could have approached the District Legal Services Authority in 2002 itself after her appeal was rejected on 19.1.2002 or after her revision petition was rejected vide order dated 31.12.2003. The applicant has failed to approach this Tribunal within a reasonable time.

13. In the above facts and circumstances of the case, we dismiss this OA both on merits as well as on limitation. There shall be no order as to costs.

(Dated this the 22<sup>nd</sup> day of January 2010)

  
**K. GEORGE JOSEPH**  
**ADMINISTRATIVE MEMBER**

  
**GEORGE PARACKEN**  
**JUDICIAL MEMBER**

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