

FINAL ORDER

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. - 68/87

DATED FRIDAY THE THIRD DAY OF MARCH
ONE THOUSAND NINE HUNDRED AND EIGHTY NINE

PRESENT

HON'BLE SHRI S. P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI G. SREEDHARAN NAIR, JUDICIAL MEMBER

P. Balakrishnan Nair

Applicant

Vs.

1. The Secretary to the Government of
India, Ministry of Communications
(Department of Posts), New Delhi

2. The Postmaster General, Kerala Circle,
Trivandrum

3. The Director of Postal Services (HQ)
Kerala Circle, Trivandrum and

4. The Superintendent of Post Offices,
Quilon Division, Quilon

Respondents

Mr. K. R. B. Kaimal

Counsel for the
applicant

Mr. K. Narayana Kurup, ACGSC

Counsel for the
respondents

O R D E R

Hon'ble Shri G. Sreedharan Nair

The applicant while functioning as Sub Postmaster,
Kilikollur was proceeded against under the CCS (CC&A)
Rules, 1965, for short "the Rules" by the issue of
memorandum of charges dated 8.8.1984 for showing lack of
integrity and lack of devotion to duty and thereby
violating clauses (i) & (ii) of Sub Rule (1) of Rule 3

of the CCS (Conduct) Rules, 1964. The first article of charges related to shortage in cash and stamp balances to the extent of Rs. 1563.07 on 28.1.1984, and the second charge was in respect of the omission to write the office ^{An} accounts. ~~The~~ enquiry was conducted, and ~~that~~ the applicant denied the charges, the Enquiry Officer held that the charges are proved based on which the Disciplinary authority, the third respondent imposed / penalty of reduction in pay of the applicant by four stages for a period of three years. The order was passed on 19.8.1985. The applicant submitted a revision petition on 21.10.1986 to the President of India. in terms of Rule ~~20~~ of the Rules. He was intimated that the petition has been forwarded to the first respondent, the Secretary to the Government, Ministry of Communications (Department of Posts) for appropriate action. Thereafter, the applicant was informed by the fourth respondent, the Supdt. of Postoffices, Quilon Division by his letter dated 28.11.86 that " a petition does not lie to the President of India at this stage." The applicant prays for quashing the order passed by the third respondent imposing the penalty, as well as the order rejecting his revision petition. A reference is made in the application to the memorandum dated 21.11.1986 from the fourth respondent allowing him refund of Rs. 663.10 being excess amount credited. On the basis of the said memorandum, it is contended that

the charges

the issue of alleged shortage of Rs. 1563.07 on the basis of which the first article of charges itself was framed was illegal. There is also the plea that there has been denial of reasonable opportunity of establishing his innocence. With respect to the disposal of the revision petition, it is contended that when it was forwarded to the first respondent by the President of India for disposal, the first respondent was bound to pass orders thereon.

2. A reply has been filed by the respondents traversing the various grounds urged in the application. It is stated that the applicant fully participated in the enquiry. It is contended that the petition to the President would lie only after the prescribed reviewing authority, the Member (Personnel), Postal Service Board, disposes of the case, and as the applicant has not submitted any review petition, the revision petition did not lie. It is stated that " the first respondent must have passed orders " on the revision petition and that it was accordingly that the intimation has been sent to the applicant by the letter dated 28.11.1986.

Advocate

3. The only point that was pressed by Mr. K. R. B. Kaimal appearing on behalf of the applicant was that the first respondent was bound to consider and dispose of the revision petition preferred by the applicant before the

President of India as that petition had been forwarded from the President's Secretariat to the first respondent for appropriate action. There is considerable force in the submission.

4. In view of Rule 29 of the Rules, the President may at any time, either on his own motion or otherwise revise any order made under the Rules from which an appeal is allowed but from which no appeal has been preferred.

(3)
The only restriction imposed by sub rule ~~(2)~~ of Rule 29 is that such proceedings for revision shall not be commenced until after the expiry of the period of limitation for an appeal, in a case where an appeal is allowed but no appeal has been preferred. In this case, from the order of the Disciplinary authority dated 19.8.1985, the applicant had the remedy of preferring an appeal within six months. Admittedly, the applicant did not prefer the appeal. Instead, he chose to submit the revision petition, after the expiry of the period of limitation for the appeal. From the President's Secretariat the revision petition has been forwarded to the first respondent for appropriate action. No intimation has been given to the applicant by the first respondent with respect to the consideration or the disposal of the revision petition. The fourth respondent, the Supdt. of Postoffices, Quilon Division has by his communication to the applicant

dated 28.11.1986 informed him that " the petition does not lie to the President of India at this stage." The applicant has taken up the specific plea that when the revision petition was forwarded to the first respondent, it was for him to pass orders thereon and that the disposal of the matter as contained in the aforesaid communication cannot be resorted to. The first respondent has not filed any separate reply to the application. On the other hand, the fourth respondent, the Senior Supdt. of Post Offices, Quilon Division has filed a counter affidavit by way of reply to the application wherein it is stated that the affidavit is being filed on behalf of the respondents and that he is competent ^{paragraph} ^{answer} to do so. In ~~para~~ 12, by way of ~~Amend~~ to the plea of the ~~application~~ that the first respondent was bound to consider the revision petition, as it was forwarded to him by the President, has not done so, the ~~plea~~ is only that " the first respondent must have passed the orders."

5. It is contended in the reply that a revision petition to the President of India will be maintainable only after the reviewing authority has disposed of the case. The counsel for the respondents has not brought to our attention any provision in the ~~Rules~~ to the effect. On the other hand, on a conspectus of the Rules, it is seen that the Member (Personnel), Postal Services Board

has no jurisdiction for reviewing, but he is authorised only to revise any order made under the Rules. The power of review is conferred only on the President. There is a further plea in the reply that though the applicant had the remedy of appeal from the order of the Disciplinary authority, he has not preferred the appeal. In view of Rule 29 of the Rules, even in a case where an appeal is allowed under the Rules, if no appeal has been preferred within the prescribed period of limitation, the petition for revision can be maintained. At any rate, it is not clear from the communication addressed to the applicant by the fourth respondent on 28.11.1986 why the revision petition to the President was considered as not maintainable at that stage.

6. The counsel for the applicant invited our attention to the memorandum dated 21.11.1986 issued to the applicant by the fourth respondent under which the applicant was allowed refund of Rs. 663.10 out of the sum of Rs. 1563.07 credited by him on account of alleged ~~short fall~~ ^{shortage}. The implication of this memorandum is that the shortage was only to the extent of Rs. 889.97 and as such, the memorandum of charges in respect of alleged shortage of Rs. 1563.07 and the finding of the Enquiry Officer and the Disciplinary authority upholding the same are not ex facie sustainable. This is a matter which had to be taken note of by the revisional authority.

7. In the result, we are constrained to hold that the revision petition dated 21.10.1986 submitted by the applicant before the President of India has not been properly considered and disposed of. We direct the first respondent to whom the petition has been forwarded from the President's Secretariat to consider the revision petition on merits and dispose it of in accordance with law within a period of two months from the date of receipt of a copy of this order.

8. The application is disposed of as above.

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(G. Sreedharan Nair)
Judicial Member
3.3.1989

S. P. Mukerji
(S. P. Mukerji)
Vice Chairman
3.3.1989

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