

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.558/2003

Tuesday, this the 28th day of October, 2003.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

K.K.Balan,
Postal Assistant,
Vaikom Head Post Office,
Kottayam. - Applicant

By Advocate Mr P.R.Padmanabhan Nair

Vs

1. Senior Superintendent of Post Offices,
Kottayam Division,
Kottayam-1.
2. Director of Postal Services,
C/o Postmaster General,
Central Region, Kochi-682 016.
3. Assistant Postmaster General,
O/o Postmaster General,
Central Region,
Kochi-682 016.
4. Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram-695 001.
5. Director General of Posts,
Department of Communications,
New Delhi. - Respondents

By Advocate Mr C.Rajendran, SCGSC

The application having been heard on 28.10.2003, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The applicant while working as Sub Postmaster, Olessa, was placed under suspension with effect from 30.1.88 by the

Senior Superintendent of Post Offices, Kottayam on the ground of alleged shortage of Rs.6218/- and paise 95 on 29.1.88 and some alleged false entries in the Excess Cash Balance Memos. However, no departmental action was taken against him. He was implicated in a criminal case C.C.No.220/88 before the Chief Judicial Magistrate, Kottayam. The Chief Judicial Magistrate found the applicant guilty of the offences and convicted him for which he was charge sheeted, but without sentencing to any punishment, released him on probation under Section 4(i) of the Probation of Offenders Act. The applicant challenged the judgement of the learned Magistrate Court convicting him before the Sessions Court, Kottayam in Criminal Appeal No.116/93. By judgement dated 26.3.97, the Sessions Judge reversed the judgement of the Chief Judicial Magistrate, exonerated the applicant and acquitted him honourably. Though the State of Kerala filed a Revision Petition against the judgement in C.A.No.116/93, it was dismissed by the Hon'ble High Court of Kerala on 10.7.2002. When the Chief Judicial Magistrate, Kottayam convicted the applicant, the second respondent after considering the circumstances leading to his conviction, by order dated 12.10.93 compulsorily retired the applicant from service with immediate effect. In the meanwhile, the applicant filed O.A.1427/97 claiming reinstatement with effect from the date on which he was placed under suspension in view of his acquittal by the Sessions Court which was allowed. However, the respondents filed an O.P.No.26050/2000 before the Hon'ble High Court of Kerala challenging the order in O.A.1427/97. The Hon'ble High Court

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dismissed the O.P. on 5.11.2002. In the meanwhile, the applicant was reinstated in service by order dated 22.9.2000 of the 1st respondent subject to the outcome of Revision Petition No.895/98 and O.P.26050/2000 then pending before the Hon'ble High Court of Kerala. However, these pending proceedings have been finally dismissed. The applicant rejoined service on 25.9.2000 as per A-8. Thereafter, the applicant was served with memo of charge dated 31.10.2001. The enquiry initiated thereunder is pending. Although the applicant filed O.A.1021/2001 impugning the memo of charge by order dated 14.11.2002 the application was dismissed giving liberty to the applicant to seek appropriate relief regarding arrears of pay and allowances. The applicant submitted A-11 representation dated 4.12.2002 praying that the entire period from the date of his suspension to the date of reinstatement should be regularised as duty for all purposes and he be paid full pay and allowances and his pay be revised and increments granted to him. In reply to this representation the applicant was served with the impugned order A-2 rejecting his claim on the ground that the acquittal of the applicant having been based on evidence as per the Indian Evidence Act, he is not entitled to be paid the pay and allowances till the enquiry initiated under Rule 14 against him is finalised. Aggrieved by that the applicant has filed this application seeking to set aside the impugned order and directing the respondents to regularise the applicant's service from 30.1.88 to 25.9.2000 under FR 54 and draw and disburse the arrears of salary and allowances to the applicant forthwith.

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2. The respondents in their reply statement seek to justify the impugned order on the ground that as the applicant has not been exonerated in the disciplinary proceedings initiated under Rule 14, the applicant is not entitled to have the period during which he was out of service for duty for all purposes and for payment of arrears of pay and allowances.

3. We have carefully gone through the pleadings and the material placed on record and have heard Shri P.R.Padmanabhan Nair, learned counsel for the applicant and Shri C.Rajendran, learned SCGSC for the respondents. The undisputed facts of the case establish that the applicant was placed under suspension and was prosecuted for offences under Section 409 and 477 of the Indian Penal Code, that the applicant was convicted by the Chief Judicial Magistrate, that the applicant was compulsorily retired after a skeleton enquiry as per rules on his conduct leading to the conviction, that after the judgement of the Sessions Court reversing the judgement of the Chief Judicial Magistrate and acquitting the applicant honourably the Tribunal in its order in O.A.1427/1997 found that the order of penalty the basis of which no longer stands has to be set aside and the applicant was to be reinstated in service, that the applicant was reinstated and that the revision against the Sessions Court judgement has been dismissed by the Hon'ble High Court. Therefore, here is a case where the penalty of compulsory retirement awarded to the applicant was set aside by the Tribunal in its order in O.A.1427/1997 on merits and not on technical grounds or for failure to comply with the provision of Article 311 of the



Constitution or violation of principles of natural justice. The basis of the penalty being the conviction and the conviction being annulled by the Sessions Court, the penalty had no merit and therefore was set aside. That the Tribunal has granted liberty to the department to proceed against the applicant in accordance with law in its order in O.A.1427/1997 does not make the penalty voidable and not void, because the penalty was solely based on conviction and once conviction is set aside the penalty has become baseless and void. With liberty reserved the respondents would be entitled only to proceed against the applicant departmentally in accordance with law prospectively, and not to validate any action which has been held invalid, baseless and void. The penalty of compulsory retirement of the applicant has been set aside by the Tribunal by its order in O.A.1427/1997 on merits of the order of penalty. The Rule which would apply for regulating the period between the compulsory retirement and reinstatement including the period under suspension is sub rule 3 of FR 54-A. Sub rule 3 of FR 54-A reads as follows:

"(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be."

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The facts situation in this case is squarely covered by the abovesaid provision. The respondents are therefore, bound to regularise the entire period from 30.1.88 to 25.9.2000 in the case of the applicant as service for all purposes including the arrears of pay and allowances in accordance with the provisions contained in FR 54-A(3).

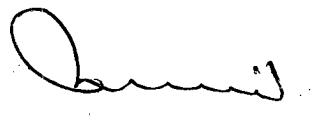
4. The argument of the learned counsel of the respondents that if the applicant is found guilty of the misconduct for which he has been charge sheeted, he would be liable for penalty and therefore the penalty of compulsory retirement cannot be said to have been set aside by the Tribunal in its order in O.A.1427/1997 on merits and therefore sub rule 3 of Rule 54-A of FR does not apply. It does not appeal to us at all because, the penalty of compulsory retirement was set aside by the Tribunal finding no merit in the order imposing penalty, once the conviction of the applicant which was the sole basis for the imposition of the penalty has been set aside by the appellate court and High Court. The departmental proceedings initiated thereafter is a separate proceeding which the respondents would be free to take to its logical conclusion, and the merits of that is yet to be decided. That cannot be clubbed or linked with the penalty of compulsory retirement which has been set aside on merits by the Tribunal in its order in O.A.1427/1997.

5. In the light of what is stated above the application is allowed. The respondents are directed to issue orders regularising the period of service of the applicant from

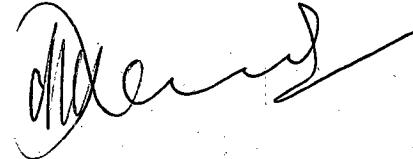
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30.1.88 to 25.9.2000 as service for all purposes, grant him the increment and revision in pay in accordance with the rules and to make available to him the consequential benefits of arrears of pay and allowances within a period of three months from the date of receipt of copy of this order. The seniority of the applicant and other benefits shall also be granted to him as if the applicant continued in service between 30.1.88 and 25.9.2000. It is made clear that the respondents will be at liberty to take the disciplinary proceedings initiated by issue of memorandum of charge dated 31.10.2001 to its logical conclusion. However, any order in that proceedings would not affect the order regularising the period of service of the applicant between 30.1.88 and 25.9.2000 as duty for all purposes. There is no order as to costs.

Dated, 28th October, 2003.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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