CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.602/03

Monday this the 5th day of April 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER

A.K.Divakaran,
S/o.Kunjan Bava,
Driver, Mail Motor Service
(under compulsory retirement), Ernakulam.
Residing at : Alunkalthara,
Elamkulam, Kadavanthara P.O.,
Ernakulam - 682 020. Applicant

(By Advocate Mr.P.A.Kumaran)

Versus

1. The Manager,
Mail Motor Service,
Central Region,
Department of Posts, Kochi-16.

2. The Director of Postal Services,
Central Region, Kochi-16.

3. The Chief Post Master General,
Kerala Circle, Trivandrum-33.

4. The Member (Personnel) Postal Services Board,
Dak Bhavan, New Delhi.

5. Union of India, represented by its
Secretary to Government of India,
Ministry of Communications,
Department of Posts, New Delhi. Respondents

(By Advocate Mr.George Joseph,ACGSC)

This application having been heard on 5th April 2004 the Tribunal on the same day delivered the following :

O R D E R

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

Order dated 27.6.2001 (Annexure A-1) of the 1st respondent, the Manager, Mail Motor Service, Central Region, Ernakulam by which the applicant was compulsorily retired from service, the order dated 10.12.2001 (Annexure A-2) of the 2nd respondent by which the appeal has been rejected and the order

dated 6.4.2003 of the 3rd respondent dismissing the revision are challenged by the applicant, Ex-Mail Motor Driver by this application filed under Section 19 of the Administrative Tribunals Act, 1985. The facts in this case can be put in a nutshell as hereunder :

2. On 6.3.1999 while the applicant was working as Driver of the Mail Motor Vehicle No.KL-7/B 4326 at the place called Kalamukke near Elamkunnapuzha an accident occurred in which a pedestrian named Bhaskaran, aged 45 years was hit by the vehicle. Although the applicant immediately took the injured Bhaskaran to the hospital for treatment he succumbed to injuries. The applicant immediately reported the matter to his superior official. Based on the occurrence a criminal case was registered against the applicant for offence under Sections 279 and 304 (A) of Indian Penal Code. Simultaneously a Memorandum of Charge was also served on him for proceeding against him under Rule 14 of the CCS (CCA) Rules 1965. The enquiry as also the criminal case proceeded simultaneously. Although several witnesses were examined and documents marked the enquiry officer found that there was nothing on record to prove the charge against the applicant. The disciplinary authority, the 1st respondent, however did not agree with the conclusion of the enquiry officer. He decided to find applicant guilty and gave him a notice of such intention as also a copy of the enquiry report. The applicant submitted representation explaining that he was innocent. However the disciplinary authority issued Annexure A-1 order holding the applicant guilty of the charges and imposing on him the penalty of compulsory retirement from service. Although the applicant filed a detailed appeal to the 2nd respondent, the 2nd

respondent by his order Annexure A-2 rejected his appeal. The revision petition also met with the same fate. Therefore the applicant has filed this application seeking to set aside these orders and for a direction to the respondents to reinstate him in service forthwith and pay full back wages with continuity of service and all consequential benefits. It is alleged in the application that the accident was an inevitable accident that he has not been negligent or rash, that he has been acquitted by the Court of offences under Sections 279 and 304 (A) by the competent court and that the finding of the disciplinary authority which has been confirmed by the appellate and revisional authorities is based on no evidence at all.

3. The respondents in their reply statement seek to justify the enquiry in accordance with rules and that the finding of guilt is supported by evidence.

4. We have heard Shri.P.A.Kumaran, learned counsel of the applicant and Shri.George Joseph,ACGSC for the respondents. We have also with great care gone through the pleadings and all the materials placed on record. The sole question that calls for an answer in this case is whether the finding that the applicant is guilty is based on any evidence or is totally perverse. The learned counsel of the applicant taking us through the evidence adduced at the enquiry argued that, as no witness has deposed that the applicant was guilty of rash and negligent driving and thereby causing the accident the conclusion arrived at by the disciplinary authority that the applicant is guilty disagreeing with the finding of the enquiry officer is totally perverse. The learned counsel for the respondents on the other hand argued that

the finding that the applicant was guilty of rash and negligent driving and causing the death of the injured is based on the evidence on record including the Spot Mahazar (P5) prepared by C.P.Joy PW-2 and that therefore there is no reason for interference. He also argued that when the enquiry has been held in conformity with the rules the Tribunal cannot interfere with the decision on merits as the jurisdiction exercised is not an appellate jurisdiction. We have given our anxious consideration to the arguments raised on either side. The learned counsel for the respondents is right in his contention that the Tribunal cannot re-appreciate the evidence and interfere with the finding even if a different conclusion can be arrived at on the basis of evidence. But if the conclusion arrived at by the disciplinary authority is based on no legal evidence at all the Tribunal will be justified in interfering with the finding. Let us therefore see whether there is any evidence at all in this case based on which a reasonable person can reach the conclusion that the applicant on account of his rash and negligent driving caused the accident which resulted in the death of the injured. A careful scrutiny of the enquiry report and the statement of witnesses reveals that no witness stated that applicant was driving the vehicle at an excessive speed or in a rash and negligent manner. The enquiry officer has noted that the vehicle was keeping the normal scheduled line in covering the distance and in the absence of any evidence to suggest over speed concluded that the applicant was vigilant in driving and the accident cannot be said to be the result of his rashness or negligence. The disciplinary authority disagreed with this view only on the ground that a tyre mark of 6 feet was noticed in P-5 Spot Mahazar prepared by C.P.Joy PW-2. How the 6 feet tyre mark would prove that the

applicant was negligent in driving is not been stated in the disciplinary authority's finding. The length of the tyre mark in the road was on applicant's sudden brake could depend on variety of reasons like speed, the slope of the road, the smoothness of the road, surface, the condition of the tyre, whether the road was wet etc. No expert opinion is available to show that if 6 feet tyre mark be there, high speed should be inferred. The conclusion arrived at by the enquiry officer was a balanced one. The disciplinary authority without any material at all differed from the finding and held that the charge was proved without the support of any legal evidence. It has also to be remembered that the applicant was found not guilty of the offence under Sections 279 and 304 (A) of the I.P.C. and acquitted by the Judicial Magistrate of the First Class in C.C.302/99 by Annexure A-10 judgement. The allegation in the Memorandum of Charge was on the same as what was contained in the criminal charge. Under these circumstances, we find that the argument of the applicant's counsel that the finding of the disciplinary authority that the applicant is guilty is perverse and that his finding has been accepted by the appellate and revisional authorities without any application of mind has considerable force and has to be accepted. We find that no reasonable person can on the basis of the evidence on record at the enquiry come to the conclusion that the applicant was guilty of the charges. The facts and circumstances clearly establishes that the accident was an inevitable one for which the applicant cannot be held responsible.

5. In the light of what is stated above we find that the applicant is not guilty. The application is allowed. The

impugned orders are set aside. The respondents are directed to reinstate the applicant in service forthwith and pay to him full back wages with continuity of service and all consequential benefits. These directions should be complied with within a period of two months from the date of receipt of a copy of this order. There is no order as to costs.

(Dated the 5th day of April 2004)

H.P.DAS
ADMINISTRATIVE MEMBER

A.V.HARIDASAN
VICE CHAIRMAN

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