

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 526 of 2007

Friday, this the 18th day of January, 2008

CORAM:

**HONBLE DR. KBS RAJAN, JUDICIAL MEMBER
HONBLE MRS. O.P. SOSAMMA, ADMINISTRATIVE MEMBER**

A.N. Mohanan,
S/o. Late A.K. Narayanan,
Assistant, Regional Passport Office,
Cochin, Residing at 'Alazhata House',
Kadavanthara P.O., Cochin : 682 030

(By Advocate Mr. Shafik M.A)

versus

1. Union of India,
Represented by Foreign Secretary,
Ministry of External Affairs,
Patiala House Annex, Tilak Marg,
New Delhi.
2. The Additional Secretary (Administration),
Government of India, Ministry of
External Affairs, Patiala House Annex,
Tilak Marg, New Delhi : 110 01
3. The Joint Secretary & Chief Passport Officer,
Government of India, Ministry of External
Affairs, CPV-Division, New Delhi. Respondents.

(By Advocate Mr. M.M. Saidu Mohammed, ACGSC)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The short issue involved in this OA is whether the penalty of censure imposed has been passed by the respondents in accordance with the laid down procedure.

2. Brief facts: The applicant was proceeded against on certain alleged

misconduct vide Memorandum dated 3rd August, 1999 at Annexure A-2. This Memorandum was in fact preceded by another show cause, vide Annexure A-4 Memorandum dated 16-03-1999, wherein the allegation was that the applicant along with another individual Shri Prabath threatened the guard on duty who removed certain posters displayed unauthorizedly at the entrance door of the office premises, and forced him to replace the poster and used abusive language to the guard in front of the public and thereafter the applicant along with the said Shri Prabath came to one Shri Sashikumar's seat and shouted at him and threatened him too. The applicant having denied the charges, inquiry was conducted. After 22nd March, 2000, though the case was, as per pre-decided schedule, to be proceeded further on 19-04-2000, the same did not take place. While there was no further progress in the proceedings, meanwhile, the respondents had promoted juniors to the applicant keeping the case of the applicant in sealed cover. This having prejudiced the applicant, he had chosen to prefer a representation dated 08-06-2001 to the III respondent stating inter alia as under:-

"I humbly submit that I am totally innocent of the charges leveled against me. Due to the pendency of the abandoned proceedings my promotional chances are adversely affected. I may not get justice, if the enquiry proceedings are re-started at this distance of time. Therefore, I most respectfully request your goodself to drop the charges against me. I honestly regret the happenings. I may be excused if I have committed any wrong to the department, knowingly or unknowingly."

3. The disciplinary authority had taken the above request of the applicant as an unqualified admission of the alleged misconduct and passed an order of censure vide impugned order dated 13th September, 2001 at Annexure A-1. The order inter alia reads as under:-

"Whereas the undersigned, being the Disciplinary Authority, has considered the representation of Shri A.N. Mohanan and has

decided to dispense with the departmental inquiry. As Shri A.N Mohanan has regretted the lapse on his part, the undersigned would overlook the charge as proved. However, keeping in view the apology tendered by Shri A.N. Mohanan, the undersigned has decided to take a lenient view and has come to the conclusion that imposition of a penalty of Censure would meet the ends of justice.

Now, therefore, a penalty of Censure is hereby imposed on Shri A.N. Mohanan, UDC, Regional Passport Office Cochin."

4. The applicant has preferred an appeal in which he has contended that he had never admitted the charge, instead, has only denied the same when the charge sheet was served upon him. In his representation dated 8th June, 2001 also he had stated that he had not committed any offence and he had cited the deposition of certain material witnesses also to prove his case. What he had stated in his letter dated 8th June 2001 was that the pendency of the abandoned disciplinary proceedings affects his promotional chances and he was not likely to get justice if the inquiry proceedings were re-started at that distance of time and hence, he had requested to drop the charge against him. The same does not amount to admission of his guilt and hence, the punishment of censure imposed upon him is unjustified.

5. As the appellate authority had not decided the appeal, the applicant had moved OA No. 559/2005 which was decided on 18th January, 2007, vide Annexure A-14, with a direction to the appellate authority to dispose of the appeal. Annexure A-3 is the order of the appellate authority, rejecting the appeal. Hence this OA.

6. Respondents have contested the OA. According to them, the findings in Annexure A-1 order of the disciplinary authority are well founded and the penalty imposed is only just and reasonable. They have also referred to yet another OA

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No. 203/2002 wherein the Tribunal held that censure is not a bar to promotion, there is no impediment in opening the sealed cover and act accordingly. This was upheld by the High Court, but when the matter was taken up with the Apex Court, and the case at that time was only pending.

7. Counsel for the applicant argued that the innocuous penalty of censure has telescopically affected the promotion of the applicant. In fact, many of the juniors have become Public Relation Officer and the applicant is languishing as Assistant. He had submitted that there is variation in the alleged charge as available in the Show Cause notice of March, 1999 and the memorandum of August, 1999. He had also taken the Tribunal through the depositions /cross examination to hammer home that the same go in his favour.

8. Counsel for the respondents reiterated the contents of the Reply.

9. Arguments were heard and documents perused. Rule 14 sets out the procedure for holding enquiry for major penalty proceedings. Provision exists as to action to be taken when the alleged misconduct is admitted. That is only at the time before commencement of the inquiry or at the very threshold level of inquiry. Here the stage of examination/cross examination of prosecution witness was over, as early as March, 2000 but thereafter, for any reason whatsoever, there had been no further progress. This resulted in the matter hanging without any decision. Normally, the period for completion of inquiry is stated to be about six months. The charge memo having been issued in August, 1999, if after March, 2000, there has been a sense of hibernation and during this intermittent period, many a junior seemed to have been promoted. It was on account of the same that the applicant had to pen the representation in June, 2001. The words, 'regret the happenings' and 'may be excused' etc., are to be construed as

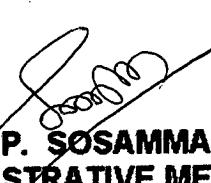
A handwritten signature in black ink, appearing to read 'S. B.' followed by a stylized surname.

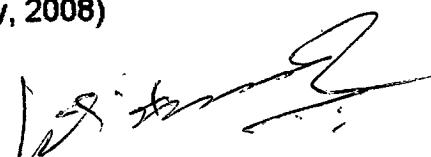
words of politeness for, these words were preceded by the words, "I am totally innocent of the charges levelled against me" etc., As such, it is not exactly correct to hold that there has been an unqualified admission of the alleged misconduct. As such, the decision of the Disciplinary authority may have to be set aside. In that event, the proceedings may be deemed to be continuing, which would do more harm to the applicant. Hence, interest of justice would be met if the penalty of censure is treated as imposed within six months from the date of issue of charge sheet which would mean that the penalty of censure would have the sting till September, 2000 and not thereafter. If so, the applicant's case for promotion could be considered on the basis of the recommendations of the DPC held after September, 2000. Such an action would render justice to the applicant and such an order by this Court is permissible under Rule 24 of CAT (Procedure) Rules, 1986.

10. The OA is **disposed of** on the above terms. Respondents are directed to take necessary action and pass suitable orders in this regard. If no DPC had taken place between October, 2000 till the date of promotion of the applicant, the applicant may be informed accordingly.

11. No costs.

(Dated, the 18th January, 2008)


 (O.P. SOSAMMA)
 ADMINISTRATIVE MEMBER


 (Dr. K B S RAJAN)
 JUDICIAL MEMBER