

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 557 OF 2008

Monday, this the 1st day of March, 2010

CORAM:

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

Shri P.Mohanan
Postal Assistant
Calicut Civil Station PO (under suspension)
Residing at "Shivakripa", Kalam Parampa
Poovattu Parambu PO,
Calicut – 673 008 ... Applicant

(By Advocate Mr.Shafik M.A.)

versus

1. Union of India represented by
Chief Postmaster General
Kerala Circle
Trivandrum – 695 033
2. The Senior Superintendent of Post Offices
Calicut Division, Calicut
3. The Director of Postal Services
Department of Posts, Northern Region
Calicut ... Respondents

(By Advocate Mr.P.S.Biju, ACGSC)

The application having been heard on 01.03.2010, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

The applicant is a Postal Assistant and he was suspended from service as per Annexure A-1 order dated 04.09.2006 under Rule 10 of CCS (CCA) Rules, 1965 on contemplating disciplinary proceedings against him. Subsequent to the above suspension order the applicant was served with a charge memo dated 11.01.2008 in which it is alleged that he had



committed mis conduct as alleged in Annexures annexed to the said memo of charges. Subsequent to the above charge, a fresh charge memo has been issued to him as per Annexure A-8 dated 31.03.2008. Subsequently, the said order dated 31.03.2008 has been cancelled and a fresh charge sheet was served as per Annexure A-12 and the disciplinary proceedings initiated against him is continuing. The applicant has filed the present OA challenging Annexure A -12 charge sheet and also aggrieved by the continuation of his suspension which is contrary to the rules relating to suspension as there was no review of the suspension by the Review Committee.

2. This OA has been admitted by this Tribunal and notice has been ordered to the respondents. In pursuance of the notice received, a reply statement is also filed on behalf of the respondents taking a stand that the continuation of the suspension of the applicant and the disciplinary proceedings initiated against the applicant are justifiable. Subsequent to the filing of the reply, the OA has been amended challenging Annexure R-2 and thereby respondents filed the additional reply statement reiterating their stand in the earlier reply.

3. We have heard Mr.Sreeraj, counsel for applicant and Mr.P.S.Biju, learned counsel for respondents. We have also perused the documents before us. The main contention of the learned counsel for applicant is that since the applicant was suspended vide Annexure A-1 order dated 04.09.2006, the same is continuing even without a review by the Review Committee. The counsel submits that as per Sub rule 6 & 7 of Rule 10, it is mandatory on the part of the authorities to review the



suspension order within 90 days and extend the same only after getting a report from the authorities reviewing / revoking the suspension. In the case of the applicant, no review has been done within the stipulated time. If so, according to the applicant as per latest judgment of the Hon'ble Supreme Court reported in **CDJ 2010 SC 008 in Union of India & Ors. vs. Dipak Mali** in which the Apex Court had considered the above rule position and held that if the review is not made within the stipulated time, the suspension will automatically cease, Annexure A-1 has to be quashed. Counsel for applicant further contended that even after the filing of the appeal under Rule 23 of the CCS(CCA) Rules against the suspension order, respondents have not considered such appeal and not answered the same as per law. The counsel further submits that since the 1st charge has been cancelled without any reason, 2nd and 3rd charge sheets filed against him including Annexure A-12 are not sustainable under law. The counsel in this context relies upon an order issued by Government of India, wherein the Director General of P&T had ordered as per letter No.10014/324/78-Disc-II dated 05.07.1979 that "once the proceedings initiated under Rule 14 or 16 of the CCS (CCA) Rules are dropped, the disciplinary authorities would be debarred from initiating fresh proceedings to the delinquent official unless the reason for rejection of charge sheet was not dropped and the proceedings are appropriately mentioned."

4. For the above contentions, the counsel for respondents relies on reply statement and additional reply statement and submits that since Annexure A-12 charge sheet is filed against the applicant narrating a serious misconduct of misappropriation of an amount of nearly two lakhs, it is a serious misconduct and the applicant is to face the charge sheet and



the disciplinary proceedings initiated against him have to be continued. Though in the reply statement it is stated that the suspension order has been reviewed as per rules, it is not seen that the review order has been passed within the time stipulated as per the latest review order made by the Review Committee so that the suspension has been extended as per law. With regards to the appeal filed against the suspension order, counsel for respondents submits that it was considered by the Appellate Authority and held that this matter has to be considered at the time of conclusion of disciplinary proceedings. Apart from the charge sheet, a criminal case has been charged against him under the provisions of IPC, C.C No. 395/07 before the Judicial Magistrate, Calicut.

5. With the above rival contentions, the questions to be considered in this OA are that whether the continuation of suspension of the applicant is regular and the applicant is entitled to quash Annexure A-12 charge sheet. It is an admitted position of law that after the amendment brought out to the rules during 2003, a suspension ordered by the authorities against the delinquent official should be reviewed after 90 days from the date of issue of such order and take a decision on the recommendations made by the Review Committee by revoking the suspension or extending the same further beyond 180 days at a stretch. With regard to this rule position, the counsel relies on the judgment of the Apex Court to the effect that if the rule position has not been complied with by the authorities, the suspension shall cease automatically and it shall be deemed to be cancelled and the applicant / delinquent official is to be reinstated in service. We are of the view that Annexure A-1 suspension order cannot stand in the eye of law and it stands quashed and the suspension order of the applicant stands




rather deemed as cancelled after the expiry of 90 days and the applicant shall be reinstated in service forthwith. With regard to the appeal filed, as we have considered the suspension order, we are not answering that question at present. The next question is regarding continuation of proceedings. Annexure A-10 representation is pending before the authorities and the authorities shall dispose of the representation within a reasonable time at any rate within 60 days from the receipt of a copy of this order in the light of the contentions of the applicant and the rule position.

6. In the light of above, we allow this OA to the extent stated above, with no order as to costs.

Dated, the 1st March, 2010.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE K.THANKAPPAN
JUDICIAL MEMBER

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