CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 579 of 1996

Thursday, this the 2nd day of April, 1998.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

HON'BLE MR S.K. GHOSAL, ADMINISTRATIVE MEMBER

K.R. Vilasini Amma,
Extra Departmental Sub Postmaster,
Cheruthana,
Kannamkara House,
Cheruthana (P.O.),
Via. Karuvatta. ...Applicant

By Advocate M/s O.V. Radhakrishnan.

Vs

1. K. Gopinathan Nair,
Inquiring Authority and
Assistant Superintendent of Post Offices,
Mavelikkara North Sub Division,
Mavelikkara.

2. Superintendent of Post Offices,
Mavelikkara Division,
Mavelikkara - 690 101.

3. Director of Postal Services,
Central Region, Kochi - 682 016.

4. Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram - 695 033.

5. Postmaster General,
Central Region, Kochi.

6. Union of India represented
by its Secretary,
Ministry of Communications,
New Delhi. ...Respondents

By Advocate Mr Varghese P. Thomas, Addl.CGSC.

The application having been heard on 9.3.98,
the Tribunal delivered the following on 2.4.1998.

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to set aside A2, A8, A10, A12, A14 and A18, to direct the respondents to reinstate her in service and also to direct the respondents to treat her as continuing in service and to grant full service benefits including arrears of allowances for the

period she was kept off duty between 8.5.90 and 17.1.91 and for the period she was dismissed from service from 18.1.91 till her reinstatement in service.

2. While the applicant was working as Extra Departmental Sub Postmaster, Cheruthana, she was put off duty as per A1 dated 8.5.90. The applicant was subsequently served with A2 Memorandum of Charges dated 13.9.90. The applicant submitted written statement on 6.10.90 denying the charges. Subsequently, A4 dated 10.10.90 was served on the applicant stating that an enquiry was proposed to be held under Rule 8 of P&T ED Agents (Conduct & Service) Rules, 1964 against her. The Inquiry Authority after enquiry found, out of the 4 charges, charges 1, 2, 3 stand proved against the applicant and charge 4 was not proved. The Disciplinary Authority accepted the findings of the Inquiry Authority and as per A10 dated 18.1.91 ordered dismissal of the applicant from service. Against A10, the applicant submitted an appeal. As per A12 order the appeal was dismissed upholding the dismissal imposed on the applicant by the Disciplinary Authority. The applicant submitted a review petition against A12 order. The review petition was rejected. Aggrieved by the findings of the Inquiry Authority, imposition of penalty by the Disciplinary Authority, dismissal of the appeal by the Appellate Authority, and the rejection of the revision by the Revisional Authority, the applicant filed O.A. 1264/92 before this Bench of the Tribunal. This Bench of the Tribunal disposed of the same with the direction to the applicant to move the competent authority under Rule 16 of the Extra Departmental Agents (Conduct & Service) Rules, 1964 after conclusion of the criminal proceedings as per order dated 20.1.94. The criminal prosecution pending against the applicant was withdrawn. In the light of the withdrawal of criminal prosecution, the applicant filed a review petition before the 4th respondent with a prayer to set aside the order of dismissal and to reinstate her

in service with all consequential benefits. That was rejected as per A18.

3. Respondents have filed a reply statement conteding thus: The criminal case was withdrawn by the Public Prosecutor without the knowledge of the department. The applicant in her statement given before the Sub Divisional Inspector admitted that the amount found short was utilised for her personal purpose. The grounds raised in the O.A. are not sustainable in law. The offence committed by the applicant is grave in nature and the O.A. is to be dismissed with costs.

4. In this O.A. in para -(ii) it is stated thus:

> "The applicant states that after 3 months of Annexure A1 order, the Sub Divisional Inspector, Kayamkulam Sub Division filed a first Information Report under Section 154 of the Code of Criminal Procedure at Veeyapuram Police Station against the applicant for offence punishable under Section 409 of Indian Penal Code on 6.8.1990 and the Sub Inspector of Police, Veeyapuram registered a criminal case No.45/90 against the applicant."

5. Section 154 of the Criminal Procedure Code deals with information in cognizable cases. The information given to a Police Officer and reduced to writing as required by Section 154 of the Criminal Procdure Code is known as "first information". "First information report" is not mentioned in the Criminal Procedure Code, but these words are understood to mean information recorded under Section 154 of Cr.P.C. It can only be a case of the Sub Divisional Inspector, Kayamkulam Postal Sub Division giving the information either orally or in writing.

6. It is not known how the Sub Inspector of Police, Veeyapuram Police Station could register a criminal case on receipt of information. On receipt of first information, the Station Head Officer can register

a crime and allot a crime number. A criminal case comes into existence only after the Officer in-charge of the Police Station forwards the final report to a Magistrate who is empowered to take cognizance of the Police Report and takes the same on file.

7. Learned counsel for the applicant argued that the charges are vague. Vagueness of charges by itself cannot be a ground to hold that the disciplinary proceedings are vitiated. Unless the vagueness has misled or caused prejudice to the delinquent and occasioned a failure of justice, it will not vitiate the disciplinary proceedings. The question of prejudice is ultimately one of inference from all facts and circumstances of each case. Where the charges were not correctly framed, but it was clear that the delinquent understood exactly the case against her, it cannot be said that she was prejudiced in any way. On consideration of the facts and circumstances of the case it is seen that the applicant has understood exactly the case against her, and therefore, it is to be held that she was not prejudiced in any way. Charge in a disciplinary proceding need not be framed with precision of a charge in criminal proceeding. Vagueness is relative term. That apart, there is no plea of vagueness of the charges raised in the O.A. This was raised as an argument at the time of hearing the O.A. A plea which is not raised cannot be considered. So, on the sole ground that the vagueness of the charges is not pleaded in the O.A, this argument cannot be considered.

8. Learned counsel appearing for the applicant also argued that R1 admission made by the applicant has been relied on by the Inquiring Authority, the Disciplinary Authority, the Appellate Authority and the Revisional Authority in finding her quilty and this admission ought not have been relied upon by these authorities.

9. From A3 it is seen that the case of the applicant is that the statement regarding the admission was obtained from her under

duress. If that is so, a reasonable person of ordinary prudence would have immediately reported that fact to the superior officers of the officer who has obtained the statement from the applicant. There is admittedly no such case for the applicant. The applicant is not a novice. From the averments of the O.A. it is seen that at the time when the statement was given, she had put in about 9 years of service. When the Postal Sub Divisional Inspector, Kayamkulam alongwith Mail Overseer visited the Post Office where the applicant was working as Extra Departmental Sub Postmaster on 7.5.90, the applicant as per R1 admitted that the shortage of cash found was utilised by her for her personal purpose. It is this statement which the applicant in A3 has stated to have been obtained by the Postal Sub Divisional Inspector, Kayamkulam under duress. A3 is the representation submitted by the applicant before the 2nd respondent which is dated 6.10.90. In A6 the written brief submitted by the applicant dated 7.12.90 before the Inquiring Authority it is stated that the Postal Sub Divisional Inspector, Kayamkulam was satisfied with the answer given by her regarding the cash and if he was really satisfied with the answer, there would have been no further action against her. It is also stated in A6 that she had never told that she had used the amount for her personal needs. If she had never given R1 statement stating that cash from the office has been utilised for her personal needs, there is no question of such a statement being vitiated by duress. So, it is very clear that the applicant has no consistent case. At one moment she says that is vitiated by duress and the next moment she says that she has not made such a statement at all. R1 admission was made by the applicant at the earliest stage. Such an admission can be used as evidence though it cannot obviate the enquiry. When the applicant says the admission was obtained under duress it is for the applicant to prove the same. R1 is proved by examining the officer before whom it was made. Here also there is no plea raised in the O.A. on this aspect. For the very same reasons already stated while

dealing with the argument of the learned counsel for the applicant as to the vagueness of charges, this argument also cannot be entertained.

10. The 1st charge against the applicant framed by the Disciplinary Authority is that while she was working as ED Sub Postmaster, Cheruthana on 7.5.90 failed to produce the full amount of cash balance before the Sub Divisional Inspector of Post Offices, Kayamkulam Sub Division during his verification of the office balance on the date and thus she failed to maintain absolute integrity and devotion to duty violating Rule 17 of P&T ED Agents (Conduct & Service) Rules, 1964.

11. ED Sub Postmasters are permitted to take office cash at their residence during the closed hours of office is not under dispute. So, it is only during the closed hours of office and not during the working hours of the office. It is the undisputed fact that the applicant had not brought the money to the post office during the working hours of the Post Office. Her explanation is that on that particular date she forgot to bring the cash from her residence to the Post office. It is not easy to believe.

12. With reference to the 3rd charge in the O.A. it is stated that:

> "The EDDAs would select the MOs likely to be paid on the same day and cash to that requirement alone would be entrusted to them as it is not advisable to entrust cash with EDDAS when they are of sure opinion that a few MOs could not be paid on that day due to the absence of the payees."

It is not known how it is possible for the EDDAs to anticipate or predict precisely how many of the payees of MOs will be absent on a particular date.

13. With regard to charge No.2, it is stated in the O.A. by the applicant that:

> "EDSPMs are not given sufficient training in maintaining registers and the mere fact that certain M.O. entries were made in MO3 register only on subsequent days cannot be taken as showing fictitious liabilities particularly when the MOs are entered in ECB Memo on the correct dates."

On this aspect in the reply statement it is specifically stated that the applicant prior to her appointment on regular basis had worked in the same post from 4.7.81 to 19.4.82 as a provisional appointee and thus she was thorough with the work to be attended by her and there was no necessity for imparting any training to the applicant to get acquainted with the office work. At the time when the charge memo was served on the applicant she had put in about 9 years of service. She cannot escape by saying that EDSPMs are not given sufficient training in maintaining registers and on that account she cannot be found fault with regard to the second charge. It is also not clear what the applicant means by saying "sufficient training".

14. Learned counsel appearing for the applicant argued that in A18 it has been stated while disposing of the review petition that the applicant was warned 5 times and cautioned once by the Superintendent of Post Offices, Alleppey from 1986 onwards and these are not included in the charge. It is true that previous warnings and cautioning of the applicant by the authorities concerned are not in the charge. The review petition was rejected finding that there is no ground to interfere with the orders of the Disciplinary Authority and the Appellate Authority. The review petition was rejected as per A18 not solely on the ground that the applicant was warned 5 times and cautioned once by the authorities concerned. In A18 the other grounds for rejecting the review petition are also stated. When there are other grounds for rejecting A18 review petition, A18 cannot be held to be bad in law. That apart, from

R1 it is clearly seen that the applicant has admitted that though there were instances of shortage of small amounts on previous occasions, huge amount of shortage was never occurred. So, it cannot be said to be something newly introduced and the applicant was taken by surprise.

15. Another argument advanced by the learned counsel for the applicant is that the legal effect of acquittal of the accused in the case charged by the Police is that the accused is declared not guilty of charges. From A16 it is seen that permission sought to withdraw the prosecution against the applicant herein who is the accused before the Judicial First Class Magistrate, Kayamkulam in CC No.213/90 was granted and the accused was acquitted under Section 321 of the Criminal Procedure Code. Section 321 of the Cr.P.C. says that any public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried, and, if such withdrawal is made before a charge has been framed, the accused shall be discharged, and if it is made after a charge has been framed, or when under the Criminal Procedure Code no charge is required, the accused shall be acquitted. Though Section 321 is in general terms and does not circumscribe the powers of the public prosecutor to seek permission to withdraw from prosecution the essential consideration which is implicit in the grant of the power is that it should be in the interest of administration of justice which may be either that it will not be able to produce sufficient evidence to sustain the charge or that subsequent information would falsify prosecution evidence or any other similar circumstances which it is difficult to predicate being entirely dependent on the facts and circumstances of each case. There is no material produced to show on what ground the public prosecutor

sought permission of the Court to withdraw the prosecution. In the absence regarding the grounds on which the public prosecutor sought permission of the Court to withdraw prosecution and from A16 it is not possible to know on what ground exactly the applicant was acquitted, it is not possible to say that the applicant was "honourably acquitted." Just because the delinquent government servant who is the accused in the criminal case is acquitted, it does not mean that no disciplinary proceedings will lie against the delinquent government servant. As far as the disciplinary proceeding is concerned it is a fact finding enquiry. AS far as the criminal case is concerned, the prosecution has to prove the guilt of the accused beyond a reasonable doubt. The same standard of proof is not applicable in a fact finding enquiry.

16. In the O.A. it is admitted by the applicant that "entries of money orders were used to be made in MO3 Register only on subsequent days". Under what authority it is so done is not mentioned. So, it is a clear admission on the part of the applicant that entries are not made by her in MO3 Register in the regular course. It is also stated in the O.A. "the practice followed by the applicant in making entries in MOs Register on subsequent days can at the most be assuming without conceding a procedural lapse". How there can be an exclusive practice to be followed by the applicant is not known. The applicant can only follow the practice prescribed and not her own practice.

17. Learned counsel appearing for the applicant relying on rule 217 of P&T Manual (Vol.V) argued that if a supervising officer finds a deficiency in the cash, the official should be called upon to produce the money and if the official cannot do so, and is unable to give a satisfactory explanation an inventory of cash actually found should have been drawn up and got signed by two independent witnesses and in this case no inventory of cash has been taken by the supervising officer when deficiency in cash was found by the

supervising officer. It is also argued by the learned counsel for the applicant that as per Note 2 of rule 217 of P&T Manual (Vol.V) when deficiency in cash was noticed by the supervising officer time should be given to the ED Agent to send for the cash and in this case no time was granted to the applicant to bring the cash. When the ED Agent admits before the supervising officer that she has utilised the cash for her personal purpose and that she will make good the deficiency the next day, there is no necessity to grant time to the ED Agent to send for cash as provided in Note-2 to Rule 217 of P&T Manual (Vol.V). In this case as per R1, applicant admitted that the amount was utilised by her for her personal needs and she will make good the amount on the next day. That being so, there is no necessity to grant time to send for cash as the time to be granted is only for production of the cash immediately. As the applicant has admitted that she has utilised the office cash for her personal purpose and she would make good the deficiency of the cash on the next day, no purpose would have been served by granting time to the applicant by the supervising officer to send for the cash found to be deficit. The time to be granted is only the time required for going to and coming back from the place where the cash is kept in safe custody and not for the production of cash on the next day. That being so, there is no necessity for preparation of an inventory of cash in this case.

18. According to applicant, due to non-production of MO3 Register (Original) has caused prejudice to her. It is the admitted case of the applicant that MO3 Register is not maintained properly by her. She was following a

practice of her own and not the practice prescribed. In such a case even by production of the original before the Inquiry Authority instead of a photostat copy it cannot make any improvement in support of the case of the applicant. The department has stated that nonproduction of the original of MO3 Register was due to the reason that the same was handed over to the Police in connection with the investigation of the crime registered against the applicant.

19. According to applicant, the Sub Divisional Inspector of Post Offices who visited the office where she was working when found that there was deficiency in cash told her that the cash deficiency could be made good on the next day and there would be no problem and it is only because of that direction she did not bring cash on the same day. The applicant as already stated, is not a novice and had put in about 9 years of service when Sub Divisional Inspector of Post Offices inspected the post office where she was working and found deficiency in cash. It is very difficult to believe that the Sub Divisional Inspector would have told the applicant that it is enough to make good the deficiency of cash on the next day and there will be no problem. One cannot expect a person who has worked for about 9 years as ED Sub Postmaster readily to accept such a direction even if it was given by the Sub Divisional Inspector. It appears more to be a cock and bull story.

20. Relying on rule 81 of the P&T Manual (Vol.III), learned counsel appearing for the applicant argued that the disciplinary proceedings against the applicant ought to have been kept in abeyance till the finalisation of the criminal proceedings. Rule 81 of the P&T Manual (Vol.III) says that once charge sheet has been filed in the court against an employee, departmental proceedings, if any, against him on the same facts of the case should be kept in abeyance till the finalisation of the criminal proceedings. When was the

charge-sheet filed before the court in respect of the case against the applicant is not known. In the reply statement it is specifically stated by the respondents that Rule 81 of the P&T Manual (Vol.III) is not violated and in the letter No.5/11/81-VT/VIG-I dated 18.10.85 issued by the Ministry of Communication, Government of India, it has been clearly laid down that there is no bar in initiating disciplinary proceedings simultaneously with criminal prosecution. This is not denied by the applicant. What is contained in P&T Manual is not statutory rule. In P&T Manual (Vol.III) it is clearly stated that "these instructions are to the extent necessary incorporated in the chapter for guidance of all officers having disciplinary powers." That being so, the letter referred to in the reply statement dated 18.10.85 issued by the Ministry of Communication stating that there is no bar for a parallel proceedings cannot be ignored or sidelined.

21. In State of Rajasthan Vs.B.K. Meena and others (AIR 1997 SC 13) it has been held:

> "It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is "that the defence of the employee in the criminal case may not be prejudiced." This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in D.C.M (AIR 1960 SC 806) and TATA Oil Mills (AIR 1965 SC 155) is not also an invariable rule. It is only a factor which will go into the scales while judging the advisability or

> desirability of staying the disciplinary proceedings. One of the contending consideration is that the disciplinary enquiry cannot be - and should not be - delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed, that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good Government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e. for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of discipliniary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above."

22. So, the argument based on Rule 81 of the P&T Manual (Vol.III) cannot be accepted.

23. Learned counsel appearing for the applicant drew our attention to Jagdish Prasad Saxena Vs. State of Madhya Bharat (now Madhya Pradesh) (AIR 1961 SC 1070). There it has been held that as the

statement made by the appellant did not amount to a clear or unambiguous admission of his guilt, failure to hold a formal enquiry constituted a serious infirmity in the order of dismissal passed against him, as the appellant had no opportunity at all of showing cause against the charge framed against him and so the requirement of Article 311(2) was not satisfied. Here it is not the case like that. Applicant was found guilty not solely based on R1, the admission made by her without a formal enquiry. A formal enquiry was conducted and she was found guilty. Hence, the ruling is not applicable to the facts of the case at hand.

24. It is alleged in the O.A. that imposing penalty of dismissal on the applicant is unconscionably disproportionate to the gravity of the offence alleged to have been proved in the enquiry and imposing extreme penalty of dismissal is violative of Article 14 of the Constitution of India. In Municipal Committee, Bahadurgarh Vs. Krishnan Behari and others ((1996) 2 SCC 714) it has been held that the amount misappropriated may be small or large - it is the act of misappropriation that is relevant. In that case the delinquent government servant was found guilty of charges and Municipal Committee dismissed him from service. In appeal, the Director of Local Bodies reduced the punishment to stoppage of four increments and the period during which the delinquent was out of service was directed to be treated as extraordinary leave. A writ petition filed by the Municipal Committee was dismissed by the High Court in limine. The Apex Court allowed the appeal setting aside the judgment of the High Court and directed to restore the order of the Municipal Committee dismissing the delinquent employee. Hence, this argument cannot be accepted.

25. Judicial review is not an appeal from a decision, but a review of the manner in which the decision is made. Power of judicial review is to ensure that individual receives fair treatment

and not to ensure that conslusion which the authority reaches is necessarily correct in the eye of the court. Neither the technical rules of Evidence Act nor the proof of fact or evidence as defined therein, apply to the disciplinary proceedings. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conslusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary Authority is the sole judge of facts. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent government servant in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the Disciplinary Authority is based on no evidence. There is nothing to show in this case that there is any violation of natural justice or of any statutory rules prescribing the mode of inquiry or the conclusion or the finding reached by the Disciplinary Authority is based on no evidence. That being so, we do not find any ground to interfere.

26. Accordingly, the Original Application is dismissed. No costs.

Dated the 2nd day of April, 1998.

S.K. GHOSAL
ADMINISTRATIVE MEMBER

A.M. SIVADAS
JUDICIAL MEMBER

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LIST OF ANNEXURES

1. Annexure A1. True copy of the memo No.EDSO/2 dated 8-5-90 of the Sub Divisional Inspector of Post Offices,Kayamkulam.

2. Annexure A2. True copy of the memorandum of charges No.F6/1/90-91 dated 13-9-90 of the 2nd respondent.

3. Annexure A3. True copy of the representation dated 6-10-90 before the 2nd respondent.

4. Annexure A4. True copy of the memo No.F6/1/90-91 dated 10-10-90 of the 2nd respondent.

5. Annexure A6. True copy of the written brief dated 7-10-90 of the applicant.

6. Annexure A8. True copy of the enquiry report dated 24-12-90 of the 1st respondent.

7. Annexure A10.True copy of the dismissal order No.F6/1/90-91 dated 18-1-91 of the 2nd respondent

8. Annexure A12.True copy of the appellate order No.ST/7-6/91 dated 21-6-91 of the 5th respondent.

9. Annexure A14.True copy of the review Order No.ST/E-9/91 dated 24-12-91 of the 4th respondent.

10. Annexure A16. True copy of the Order ofthe Judicial I Class Magistrate,Kayamkulam dated 4-11-94 in C.C.No.213/90.

11. Annexure A18.True copy of the Order No.ST/8-14/95 dated 11-1-96 of the 5th respondent

12. Annexure R1.Statement in Malayalam language by the applicant, dated 7.5.1990 before the Sub Divisional Inspector, Post Office, Kayamkulam.