

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.545/2000

Thursday this the 13th day of June, 2002.

CORAM

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

P.M.Joy
S/o Mathai
Postman, Thanneermukkum,
Cherthala.
residing at Pollakattil, Manappuram
Via Puchakkal, Alleppey.

Applicant.

(By advocate Mr.M.R.Rajendran Nair)

Versus

1. The Superintendent of Post Offices
Alappuzha Division
Alappuzha.
2. The Chief Postmaster General
Kerala Circle
Thiruvananthapuram.
3. The Director of Postal Services
Central Region
Kochi.
4. Union of India rep. by
the Secretary
Ministry of Communications
New Delhi.

Respondents.

(By advocate Mr.Rajendra Kumar, ACGSC)

The application having been heard on 13th June, 2002, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant aggrieved by the action of the respondents in not regularizing the period of suspension as duty for all purposes and not disbursing the pay and allowances for the period of suspension has filed this Original Application seeking the following reliefs:



- i. To quash Annexure A8.
- ii. To direct the respondents to treat the period of suspension of the applicant as duty and to disburse the pay and allowances for the period of suspension.
- iii. Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and
- iv. Grant the cost of this Original Application.

2. Applicant while working as Postman, S.L.Puram was placed under suspension from duty with effect from 19.6.90 as per A-1 memo dated 18.6.90 issued by the first respondent. Disciplinary proceedings were initiated against him under Rule 14 of the CCS (CCA) Rules 1965 which ended with the imposition of penalty by A-2 memo dated 30.4.92 issued by the first respondent of reduction of his pay by three stages from Rs.920/- to Rs.870/- in the time scale of Rs.825-15-900-EN-20-1200 for a period of three years with effect from 1.5.92. It was also directed that he would not earn increments of pay during the period of reduction and that on the expiry of this period the reduction would not have the effect of postponing his future increments of pay. By A-3 memo dated 23.4.92 the applicant was reinstated. First respondent issued memo dated 6.12.93 directing the applicant to make representation, if he wished, to convert the period of suspension into leave. According to the applicant, as he could not submit representation, he personally met the first respondent and requested him to treat the period of suspension as duty for all purposes. First respondent issued A-4 memo dated 11.5.94 ordering to treat the period of suspension as non-duty for all purposes and also directed that the pay and allowances for the period of suspension be limited to the subsistence allowance already drawn. Applicant submitted A-5 representation on 1.9.99 requesting to treat the period of suspension as duty for all



purposes to which the first respondent issued A-6 memo dated 8.10.99 directing the applicant to prefer an appeal to the DPS, Central Region. Accordingly the applicant filed A-7 appeal dated 8.11.99 to the DPS, Central Region. Third respondent rejected A-7 appeal as time barred stating that the grounds mentioned for condonation of delay were not at all convincing by A-8 order dated 27.1.2000. Aggrieved the applicant has approached this Tribunal seeking the above reliefs.

3. According to the applicant the penalty imposed on him was a minor one as per Rule 11 of the CCS (CCA) Rules 1965 and as per F.R.54B the period of suspension was to be treated as duty for all purposes if only minor penalty was imposed. But the orders of the respondents were contrary to the above provisions and hence liable to be set aside by higher authority. A-4 order adversely affected the pay and allowances, promotions etc. of the applicant and it would have its impact on his pensionary benefits. A-2 order dated 30.4.92 imposed a minor punishment which was only for three years without any cumulative effect. But A-4 order dated 11.5.94 had cumulative effect. It would not only affect his service but would also have its impact on his pensionary benefits. Appellate authority rejected A-7 appeal on the sole ground that it was time barred. He had not looked into the merit of the case as provided under Rule 27 (3) of the CCS (CCA) Rules. Even though specific reasons were given in A-7 for the delay, in A-7 nothing had been stated as to why those grounds were not convincing. It was further submitted that if departmental proceedings against a suspended employee for the imposition of a major penalty ended with the imposition of a

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minor penalty, the suspension could be said to be wholly unjustified in terms of F.R.54B. Therefore, the employee concerned was to be paid full pay and allowances for the period suspension. In the present case the applicant was entitled to be paid full pay and allowances for the period of suspension as the penalty imposed at the end of disciplinary proceedings was a minor one.

4. Respondents filed reply statement resisting the claim of the applicant. It was submitted that the competent authority had the discretion to treat the period of absence as duty or otherwise for any purpose depending upon the merits of each case. If no order was passed directing that the period of absence be treated as duty for any specific purpose, the period of absence was to be treated as 'non-duty'. In this case it was specifically stated that the period of absence would not be treated as duty but the applicant did not submit any representation in response to R-1 memo dated 6.12.93 issued to him. Applicant did not make any representation before the competent authority till 8.10.99. The applicant was not vigilant to plead for his right in time. After a lapse of nearly 6 years the applicant could not seek judicial remedy to protect his right, which was barred by limitation. In order to invoke the judicial machinery into motion the applicant had submitted a representation to the Superintendent of Post Office, Alappuzha Division after 5 years of issuance of A-4 order and that too withholding the fact that he was issued with a notice giving a chance to represent against the proposed action to which he did not respond. As per rule 25 of CCS (CCA) Rules no appeal

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preferred after 45 days from the date of which a copy of the order appealed against was delivered to the appellant shall be considered unless the limitation of 45 days was relaxed by the appellate authority. The power of relaxation available to the appellate authority may be used by it at its discretion wherever justified. The Rule also provided that such relaxation would be granted if the appellate authority was satisfied about the case for delay. A-8 would show that the appellate authority had considered the reason furnished by the applicant for delay and came to the conclusion that there was no valid ground for condonation of delay. Since the statutory provisions enabled the appellate authority to use its discretion and entertain appeal beyond the period of 45 days it was not mandatory that such appeals should be considered. Rule 27 (3) came into operation only when the appellate authority decided to consider the appeal exercising the discretion provided under Rule 25. Even though the penalty imposed was a minor one as per Rule 11 of the CCS (CCA) Rules, since the applicant did not submit any representation, the period of suspension was treated as 'non duty' for all purposes.

5. Heard the learned counsel for the respondents. In the absence of the learned counsel for the applicant, we have considered the pleadings made in the OA and the submissions of the learned counsel for the respondents Mr.M.Rajendra Kumar, ACGSC. Mr.Rajendra Kumar, ACGSC took us through the reply statement and submitted that the applicant having slept over his right could not revive the issue through this application. He was given an opportunity to represent against the proposed action



in 1992 but he did not choose to give any reply. A-4 order was issued in 1994 and he could not make any appeal against the same. He referred to F.R.54 (B)(5) and submitted that it was within the competency of the authority. Accordingly, the first respondent decided to treat the period of suspension as non-duty and also recommended the reduction of pay and allowances as per F.R.54-B. First respondent had acted in accordance with F.R.54(B)(5) and the applicant had no response to the notices issued to him. Accordingly the OA was liable to be dismissed.

6. We have given careful consideration to the rival pleadings and the submissions made by the learned counsel for the respondents. We find from A-7 appeal that the appeal was filed beyond the period provided for under the Rules but the applicant has in A-7 representation given a number of reasons for condoning the delay in filing the appeal.

7. Applicant in A-7 in para 2 had given the following grounds for condoning the delay:

"Before submitting the facts of this case, I pray to condone the delay in submission of this appeal on the following grounds:

i) Being a postman I am not aware of the rules and procedures on this subject thoroughly.

ii) The notification issued under No.11012/4/86-Estt (11) dated 13.7.90 regarding amendment to rule 11 of CCS (CCA) Rules 1965 and OM No.11012/15/85 Estt (A) dated 3.12.1985 of Dept. of Per.& Trg. regarding regularization of period of suspension were not communicated to me.

iii) There were no books/volumes at the post offices for reference on the above subject.

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iv) Because of the problems in my family, I could not reply to memo dated 6.12.93 of Supdt. of POs Alappuzha Division regarding regularization of period of suspension. But, I met the Supdt. of POs Alappuzha Division and requested him to consider my case sympathetically.

v) The order under No.F1/1/90-91 dt.11.5.94 was passed ex-parte by SPOs Alappuzha Division. I was on the belief that SPOs Alappuzha Division might have issued the order only in accordance with rules and procedures on the subject.

vi) The irregularity in the order of SPOs Alappuzha Division issued under No.F1/1/90-91 dt. 11.5.94 has been realized by me only when my promotion under TBOP scheme is not considered.

vii) The procedure laid down in the rules was not complied with by SPOs Alappuzha Division. While issuing the orders under No.F1/1/90-91 dt.11.5.94 and such non-compliance has resulted in failure of justice.

viii) Rejection of this appeal would cause irreparable damage not only to my entire service but also retired life.

Hence I once again pray to condone the delay in submission of this appeal. My prayer may kindly be considered sympathetically and the appeal may be allowed."

8. A-8 order issued by the appellate authority reads as under:

"This is an appeal dt.8.11.99 addressed to the undersigned submitted by Shri PM Joy, Postman, Thanneermukkom against the order of Supdt. of POs, Alappuzha in memo F1/1/90-91 dt.11.5.94 regularizing his suspension period from 19.6.90 to 24.4.92 as non duty for all purposes and limiting the pay and allowances during this period to the subsistence allowance already drawn and paid."

I have gone through the case. It is noticed that the order No.F1/1/90-91 dt.11.5.94 appealed against was delivered to the appellant on 13.5.94 and the appeal is dated 8.11.99. Grounds mentioned by the appellant for condonation of delay are not at all convincing. As there is no valid grounds for condonation of the delay, without going into the merits of the case, the appeal is rejected as time barred.

HILDA ABRAHAM
DIRECTOR"

9. Third respondent while exercising the powers of the appellate authority under Rule 27 of the CCS (CCA) Rules was acting as quasi judicial authority. Quasi judicial authority while passing an order has to pass a reasoned order. A plain



reading of appellate authority's A-8 order itself would indicate vis-a-vis the grounds raised by the applicant in his appeal that the appellate order is not at all a speaking one. How the third respondent acting as appellate authority has come to the conclusion that the grounds advanced by the applicant were not at all convincing had not been stated in the impugned order at all.

10. In State of Bihar & others Vs. Kameshwar Prasad Singh & Another JT 2000 (5) SC 389 the Hon'ble Supreme Court held:

"11. Power to condone the delay in approaching the court has been conferred upon the courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in Collector, Land Acquisition, Anantnag & Anr. vs. Mst. Katiji & Ors. [JT 1987 (1) SC 537 = 1987 (2) SCR 387] held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice—that being the life purpose for the existence of the institution of courts. It was further observed that a liberal approach is adopted on principle as it is realized that....."

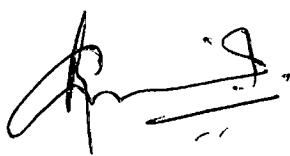
11. Respondents admit that the appellate authority has the power to condone the delay at his discretion wherever justified. When the respondents themselves admit that the appellate authority has the power to condone the delay wherever justified, it is incumbent upon the appellate authority to give sufficient cause to justify his action of not condoning the delay. That is to say, wherever discretion is used against an appellant, the appellate authority has to record his reasons. In this case as to why the delay is not condoned ought to have been stated. Further, as already stated the above appellate authority was acting as a quasi judicial authority while exercising the powers of the appellate authority. In our view what is held by the Hon'ble Supreme Court in the case of Courts/Tribunals equally applies to quasi judicial authorities like the appellate authority herein.



12. In view of the above, we hold that A-8 is liable to be set aside and quashed.

13. The next question that comes up is whether the applicant is entitled to have the relief of a direction to the respondents to treat the period of suspension of the applicant as duty and to disburse the pay and allowances for the period of suspension. We find from A-7 that the applicant has referred to O.M.No.11012/15/85 Estt.(A) dated. 3.12.85 of the DOPT regarding regularization of the period of suspension. The said O.M. dated 3rd December, 1985 is appearing in page 234 of Swamy's Compilation of F.R.S.R. 14th Edition 1999. The said O.M. reads as under:

"Period of suspension to be treated as duty if minor penalty only is imposed. - Reference is invited to O.M. No.43/56/64-AVD, dated 22.10.1964 containing the guidelines for placing Government servants under suspension and to say that these instructions lay down, inter alia, that Government servant could be placed under suspension, if a prima facie case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement. These instructions thus make it clear that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty. The Staff Side of the Committee of the National Council set up to review the CCS (CCA) Rules, 1965 had suggested that in cases where a Government servant, against whom an inquiry has been held for the imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances paid for suspension period. Government have accepted this suggestion of the Staff Side. Accordingly, where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR 54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under FR 54-B."



14. F.R. 54-B reads as under:

"F.R.54-B(1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order -

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or the Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rule (2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.



(6) Where suspension is revoked pending finalization of the disciplinary or the Court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5) as the case may be.

(7) In a case falling sub-rule (5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose.

Provided that, if the Government servant so desires such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under Rule 53."

15. When the Government of India on the demands made by the Staff Side have decided that where action initiated for imposition of a major penalty ends with a minor penalty, the suspension should be said to be wholly unjustified in terms of F.R.54 (B), in our view the issuance of a notice to the employee is not at all called for as the appropriate authority has no discretion and has to necessarily consider the suspension as wholly unjustified only. In this particular case, the reasons given by the respondents in the reply statement for treating the period as non duty is that the applicant had not given any reply to the notice issued to him. When we are of the view that the notice itself is not required, the question of not giving reply does not arise at all. When the Government of India issues instructions in the OM dated 3rd December, 1985, it is meant for compliance by all the subordinate authorities. As in this

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particular case we find that the first respondent had against such instructions, A-4 order has to be treated as null and void ab-initio.

16. In the light of the above, the applicant is entitled to the relief of a direction to the respondents to treat the period of his suspension as duty for all purposes. The applicant shall also be entitled for all the consequential benefits. Accordingly respondents are directed to treat the period of suspension as duty for all purposes and grant the consequential benefits flowing therefrom restricting the monetary benefits arising therefrom for a period of three years counting backwards from the date of filing of this OA on 22.5.2000.

17. The OA stands allowed to the above extent with no order as to costs.

Dated 13th June 2002.



K.V.SACHIDANANDAN
JUDICIAL MEMBER

aa.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the Memo No.F1/1/90-91, dated 18.6.1990 issued by the 1st respondent.
2. A-2: True copy of the Memo No.F1/1/90-91, dated 30.4.1992 issued by the 1st respondent.
3. A-3: True copy of the Memo No.F1/1/90-91, dated 23.4.1992 issued by the 1st respondent.
4. A-4: True copy of the Memo No.F1/1/90-91, dated 11.5.1992 issued by the 1st respondent.
5. A-5: True copy of the representation dated 1.9.1999 submitted by the applicant to the 1st respondent.
6. A-6: True copy of the Memo No.F1/1/90-91, dated 8.10.1999 issued by the 1st respondent.
7. A-7: True copy of the appeal dated 8.11.1999 submitted by the applicant to the 3rd respondent.
8. A-8: True copy of the Order No.ST/7-1/2000 dated 27th January, 2000 issued by the 3rd respondent.

Respondents' Annexures:

1. R-1: True copy of the memo issued by Department of Posts, India by No.F1/1/90-91 dated 6.12.1993.

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21.6.02