CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 53 of 2004

Friday, this the 30th day of June, 2006

C O R A M:

HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.M. Thankamany,
W/o. K.L. Vijaya Kumar,
Ex. Postal Assistant,
Aluva Division,
Residing at Kattumpuram House,
Thevara P.O., Kochi – 682 013 ... Applicant.

(By Advocate Mr. P.C. Sebastian)

versus

1. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

2. The Director of Postal Services,
Central Region, Kochi – 682 016

3. The Senior Superintendent of Post Offices,
Aluva Division, Aluva : 688 101

4. The Assistant Superintendent of Post Offices (O/S),
Office of the Senior Superintendent of Post Offices,
Ernakulam Division (Inquiring Authority).

5. The Union of India represented by
Secretary to Government of India,
Ministry of Communications,
Department of Posts, New Delhi .... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O R D E R

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

Challenge in this case is against the order of removal from service on disciplinary grounds, which was confirmed in the appeal and revision petition filed by the applicant was also dismissed.

2. The brief facts as contained in the OA and the retort of the respondents as contained in the reply affidavit are as under:-

(a) The applicant, while working as Postal Assistant was issued a charge sheet containing three articles of charges which are reproduced hereunder:

"A R T I C L E – I

That Smt. K.M. Thankamany, Postal Assistant, Thaikattukara, while working as SPM, Thaikkattukkara, on 28.8.98 fraudulently withdrew an amount of Rs. 13000/- (Rs.Thirteen Thousand only) as interim withdrawal from RD Account No. 86097 standing open at Thaikattukara in the name of Shri N.J. George, Naduvilaveettil, Thaikattukara without the knowledge of the depositor and without entry in the pass book. She did not pay the amount to the depositor and did not obtain his acquittance and thereby violated Rule 113 (4) read with Rule 33 of POSB Manual Volume I and that by this act Smt. K.M. Thankamany failed to maintain absolute integrity and devotion to duty in contravention of Rule 3 (1) (i) and 3 (1) (ii) of CCS (Conduct) Rules, 1964.

ARTICLE- II

That Smt. Thankamany, Postal Assistant, Thaikattukara, while working as SPM, Thaikkattukkara on 11.12.97 fraudulently withrew Rs. 10,000/- Rupees ten thousand only) from Recurring Deposit Account No. 86354 standing open at Thaikattukara SO in the name of Smt. A. Jansi Ratnakumari, 3/281, Thaikkattukkara, without the knowledge of the depositor and without entry in the pass book. She did not pay the amount to the depositor and did not obtain her acquittance and thus violated Rule 113 (4) read with Rule 33 of POSB Manual Volume I and that by this act Smt. K.M. Thankamany failed to maintain absolute integrity and devotion to duty in contravention of Rule 3 (1) (i) and 3 (1) (ii) of CCS (Conduct) Rules, 1964.

ARTICLE – III

That Smt. Thankamany, Postal Assistant, Thaikattukara, while working as SPM, Thaikattukara, on 20.5.98 irregularly withdrew a sum of Rs. 6000/- (Rupees six thousand only) from Recurring Deposit Account No. 86554 standing open at Thaikattukara SO in the name of Smt. Girija K.A., Thiakkoottathil, SPWHS, Thaikattukara, without the knowledge of the depositor, without entry in the pass book and without obtaining acquittance of the depositor and thereby violated Rule 113 (4) read with Rule 33 of POSB Manual Volume I and that by this act Smt. K.M. Thankamany failed to maintain absolute integrity and devotion to duty in contravention of Rule 3 (1) (i) and 3 (1) (ii) of CCS (Conduct) Rules, 1964."

(b) On applicant's denial of the charges , a departmental enquiry was ordered. In the sitting of the enquiry, the charges were read over to the applicant. The applicant denied the charges levelled against her. Before commencing the production of evidence, applicant submitted a request dated 1.7.2000 to the Inquiry Authority requisitioning certain documents for inspection. Among the documents requisitioned, two items were not produced for the perusal of the applicant stating that the said documents according to the Postmaster, Aluva HO, were not

available. The applicant also submitted a requisition dated 23.8.2000 to the Inquiry Authority requesting for the production of five additional documents which were in the custody of the disciplinary authority. But applicant's request for additional documents was rejected by the Inquiry Authority as per his letter dated 28.8.2000 (A/2) stating that her request was time barred under sub-rule 11 (iii) of Rule 14 of CCS (CCA) Rules.

(c) The Inquiry Authority thereafter proceeded with the inquiry and submitted his report dated 28.01.2001 holding that all the three articles of charges levelled against the applicant have been proved beyond doubt. Against the enquiry, the applicant submitted a representation dated 6.3.2001.

(d) The Disciplinary Authority as per his Memo dated 20.3.2001 concurred with the findings of the Inquiring Authority, and imposed the penalty of dismissal from service on the applicant.

(e) Against the punishment, the applicant submitted an appeal dated 7.5.2001 to the Appellate Authority. The Appellate Authority as per order dated 8.1.2002 (A/7) rejected the appeal of the applicant.

(f) Aggrieved by the rejection of her appeal, the applicant submitted a revision petition to the revisional authority. The same was, however, rejected by order dated 9.1.03 (A/9).

(g) The inquiry is vitiated for the reason that applicant was not given adequate opportunity to defend her case and prove her

innocence. Additional documents were denied by the Inquiry Authority not for the reason that they were irrelevant as mandated under the provision of sub-rule 12 of Rule 14 but for the only reason that applicant had not given requisition within ten days.

(h) The Inquiry Authority has arrived at his findings without considering relevant facts.

(i) The Inquiry Authority has mainly relied on the self incriminating statements which the applicant was compelled to give to the investigating official under duress.

(j) A police case was also registered on identical set of facts and a criminal case under C.C. No. 705/00 charged against the applicant before the learned Judicial First Class Magistrate Court, Aluva. The applicant was acquitted in the said case by judgement dated 22.11.2003.

3. Respondents have contested the case. In the reply statement, they have submitted as under:

(a) The enquiry was conducted in accordance with law and principles of natural justice. Applicant was afforded all necessary opportunity to defend the charges levelled against her and to prove her innocence. After a detailed enquiry, the enquiry officer found the applicant guilty of all the three charges levelled against her. The findings of the enquiry officer was well founded. A copy of the

enquiry report was forwarded to the applicant and she submitted her reply. The disciplinary authority after considering the enquiry report and the representation submitted by the applicant, awarded the punishment of dismissal from service.

(b) The petition dated 1.7.2000 for production of documents was filed only on 6.7.2000, i.e., after a lapse of three months. However, available documents were produced and the documents were inspected by the applicant on 17.8.2000. Documents listed as item 4 and 5 i.e., the SB-3 cards and error book, were not produced as the Postmaster, Aluva, who is the custodian of these documents reported that these documents are not available. However, specimen signature book of Thaikattukara Post Office in respect of Recurring Deposit Accounts was produced in the place of SB-3 cards.

(c) Applicant's request dated 23.8.2000, for production of additional documents was rejected. As per sub-rule 11 (iii) of Rule 14 of CCS (CCA) Rules, 1985, notice for production of additional documents if any, should be given within ten days of the first sitting. The first sitting of the enquiry was on 5.4.2000. Hence, the rejection of the said application was in accordance with law.

4. Arguments were heard and documents perused.

5. The Applicant's counsel tried first to take the Court though the entire facts of the case with a view to contending that the authorities have not rendered the

findings correctly. It was argued that when provision exists even for refunding the deposits when requisition is made through agents, the respondents are wrong in passing the order of penalty of dismissal from service. As the Tribunal cannot reappreciate the evidence, and as the scope of judicial review in disciplinary proceedings is very much limited, the applicant's contention on findings of fact cannot be entertained. In this regard, reference can be made to a very recent judgment citing two earlier decisions, of the Apex Court, in the case of ***Govt. of A.P. v. Mohd. Nasrullah Khan,(2006) 2 SCC 373*** would be very much appropriate:

> *"**12.** We may now notice a few decisions of this Court on this aspect avoiding multiplicity. In Union of India v. Parma Nand, K. Jagannatha Shetty, J., speaking for the Bench, observed at SCC p.189, para 27 as under:*
>
> *"27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."*

13. Again, the same principle has been reiterated by this Court in B.C. Chaturvedi v. Union of India, K. Ramaswamy, J., speaking for the Court, observed at SCC p.759, para 12 as under:

> *"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/ Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."*

6. Thus, The question involved in this case is confined to whether there is any legal flaw in the decision making process in the disciplinary proceedings held

against the applicant. The applicant has challenged the disciplinary authority's order, the order of the appellate authority and that of the revisionary authority but then, his main contention at the time of argument, is that the additional documents which were called for by him in August, 2000 were not made available to him. The documents he requisitioned are as under:-

> "(i) Reports of preliminary enquiry/investigation submitted by the investigating officer to the disciplinary authority. The documents is relevant in view of the defence point of view to see what type of independent enquiry was conduced Annual.
>
> (ii) Inspection Report on Thaikattukara SO for the year 1998 and 1999. This is relevant to show that there was no adverse mention in the IR.
>
> (iii) Diary of Shri Muraleedharan Nair ASP for the period covering June, 1999 and July, 1999. This is to know whether the enquiry officer acted in a hasted manner.
>
> (iv) Diary of Shri Radhakrishnan, Mailover covering the period May, 1999. This is to know the movement of the witness so as to contradict his version in the defence point of view.
>
> v) Sanction for prosecution issued by the competent authority."

7. Of the above, the applicant had laid stress upon document at (ii) above.

8. The reason for not making available the documents as contained in order dated 28-08-2000 is that the applicant had requisitioned the same after the lapse of the prescribed time limit as contained in Rule 14(11) of the CCS (CC&A) Rules, 1965. At the same time the applicant contends that even the requisition of

documents earlier made by him was also beyond the prescribed time limit and yet, the Inquiry authority had made available the same. As such, the reason for disallowing his request for additional documents is not valid. We disagree. First, the purpose of prescribing time limit for making available the documents is with a view to ensuring that the disciplinary proceedings are conducted and concluded within a reasonable time frame. Any act on either part to prolong the proceedings cannot be allowed to be permitted. In the instant case the first hearing took place in April, 2000 and the applicant for the first time called for documents in July, 2000 which was acceded to by the I.O. However, when in August, 2000, the applicant called for further documents, the same were refused on the ground of the requisition not being within time. Secondly, that the applicant's request earlier was entertained cannot give any legal right to the applicant to requisition additional documents at his own will regardless of the time limit specified in the Rules. In fact, the applicant ought to have requisitioned in one go all the documents he wanted to rely upon. If he were to be permitted in asking for such documents in piecemeal, there may not be an end to it and the proceedings would be dragging. This is not the spirit behind the rules.

9. Again, violation of natural justice cannot be said to have taken place in all the cases where certain documents are called for but denied. In the case of **State of U.P. v. Ramesh Chandra Mangalik**, (2002) 3 SCC 443, the Apex Court has

held as under:-

> *"12. Learned counsel for the appellant submitted that no material or document has been relied upon by the inquiry officer, copy of which or inspection thereof may not have been allowed to the respondent. No material has been obtained after the date of hearing nor has any such material been made use of by the inquiry officer. It is further submitted that in the judgment of the High Court it has nowhere been indicated that any material or document, copy of which has not been supplied to the respondent, was used much less any prejudice, if caused to the respondent. Learned counsel for the respondent could not pinpoint any particular document which may have been made use of by the inquiry officer for establishing the charges levelled against the respondent, copies of which or inspection thereof may not have been allowed to the delinquent by the Department. No submission has been advanced on behalf of the respondent on the point of prejudice which may have been caused to the respondent by non-supply of document, if any. The High Court has also not gone into the question of the relevance of the documents, copies of which are said to have not been supplied to the respondent and consequent prejudice, if caused. We therefore find that the finding of the High Court that the principles of natural justice have been violated for non-supply of documents to the respondent is not sustainable. The cross-examination of a witness which was sought for, had unfortunately died which fact was also brought to the notice of the respondent."*

10. In the instant case, though the applicant had relied and emphasized upon one of the documents, he has not specified as to whether any prejudice was caused to him by non supply of documents. Again, it is the applicant who has to blame himself for this. For, he had not applied for the documents on time. Had he applied on time and despite the same, he was not given the documents called for and no plausible reason for refusal to make available the documents was given, then only he could claim that he is prejudiced. Here, the situation is not as such.

His very claim is belated. That in respect of his first request, the same was entertained notwithstanding the fact that even that requisition was belated, only shows that the I.O. was not biased against the applicant. Thus, we are convinced that there is no violation of principles of natural justice. Hence, the applicant could not make out a case whereby he could substantiate that there are legal lacuna in the decision making process. It is trite law that in disciplinary proceedings, scope of judicial review is very much limited. The following decisions of the Apex Court would amply confirm the law point:

(a) Government of Tamil Nadu Versus A. Rajapandian, AIR 1995 SC 561 {1995 (2) SLJ 216 (SC)}, the Apex Court has held as under: -

> *"Administrative Tribunal cannot sit as a court of appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably supports the conclusion reached by the Disciplinary Authority, it is not the function of Administrative Tribunal to review the same and reach different finding then that of the disciplinary authority".*

(b) In the case of State of **Tamilnadu versus Thiru K.V. Perumal and Others** reported in 1996(5) SCC 474, 1996(3) SLJ 43 (SC) the Apex Court has reiterated the same view.

> *"It has been repeatedly held by this Court that it is not the province of the Tribunal to go into the truth or otherwise of*

the charges and the Tribunal is not an appellate authority over the departmental authorities.

Accordingly, the Tribunal must be held to have exceeded its jurisdiction in entering upon a discussion whether the charges are established on the material available"

(c) In ***Ram Saran v. IG of Police, CRPF,(2006) 2 SCC 541*** the Apex Court has held:

"The scope of judicial review is limited to the deficiency in the decision-making process and not the decision. (See V. Ramana v. A.P. SRTC (2005) 7 SCC 338)"

11. Apart from the above, no other points were raised during the course of arguments.

12. We have gone through the comprehensive order of the disciplinary authority (20-03-2001), that of the appellate authority (08-01-2002) and the revisional authority (09-01-2003) and these have been passed in accordance with law. Equally valid is the inquiry report dated 28-01-2001. There is no infirmity in the decision making process. Further, the charges apart from being multiple, having charged the applicant with lack of integrity, the punishment accorded is also not shockingly disproportionate.

13. In view of the above, there no legal flaw could be discerned from the proceedings and as such, the O.A. being devoid of merits, merits only dismissal

and we accordingly order so.

Costs easy.

(Dated, the 30th June, 2006)

N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

K B S RAJAN
JUDICIAL MEMBER

cvr.