

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 569 of 2005

Thursday, this the 26th day of April, 2007

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

V. Raveendran Nair,
S/o. N. Vasudevan Pillai,
Extra Departmental Delivery Agent,
Manchavilakom P.O., Thiruvananthapuram,
(Residing at Raj Bhavan, Manchavilakom P.O,
Thiruvananthapuram)

... Applicant.

(By Advocate Mr. V. Vinod)

v e r s u s

1. Sub Divisional Inspector of Posts,
Neyyattinkara Sub Division,
Neyyattinkara.
2. Sub Divisional Inspector of Posts,
Nedumangad Sub Division,
Nedumangad.
3. Assistant Superintendent of Post Offices,
Office of the Superintendent of Post Offices,
South Postal Division, Thiruvananthapuram -14
4. The Superintendent of Post Offices,
South Postal Division, Thiruvananthapuram - 14
5. Union of India represented by
The Secretary, Government of India,
Department of Posts, New Delhi.

... Respondents.

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

The Original Application having been heard on 23.04.07,
this Tribunal on..26.04.07. delivered the following :

O R D E R

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The synopsis contained in the OA, which brings out succinctly the
entire facts of the case, would suffice to have a hang of the facts of the case
and the same is as under:-

<u>Date</u>	<u>Events</u>
30.09.1997	The applicant was put off from duty by the Ist respondent by Annexure A1 order.
20.04.1998	The 2nd respondent was appointed to function as Ad hoc Disciplinary Authority by the Chief P.M.G., Kerala Circle, since the Ist respondent was a material witness.
28.04.1999	Annexure A3 Charge Memo against the applicant issued by the 2nd respondent.
19.06.1999	The applicant filed statement of defence, denying the charges.
24.06.2002	Annexure A5 Inquiry Report by the Inquiring authority reporting that the charges as per Annexure A3 were proved.
01.01.2003	Ad hoc Appointing Authority was changed by Annexure A6 order.
22.02.2003	Applicant submitted a detailed representation against the findings in the inquiry report.
09.05.2003	The 3rd respondent awarded the Applicant the penalty of removal from service by Annexure A8.
11.08.2003	The Applicant submitted Appeal before the Appellate Authority.
12.07.2004	The 4th respondent set aside the penalty of removal and modified the penalty of removal from service imposed on the appellant as "Debarring from being considered for recruitment to Group D for a period of three years. It is further ordered that the period from his date of removal pursuant the order appealed against and till his rejoining shall be treated as period spent on put off duty.

2. The applicant is aggrieved by the order of the Appellate authority only to the extent that having fully appreciated the fact that there has been inexplicable delay in holding the inquiry (vide para 5 of Annexure A-10), the period of put off had not been converted into one of duty and having rendered the finding that the charges do not stand proved for a substantial portion (para 6 and 7 of Annexure A-10), instead of quashing the entire penalty order, the appellate authority has only modified the penalty order. Hence this O.A.

3. Respondents have contested the OA. According to them, the period of put off duty could be converted into one of duty under Rule 12 of the GDS (Conduct and Employment) Rules, 2001 only when there is total exoneration which is not so in the case of the applicant, and, in so far as the applicant's

contention that the entire penalty order should have been quashed, the respondents contend that since the charges have been held to be partly proved, there is no question of thorough exoneration. According to them, the appellate authority has taken a very lenient view and the order cannot be faulted with.

4. Counsel for the applicant argued that para 5 of the Appellate Order clearly confirms that there has been undue delay in finalizing the proceedings.

Para 5 reads as under:-

"The appellant was put off from duty on 01.10.1997. The charge sheet was issued to him on 28.4.1999. The Inquiring Authority was appointed on 7.7.1999. The Inquiring Authority submitted his report on 24.6.2002 and ultimately the punishment order appealed against was issued after more than five and a half years on 9.5.2003. The reason advanced for such delay in finalizing a disciplinary case involving two simple charges are due to administrative delays in the appointment and change of ad hoc appointing authority and in obtaining expert opinion on the thumb impression appearing on Exhibit P 16. While the stated administrative delays were avoidable the long delay of three years in completing the inquiry in the two simple charges is inexplicable."

5. Counsel for the applicant thus submitted that the entire period of absence from duty should have been treated to be as of duty. Again, it has been argued that even if the appellate authority is right in not completely quashing and setting aside the Disciplinary Authority's order of penalty and the modification of the penalty order is justified, then again, since the penalty now imposed is not that grave, the earlier penalty of removal being equivalent to one of major penalty and the one now imposed being equivalent to one of minor penalty, as provided for in Rule 54B of FR (that when major penalty is converted into minor penalty, period of suspension shall be converted into one of duty), in this case also, such a treatment on the basis of analogy should have been given. In that event, while the penalty would be intact the period of put off duty would be considered as one of on duty, with consequential benefits thereof.

6. Counsel for the respondents contended that the same could not be possible as the rules do not so provide.

7. Arguments were heard and documents perused. Para 5 of the Appellate Authority's order puts the entire blame of inordinate delay upon the respondents. At least for a period of three years, it has been held as 'inexplicable'. Thus, the applicant should not be penalized for the lapse on the part of the respondents in this regard. At least a period of three years, out of the total period of put off duty, should be treated as of duty and full TRCA should be made available to the applicant for this period and this period should be treated as duty for all purposes.

8. As regards the contention that the entire penalty order of the Disciplinary authority should have been quashed and set aside, we are of the considered view that the conclusion of the appellate authority is that while the first charge has not been proved (in view of the non production of the opinion or the examiner in the inquiry vide para 6 of the Appellate order at Annexure A-10) and the second one has to be held to be partly proved (lack of devotion to duty), the conclusion of the Appellate Authority is that charge No. 2 is partially proved and to that extent the applicant is liable to suffer penalty and the penalty imposed i.e. debarring from being considered for Group D post for a period of 3 years appears to be commensurate with the misconduct of the applicant. In that event, the question of treating the entire period of put off from duty as duty period does not arise.

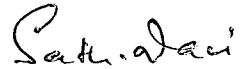
9. In view of the above discussion, we are of the considered view that ends of justice would be met if it is held that while the extent of penalty imposed cannot be interfered with, as regards treatment of the put off duty period, since three years period of delay in conducting the inquiry has not been explained as stated by the Appellate Authority, to the extent of those three years, the period shall be treated as duty for all purposes, including payment of TRCA. It is ordered accordingly and the **OA is allowed to that extent**. Respondents are directed to pass suitable orders in this regard and also make available the difference in the TRCA applicable to the applicant for the aforesaid period. This

order shall be complied with, within a period of three months from the date of communication of this order. No cost.

Dated the~~26~~²⁶..th April, 2007.



Dr.K.B.S.RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No.569/2005

Wednesday this the 3rd day of January, 2007

C O R A M:

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

V.Raveendran Nair
Extra Departmental Delivery Agent,
Manchavilakom P.O.,
Thiruvananthapuram.

... Applicant

By Advocate Mr.V.Vinod

V/s.

1. Sub Divisional Inspector of Posts,
Neyyattinkara Sub Division, Neyyattinkara.
2. Sub Divisional Inspector of Posts,
Nedumangad Sub Division, Nedumangad.
3. Assistant Superintendent of Post Offices,
Office of the Superintendent of Post Offices,
South Postal Division, Thiruvananthapuram-14
4. The Superintendent of Post Offices,
South Postal Division, Thiruvananthapuram-14.
5. Union of India represented by the
Secretary, Government of India,
Department of Posts, New Delhi. ... Respondents

By Advocate Ms.Jisha for Mr.P.S.Biju ACGSC

The application having been heard on 3.1.2007 the Tribunal delivered the following:



ORDER**Hon'ble Mr.N.Ramakrishnan, Administrative Member**

None for the applicant even during the second call. It is
^{consecutive}
observed that this is the fourth time when no representation for the
applicant is available ~~consecutively~~. ^{NA}

We find it fruitless ^{or} ~~for~~ proceeding further in view of the
^{NA}
apparent lack of interest on the part of applicant. Hence, OA is dismissed
for non prosecution.


GEORGE PARACKEN
JUDICIAL MEMBER


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

Dated this 3rd day of January 2007.

abp