

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Applicaton No.600/2013
&
Original Applicaton No.180/00040/2015

Tuesday... this the *19th* day of January 2016

C O R A M :

**HON'BLE Mr.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER**

O.A.No.600/2013

K.Karthikeyan,
S/o.R.Kunjukunju,
Gramin Dak Sevak Mail Deliverer,
Kappil East (Put Off Duty).
Residing at Palakkavil, Kappil Mekku,
Krishnapuram P.O.

...Applicant

(By Advocate Mr.V.Sajithkumar)

V e r s u s

1. Union of India
represented by the Secretary to the Government,
Department of Posts, Ministry of Communications,
Government of India, New Delhi – 110 001.
2. The Postmaster General,
Department of Posts,
Kerala Circle, Central Region, Kochi.
3. The Assistant Superintendent of Post Offices,
Department of Posts, Kerala Circle,
Mavelikkara Division, Mavelikkara – 690 101.
4. The Superintendent of Post Offices,
Department of Posts, Kerala Circle,
Mavelikkara Division, Mavelikkara – 690 101.



.2.

5. The Inspector of Posts,
Department of Posts, Kerala Circle,
Kayamkulam Sub Division, Kayamkulam.

...Respondents

(By Advocate Mr.N.Anilkumar,Sr.PCGC)

O.A.No.180/00040/2015

K.Karthikeyan,
S/o.R.Kunjukunju,
Gramin Dak Sevak Mail Deliverer,
Kappil East (Put Off Duty) Department of Posts.
Residing at Palakkavil, Kappil Mekku,
Krishnapuram P.O., Alappuzha – 690 533

...Applicant

(By Advocate Mr.V.Sajithkumar)

V e r s u s

1. Union of India
represented by the Secretary to the Government,
Department of Posts, Ministry of Communications,
Government of India, New Delhi – 110 001.
2. The Postmaster General,
Department of Posts,
Kerala Circle, Central Region, Kochi – 682 016.
3. The Assistant Superintendent of Post Offices,
Department of Posts, Kerala Circle,
Mavelikkara Division, Mavelikkara – 690 101.
4. The Superintendent of Post Offices,
Department of Posts, Kerala Circle,
Mavelikkara Division, Mavelikkara – 690 101.
5. The Inspector of Posts,
Department of Posts, Kerala Circle,
Kayamkulam Sub Division,
Kayamkulam – 690 502.

...Respondents

(By Advocate Mr.N.Anilkumar,Sr.PCGC)

These applications having been heard on 11th December 2015 this
Tribunal on 19th January 2016 delivered the following :



ORDER

HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER

Both these O.As are filed by the same applicant and since the reliefs claimed are consequential they are being considered in this order.

2. In O.A.No.600/2013 the applicant is aggrieved by the delay on the part of the respondents in regularizing the period he was under put off duty. The applicant was proceeded against under Rule 10 of the GDS (Conduct & Employment) Rules 2001. The Inquiry Officer found that the charge contained in the memo against the applicant will not stand against him. There was no disagreement from the side of the ad-hoc disciplinary authority. But instead of letting off the applicant, he cancelled the earlier charge memo and issued a fresh one on the same set of allegations. Of course he has recorded the reasons for doing so. But he had no jurisdiction to do that at that stage of the proceedings because by doing so he had set off a de novo proceedings for which he is not competent. The respondents had conceded before this Court in O.A.No.294/2010 that invoking Rule 82, Postal Manual Volume III, all proceedings against applicant will be dropped. The above undertaking was given on 11.11.2011. Inspite of the undertaking consequential orders are not passed so far. As per the instructions issued by the Department of Personal and Training, if disciplinary proceedings does not end in major penalty, the period of suspension has to be regularized since suspension itself stands unjustified.

A handwritten signature in black ink, appearing to read 'S' or 'S. Gopinath'.

In this case, though applicant was kept out of duty for around 3 years the disciplinary proceedings ended without imposing any penalty. In such case the respondents are bound to regularize the services of the applicant for the period he was under put off duty. The Disciplinary Authority may disagree with the Inquiry Officer, communicate the points of disagreement with the Inquiry Officer to the applicant, and after considering his representation if any may impose punishment on him. The Disciplinary Authority on the other hand may agree with the Inquiry Officer and exonerate the applicant of the charges. He may order a further enquiry in the matter also. But he cannot at the stage of consideration of the Inquiry Report cancel the charge memo, issue a new memo and order fresh enquiry. Such a power is not vested with him. The applicant is not being paid any ex-gratia compensation even though he has been under put off duty for the last more than 3 years. The ex-gratia payment at the rate of 25% of the TRCA originally sanctioned and paid to him initially was stopped abruptly without issuing any notice to him. In view of the fact that disciplinary proceedings got dropped without awarding punishments, the respondents are bound to disburse the back wages with arrears.

3. In O.A.No.180/00040/2015 the applicant is aggrieved by the 3rd charge sheet (Annexure A-1) issued by the 3rd respondent on the same set of allegation based on which he was proceeded with twice earlier. It is submitted that Annexure A-1 under GDS (Conduct & Engagement) Rules

A handwritten signature, appearing to be 'G', is written in black ink at the bottom of the page.

2011 was issued after dropping the 2nd charge sheet dated 29.12.2009 on the same set of allegation by memo dated 26.2.2014. It is submitted that Annexure A-1 is seen issued by ASP Mavelikkara. It is a matter of fact that the Recruiting/Appointing Authority of the applicant is IP, Kayamkulam, Sub Division. Since the IP, Kayamkulam, Sub Division of the relevant period was a material witness, the adhoc disciplinary authority was appointed by the Post Master General vide order dated 20.7.2007. Such an arrangement cannot be valid for ever, especially when the present IP Kayamkulam/appointing authority is not a material witness to the case. The instructions governing 2nd charge sheet issued as per letter dated 5.7.1979 by the 1st respondent reads that the disciplinary authority is debarred from issuing fresh proceedings against the delinquent officer unless reasons for cancellation of the original charge sheet or dropping the proceedings are appropriately mentioned in the order dropping the 1st charge sheet. In this case the Annexure A-2 does not disclose any reasons and therefore the consequent charge sheet is impermissible in law.

4. The respondents submit that this Tribunal closed the earlier O.A.No.294/2010 filed by applicant on the submission that his case will be processed by the respondents as per Rule 82 of Postal Manual Volume III. As per the said ruling referred, respondents can proceed against the delinquent official if the criminal proceeding has culminated expressing only a doubt regarding the correctness of the allegation. The Criminal Case

A handwritten signature, appearing to be a stylized 'S' or 'G', is written in black ink at the bottom of the page.

CC No.386/2007 filed against the applicant culminated in his acquittal from the charge framed for want of evidence. The Court also held that the accused is not totally innocent of the charges levelled against him. As such, the department has every right to commence and continue disciplinary proceedings initiated against him in the interest of service jurisprudence.

The applicant was working as GDS Mail Deliverer, Kappil East since 1.1.1998. While so, on 20.11.2006 the Branch Postmaster entrusted 10 registered letters and 11 money orders along with cash Rs.16,900/- for delivery and payment. The applicant collected the articles and cash, gave acquittance for the same and left the office. However, the applicant deliberately gave acquittance for the articles as if it was handed over to his son, Kalesh, which was not noticed then and there by the Branch Postmaster. Two days later, on 22.11.2006 the applicant's son handed over the registered letters and money order paid vouchers, without returning the amount of unpaid money orders. The case was reported to police and registered under CC 660/2006 on 23.11.2006 at Kayamkulam Police Station. Subsequently the amount was credited by the applicant on 25.11.2006, after keeping the office cash in his personal custody for 4 days. The applicant remained unauthorizedly absent from 22.11.2006 to 5.12.2006. When he reported for duty on 6.12.2006, his statements were recorded and he was placed under put off duty. He was proceeded under Rule 10 of the GDS Conduct and Employment Rules on 17.4.2008 vide memo No.ASP/ADA/07 dated 17.4.2008. The same was cancelled vide

A handwritten signature, appearing to be the letters 'C' and 'S' intertwined, is placed here.

memo No.ASP/ADA/07 dated 29.12.2009 due to technical defects noticed in the charge sheet framed and a fresh charge sheet was issued vide memo No.ASP/ADA/07 dated 29.12.2009. The second charge sheet issued is pending. As per the order in O.A.No.294/2010 dated 11.11.2011, the O.A was closed without any further orders taking into record the submission of the respondent that the case will be processed under Rule 82 of the Postal Manual Volume III. As per Rule 82, respondent can hold departmental inquiry on the same allegation, if better proof than that was produced before the Court or was then available. In order to proceed with the case further, action had been taken to get the expert opinion from CFSL Hyderabad. Meanwhile, the Hon'ble JFMC, Kayamkulam charge sheeted the applicant under No.386/07 and in its order, acquitted the applicant holding that the investigating agency failed to conduct thorough investigation to prove the charges through proper scientific methods. The Hon'ble JFMC held that the prosecution failed to prove the charges levelled against the accused beyond reasonable doubt and hence acquitted the applicant. The court also held in para 15 of the Annexure R-2 order that the accused is not totally innocent of the charges levelled against him and that he is benefited from the anomalies and irregularities and other unauthorized practices prevailing in the Department. Just because there was no convincing evidence before the Court to establish the guilt of the applicant, the Court held that the prosecution failed to prove the charges levelled against the applicant beyond reasonable doubt.

A handwritten signature, appearing to be the initials 'S' or 'SS', is written in black ink on a separate line below the typed text.

5. Respondent submits that the standard of proof for a criminal case is "proof beyond any reasonable doubt", while for a departmental proceedings, the standard of proof is similar to civil cases, namely, on "the balance of evidence". Acquittal by a criminal court has no bearing on the outcome of departmental proceedings. According to the respondents the case of the applicant herein is squarely covered by the judgment of the Hon'ble Apex Court in **Ajit Kumar Nag vs. General Manager (PJ), Indian Oil Corporation Ltd., Haldia and others (2005) 7 SCC 764** which reads as under :

"As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."

A handwritten mark or signature, appearing to be a stylized 'C' or a similar shape, is located at the bottom left of the page.

6. Also this Tribunal following the above decision of the Supreme Court has dismissed O.A.No.930/2011 by its order dated 9.11.2012. The applicant while working as GDSMD, Kappil East, was unauthorizedly absent from duty from 22.11.2006. On 6.12.2006 he reported before Inspector Posts, Kayamkulam Sub Division and was placed under put off duty with effect from 6.12.2006. While issuing the put off duty memo by the Inspector Post, Kayamkulam Sub Division, it was erroneously mentioned that he was entitled for 25% exgratia amount. But as per the second proviso of Rule 12 (3) of GDS (Conduct and Employment) Rules 2001, the applicant was not eligible for exgratia amount. When the mistake was detected Postmaster, Kayamkulam was ordered to stop the exgratia payment. The applicant was proceeded under Rule 10 of GDS (Conduct and Employment) Rules 2001 vide memo No.ASP/ADA/07 dated 17.4.2008 of ASP, Mavelikkara (N) Sub Division. It is submitted that the IA & PO were appointed and Rule 10 inquiry was conducted. The IA submitted his report to Adhoc Appointing Authority and he sent IA's report to the applicant. The Appointing Authority forwarded the IA's report to the applicant without any disagreement. After receiving the representation from the applicant, the Appointing Authority cancelled the charge sheet finding technical defects. As per DG P&T orders (3) under Govt. of India's decision 11 in Rule 15, it is clarified that the proceedings initiated once can be dropped by the issuing authority. The applicant submitted an appeal to the 4th respondent against the order of cancellation of charge sheet by Appointing Authority. The 4th



respondent disposed the appeal stating that the Appointing Authority is competent to cancel a charge sheet issued by him. The applicant had filed O.A.No.294/2010 and the Hon'ble Tribunal disposed of the O.A taking note of the communication addressed to the applicant by the department that it is proposed to process the case as per Rule 82 of Postal Manual Volume III.

7. Heard the counsel for the parties and considered the written submissions made. Applicant's prayer is to regularize his service for the period 6.12.2006 to 28.12.2010 with consequential benefits, in view of the commitment to drop the proceedings as per Rule 82, Vol.III of Postal Manual in O.A.No.294/2010. It is therefore necessary to have a proper understanding of Rule 82 :

“82. It is not permissible to hold departmental enquiry in respect of a charge based on the same facts or allegations which have already been examined by a Court of competent jurisdiction and the Court has given a finding that they are not true. If, however, that Court has merely expressed a doubt as to the correctness of the allegation, there may be no object to hold departmental enquiry on the same allegation, if better proof than that was produced before the Court or was then available, is forthcoming. If the Court has held that the allegations are proved but they do not constitute the criminal offence with which the Government servant was charged, then also it would be permissible to hold a departmental enquiry on the basis of the same allegations.”

8. Applicant avers that there is a commitment given by the respondents in O.A.No.294/2010 to drop the disciplinary proceedings as per Rule 82 referred above. Applicant has produced order in O.A.No.294/2010 as Annexure A-11. Relevant portion of which is reproduced :

A handwritten signature in black ink, appearing to be a stylized 'S' or a similar character, is placed here.

“.....The respondents have reinstated the applicant and it appears that the respondents are taking action in accordance with Rule 82 of the Postal Manual Volume III. In view of the above, counsel for the applicant submits that this Original Application may be closed with liberty to the applicant to file a fresh O.A if necessity arises.

Counsel for the respondents has produced a communication addressed to him by the department stating that it is proposed to process the case as per Rule 82 of Postal Manual Volume III. Taking note of the same, this Original Application is closed without any further orders. The applicant is given liberty as prayed for. No costs.”

9. Three observations are important to be noted at this stage. As erroneously averred by the applicant in his prayer, the respondents had given no commitment in the above order in O.A.No.294/2010 to drop the proceedings as per Rule 82 of Postal Manual Vol.III. The respondent merely stated that it is proposed to process the case as per Rule 82. Rule 82 does permit that where a Court has merely expressed a doubt as to the correctness of allegations, there may be no objection to hold departmental enquiry on the same allegation, if better proof than that was produced before the Court or was then available, is forthcoming.

10. The second observation is that the Court in C.C.No.386/2007 has noted :

“15.Therefore, on a consideration of the entire facts and circumstances of the case, I do not feel that the accused herein is totally innocent of the charges levelled against him. This is not a case in which the accused can be said to be falsely implicated without any basis.....”

Thus the Judicial First Class Magistrate did not give the applicant a clean chit or unconditional acquittal.

A handwritten signature or mark, appearing to be a stylized 'C' or a similar character, is written in black ink at the bottom of the page.

11. A third observation is drawn from the judgment of Ernakulam Bench in O.A.No.930/2011 filed by the applicant wherein the Bench observed in para 6 as :

“6.Therefore, the acquittal of the applicant by the learned Judicial Magistrate does not ipso facto absolve him from the liability under the departmental proceedings.....”

12. From a reading of these three observations drawn from the documents produced in the O.As the conclusion that can be drawn is :

(i) That Rule 82 does permit the holding of a departmental enquiry on the same allegation where a court has expressed a doubt as to the correctness of allegations.

(ii) Better proof in the form of expert opinion of CFSL, Hyderabad on the signature and acquittance made by applicant on 21.11.2006 in the BO Journal and Postman Book for receipt of 10 RLs and 11 MOs worth Rs.16,900/- became available. Respondents in O.A.No.180/00040/2015 avers that expert opinion of CFSL establishes that the applicant wrote the acquittance in BO Journal on 21.11.2006. Hence better proof than that produced before Judicial Magistrate was now available to proceed in the case.

(iii) The Judicial Magistrate did not give the applicant a clean acquittal and he felt that the accused (the applicant in these cases) was not totally innocent.

A handwritten signature, likely belonging to the author or a witness, is placed here. The signature is written in black ink and appears to read 'S. S. S.' followed by a surname.

.13.

(iv) This Tribunal in O.A.No.930/2011 filed by the applicant did not absolve him from the liability of departmental proceedings.

(v) This Tribunal in O.A.No.294/2010 closed the O.A on the request of the applicant. In the same O.A it is stated by respondents that they propose to **process the case under Rule 82, and not that they are proposing to drop the case under Rule 82** as averred by applicant in this O.A.

(vi) The acquittal by the JFCM, Kayamkulam as the prosecution failed to prove the charges, does not come in the way of disciplinary proceedings by the respondents.

(vii) The first charge sheet was dropped as per Annexure A-2 in O.A.No.180/00040/2015 without prejudice to take any further action on the same allegation.

13. Rule 18 of Vigilance Manual covers the action to be taken after acquittal.

“18.1 If the Government servant is acquitted by a trial or appellate court and if it is decided that the acquittal should not be challenged in a higher court, the competent authority should decide whether or not despite the acquittal, the facts and circumstances of the case are such as to call for a departmental enquiry on the basis of the allegations on which he was previously charged and convicted.

18.2 One identical set of facts and allegations may constitute a criminal offence as well as misconduct punishable under the CCS (CCA) Rules or other corresponding rules. If the facts or allegations had been examined by a court of competent jurisdiction and if the court held that

A handwritten signature in black ink, appearing to be a stylized 'E' or a similar character, is placed here.

the allegations were not true, it will not be permissible to hold a departmental enquiry in respect of a charge based on the same facts or allegations.

18.3 If, on the other hand, the court has merely expressed a doubt about the correctness of the allegations a departmental enquiry may be held into the same allegations if better proof than what was produced before the court is forthcoming.”

14. This O.A is covered by Vigilance Manual provision 18.3 above and the conclusions of a departmental enquiry on the ground of evidence of handwriting expert is for the inquiry officer and disciplinary authority to adduce. This is a case where the applicant has failed to exercise the responsibility assigned to him or by the agent appointed by him of disbursing money orders to members of public worth Rs.16,900/-. This amounts to a defalcation of public money, which is a serious charge. That the applicant returned the sum after 4 days of keeping the same, is not a reason enough to excuse the act. That on failure to disburse public money, he did not deem it fit to return the money to the Government custody or the same was retained till such time as the indiscretion was pointed out to him is the important fact to be noted which has a direct reflection on the integrity of the applicant. There is nothing in Article 311 or any other Article of the Constitution or in any other law taking away the jurisdiction of the Government to enquire into the truth of a charge in a departmental enquiry, if the charges are also being enquired into by a Criminal Court.

A handwritten signature, appearing to be the letter 'E', is placed here.

.15.

15. Applicant has approached this Tribunal putting forth surmises and fallacious premises. The disciplinary proceedings shall be completed within a period of four months from the date of receipt of a copy of this order. The applicant should cooperate with the respondents to complete the disciplinary proceedings.

16. In the light of what is stated above, both the O.As are dismissed. In view of the order in the O.As, M.A.No.962/2013 is closed. No order as to costs.

(Dated this the 19th day of January 2016)



P.GOPINATH
ADMINISTRATIVE MEMBER



N.K.BALAKRISHNAN
JUDICIAL MEMBER

asp