

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 566 of 2007

.....Fridayst..., this the 31 day of October, 2008

C O R A M

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

Abdul Rahiman A S/o M. Ali Moulavi
Retired Sorting Assistant(BCR)
SRO RMS TV Division
Kollam
residing at Reshma Manzil, 12 Muri
Thattamal PO, Kollam-691020

... **Applicant.**

By Advocates M/s Sanjay & Parvathi

Vs.

- 1 The Senior Superintendent of RMS
TV Dn, Thiruvananthapuram-695 035
- 2 The Director of Postal Services (HQ)
O/o the Chief Postmaster General, Kerala Circle
Thiruvananthapuram-695 033
- 3 The Chief Postmaster General, Kerala Circle
Thiruvananthapuram-695 033
- 4 The Union of India represented by the
Secretary to the Govt. Of India
Ministry of Communications & IT
Department of Posts,
New Delhi-110 011
- 5 The Union Public Service Commission
represented by the Secretary
UPSC, New Delhi-110001



6 Mr. Sayeed Rashid IPS s/o A. Rashid
 presently working as
 Senior Superintendent of Post offices,
 Trivandrum North Postal Division
 Trivandrum -695 001
 residing at Melathil Pattarumuku,
 Umayanalloor E.PO, Kollam -691 589

7 Mr. K.S. Nair
 Senior Superintendent of RMS TV Dn
 Trivandrum-695 036

8 Sri S. Narendran,
 Assistant Superintendent, Tvm RMS
 Trivandrum-695 001

9 Sri Philipose Panicker,
 HSG-II, SRO
 Kollam

... Respondents

(By Advocates Mr. TPM Ibrahim Khan, SCGSC for 1-5 and
 Mr. Vishnu Chempazhanthiyil for R-9)

(The Original Application having been heard on 21.10.08, this
 Tribunal delivered the following on 31-10-08.)

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

The applicant, a retired Sorting Assistant, is aggrieved by the action of the first respondent in issuing Annexure A-1 charge memo for major penalty on the eve of his retirement based on flimsy grounds and malafide intention and with the ulterior motive of victimizing and harassing the applicant by delaying the release of his retirement benefits.



2. The facts in brief are as follows. The applicant entered service of the Department as a Sorter on 16.5.1969 and after 38 years of service, he retired on superannuation on 31.5.2007. The applicant submitted that the Accounts Officer (Pension) issued the pension payment order No. 2840/LPS/TVM sanctioning the pension payable to the applicant w.e.f. 1.6.2007 (A-2). Simultaneously a sum of Rs. 2,41,237/- was sanctioned being the DCRG due to him (A-2a). He has also sanctioned a sum of Rs. 2,56,041/- being the commuted value of pension (A-2(b)). But when the applicant approached the SPM Thattamala Post Office on 1.6.2007 for receiving the payment, he came to know that a telephonic message was received for not making the payment to the applicant. On enquiry the applicant was informed that letters were issued by the first respondent withholding the payment of DCRG and commuted value of pension.

3. The applicant submits that during his service he was an active worker and office bearer of All India RMS and MMS Employees Union which is affiliated to NFPE and that he had held many positions in the union until he resigned from the union in 1987 while working as Divisional Secretary and joined the other service union - National Union of RMS and MMS in 1988. The applicant submits that he has been functioning as the Circle President w.e.f. 4.4.2005 of the Union Group-C Kerala Circle which is affiliated to the Federation of National Postal Organizations and INTUC. During the period from 19.7.2004 to



23.2.2007 he worked as Divisional Secretary of NUR Group-C RMS TV Dn of the same union. The applicant used to bring to the notice of the Postal Administration every now and then the lapses and excesses committed by the officers of the department which had created enmity and ill will among certain officers of the department towards the applicant. He was always been the eyesore of the rival service union NFPE. With the sincere and devoted work of the applicant, many members had resigned from NFPE union and joined applicant's union. With a view to eliminate the applicant from his union activities they relentlessly made false complaints against him. Unfortunately they could prevail over some of the superior officers of the Postal Department and cause initiation of many disciplinary proceedings one after another against the applicant who had to fight them all through repeated litigations.

4. The main ground raised is "non application of mind" by the 1st respondent. The impugned order has brought severe adverse civil consequences to the applicant who was on the verge of superannuation. There is no allegation of fraud or moral turpitude involving unlawful gain to the applicant nor loss to the department. The **second article of charge** relates to an issue which occurred two years ago and is a closed chapter as evidenced by Annexure A-12(a) order. The delay involved in initiating disciplinary proceedings based on the



enquiry report is very pertinent and is an indicator to the ulterior and malafide motive on the part of the respondents. Though the alleged incident occurred on 4.9.06 and the inquiries were completed on 23.9.06, the same was kept in cold storage for more than six months till the new incumbent took charge of the office of first respondent. The impact of the impugned proceedings on the applicant is irreparable as the applicant retired from service without getting a chance to work as Supervisor though his promotion to the LSG (Supervisor) was ordered by the 3rd respondent (A-13), a junior was promoted (A-13(a)).

5. The applicant alleges that the Annexure A-1 proceedings are highly unjust, arbitrary, malafide and illegal and violative of the Fundamental Rights under Article 14, 16 and 21 of the Constitution of India and hence liable to be interfered by the Tribunal. The charges levelled against the applicant *prima facie* does not constitute a grave misconduct envisaged under Rule 9 of the CCS (Pension) Rules.

6. The applicant submits that he immediately needs finance as he has incurred huge expenditure hoping that he will get the retiral benefits. One of his son aged six years and himself are undergoing treatment for cardiac trouble and are under regular check up in Sree Chithira Tirunal Institute of Medical Sciences and Technology, Trivandrum for the last so many years. The applicant is the sole bread winner of a large family.

Apart from the income derived from his service he has no other income



except 7 cents of land and a house. His sister aged 46 died after prolonged illness and his brother had to be under medical treatment for several years for injuries sustained in a major motorcycle accident. In connection with the treatment of his brother and sister and also for the marriage of his two elder daughters the applicant was constrained to incur heavy liabilities by way of loans and borrowings from banks and friends. He was hopeful that he would get the retirement benefits before 30.6.07 and repay the loans.

7. In the above circumstances, the applicant filed this Original Application invoking the jurisdiction of the Tribunal under Section 19 of the Administrative Tribunals' Act, 1985 to direct the respondents to release the pensionary benefits due to him immediately.

8. The respondents in their reply denied all the averments and allegations made in the O.A. They submitted that disciplinary action was taken against the applicant for his grave misconduct as detailed in Annexure A-1. Since the official denied all the charges levelled against him a formal enquiry was necessitated and the applicant himself is deliberately delaying the Inquiry proceedings. He did not attend enquiry sittings held on 23.8.07 and 18.9.07. He has been granted adhoc pension and other pensionary benefits were not granted as Rule 14 enquiry is pending against him. If the applicant is found guilty at the culmination of the inquiry proceedings the President reserves the right of

[Signature]

withholding pensionary benefits of the applicant and final orders under Rule 9 will be issued in the name of President. They submitted that disciplinary action against the accused is a part of maintaining discipline in the department. They have exercised their official duty and averments to the contrary are vehemently denied. They have submitted that none of the grounds raised in the O.A. are tenable and the O.A. is devoid of any merit and is liable to be dismissed.

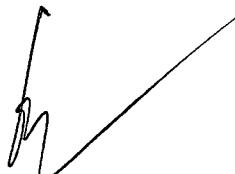
9. The applicant has filed a rejoinder reiterating the averments made in the O.A.

10. The respondent No.9 who has been arrayed in the party by name has filed separate reply statement denying all the averments against him in the O.A. and bringing out the various punishment orders suffered by the applicant during his long period of service.

11. The articles of charges framed against the applicant is extracted below:

Article -I

"That the said Shri A. Abdul Rahiman while functioning as Head Sorting Assistant in Kollam PSO during the Yearly Rotation 2006, arrived Thiruvananthapuram RMS on 4.9.2006 and unauthorisedly entered in Thiruvananthapuram TMO/1 dated 4.9.2006 at about 0845 hrs, took one cover from the mail bundle kept for despatch to SSRM TV Division Substituted with another cover with ulterior motive and left the office immediately.



By the above set, Shri A. Abdull Rahiman SA(BCR), SRO Kollam deliberately intercepted mails addressed to SSRM TV Division violating Rule 4 of Postal Manual Vol. VII and thereby failed to maintain absolute integrity and acted in a manner quite unbecoming of a Government Servant violating Rule 3(l)(i) and Rule 3(l)(iii) of CCS (Conduct) Rules 1964.

Article-II

That the said Shri A. Abdul Rahiman while functioning as Head Sorting Assistant in Kollam PSO during the year 2005 unauthorisedly arranged one outsider for duty from 0730 to 1500 hrs in Kollam PSO in the place of regular Mailman in the pretext of assistance/unwillingness/absence of a regular hand with ulterior motive on 24.12.2005 without any authority and without the consent of the higher authority violating Directorate instruction on the subject.

By the above act, Shri A. Abdul Rahiman SA(BCR), SRO Kollam deliberately engaged outsider in Kollam PSO in the regular place of Mailman without any authority or consent of higher authorities violating the Directorate instructions on the subject and neglecting the instructions issued by SSRM TV Division and thereby misused the authority of the HSA and failed to maintain absolute devotion to duty violating rule 3(l)(ii) of CCS (Conduct) Rules, 1964".

12. Arguments were heard and documents perused. First as to the powers of the Disciplinary Authority to include Article II in the Charge sheet has to be analysed. The alleged episode which took place on 24th December 2005 was earlier probed and the very same disciplinary authority, vide order dated 15th February 2006 strictly instructed the applicant to stop engaging outsiders in the place of absentees, violating the order of the Department. Annexure A-12 refers. With that, the

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charge levelled against the applicant has to be treated as dropped. If the same has to be re-opened for any plausible justifications, it is for the appellate authority to revive the same and not for the disciplinary authority. In this regard, the following decisions would be relevant:-

- (a) 1993(Supp) 1 SCC 583
- (b) 1988 (6) ATC 143
- (c) (1991) 15 ATC 917

13. The powers of the Appellate Authority include ordering for a fresh inquiry and not for the very same disciplinary authority to issue a charge sheet on the same charges in respect of which he had earlier passed an order, warning the applicant. Thus, Art. II has to be removed from the scene.

14. Now coming to the other issue, whether the proceedings could have been initiated at the fag end of the career of the applicant, whether there is any Malafide in the action on the part of the respondents, especially those who have been arrayed as private respondents, whether the tribunal has power to quash the charge sheet at the very stage of issue of charge sheet, the legal position has to be first ascertained.



15. As regards powers of the Tribunal to interfere with the proceedings at the stage of issue of charge sheet, it is appropriate to refer to the decision by the Apex Court in the case of *Union of India v. Upendra Singh, (1994) 3 SCC 357*, wherein the Apex Court has held as under:-

6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal v. Gopi Nath & Sons . The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus :

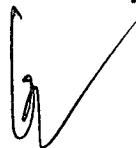
"Judicial review, it is true, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

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16. The above decision was followed in the case of **District Forest Officer v. R. Rajamanickam**, (2000) 9 SCC 284, wherein the Apex Court has held that the *Tribunal was not justified under law to interfere with the correctness of the charges levelled against the delinquent officer.*

17. In view of the above, it would be inappropriate to deal with the first article by the Tribunal. Of course, if the very issue of the charge sheet is against law, the Tribunal could interfere. No rule has been brought to our notice in this regard that the Respondents are precluded from issuing any charge sheet at the fag end of the career. The allegation is about unauthorized entry into the office, taking out one cover from the main bundle kept for dispatch to SSRM 'TV' Division, substitution with another cover with ulterior motive. This charge may not be one to be treated as a charge for which minor proceedings could be initiated. The applicant has full opportunity to disprove the charge.

18. As the applicant now stands retired, and his terminal benefits withheld, the respondents should hold the inquiry on priority basis and subject to the cooperation extended by the applicant the entire proceedings should be completed within a period of six months. Interim

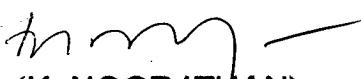
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order passed vide order dated 18-09-2007 staying further proceedings is hereby vacated.

19. In view of the above, the OA is disposed with the direction to the respondents to proceed with the inquiry only in respect of Art. 1 of the charge memorandum dated 30th April, 2007 (vide Annexure A-1) with a further direction that the inquiry should be completed within a period of six months from the date of communication of this order, subject however, to the condition that there shall be no attempt to delay the proceedings by the applicant without any justifiable cause.

20. No costs.

(Dated, the 31st October, 2008)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.