

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.71 OF 2007

Wednesday this the 20th day of August, 2008.

CORAM:

**HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Dr. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

P. Premalatha
Postal Assistant
Presently working as
Sub Postmaster, Karukutty P.O
Angamaly, Ernakulam District : Applicant

(By Advocate Mr. TCG Swamy)

v.

1. Union of India represented by the
Secretary to Government of India
Ministry of Communications
(Department of Posts) New Delhi
2. The Chief Post Master General
Kerala Postal Circle
Thiruvananthapuram
3. The Post Master General
Central Region, Kochi
4. The Senior Superintendent of post Offices
Aluva Postal Division, Aluva
Ernakulam District : Respondents

(By Advocate Mr. M.M. Saidu Muhammed)

The application having been heard on 24.07.2008, the Tribunal on ~~20/8/08~~ delivered the following :-


ORDER

HON'BLE Dr. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

The applicant in this OA is working as a Postal Assistant. While she was working at Angamaly Post office as the Treasurer, there was a burglary in the post office during the period between 5.12.2000 and


7.12.2000 when the postal employees were on strike. Cash amounting to Rs.87270 was lost in the burglary. Proceedings were initiated against the applicant under Rule 16 of CCS (CCA) Rules. Though the applicant denied the allegation of negligence, she was held responsible for the loss and a penalty of recovery of Rs.36000 at the rate of Rs.1000 per month was imposed on her. The applicant challenged the said penalty in OA721 of 2002. The OA was allowed on the ground that the respondents should have held an enquiry as the alleged negligence was factual and denied by the employee. The Tribunal had relied on the judgment of the Hon'ble Supreme Court in O.K.Bharadwaj v Union of India in which it was held that if the charges are factual and denied by the delinquent employee an enquiry is called for in the case of minor penalty and this is a minimum requirement to fulfill the principle of natural justice. Though the Tribunal quashed the penalty imposed, no liberty was given to the respondents to initiate an enquiry. However the respondents thereafter initiated an enquiry by serving a charge sheet and followed it up with the appointment of an enquiry officer. The enquiry officer submitted the report holding that the charge of negligence is proved. Based on the findings of the enquiry report, the respondents imposed the penalty of recovery of Rs.40,000 from the applicant's salary at the rate of Rs.1000 per month (A/10) by order dated 29.12.2006.

2. The applicant has challenged the aforesaid penalty in this OA. It is the contention of the applicant that as the Tribunal did not give any liberty to the respondents to initiate fresh proceedings, the action of the respondents is ab initio void. There was no negligence on the part of the




applicant. The Sub Post Master was solely responsible for not locking the iron safe. The applicant had discharged her part of the duty by locking the pad lock. There is no evidence to show that the loss of money was on account of any laxity on the part of the applicant. She cannot be made to face proceedings again on the same set of facts and circumstances.

3. The respondents have ~~a~~ filed a reply. It is their contention that as the Treasurer of the Angamaly post office she was jointly responsible for the safe custody of cash and valuables along with Sub Post Master. She was on duty on 4.12.2000. There was a call for an indefinite postal strike from 5.12.2000. The burglary was noticed on 7.12.2000. The levers of the body lock of the iron safe was in open condition (without damage) leading to the fact that it was not locked at the close of the office hours on 4.12.2000. The SPM had kept the key of the body lock on top of the iron safe and attended an urgent phone call asking the treasurer to lock it. The applicant failed to ensure that the body lock of the safe was locked. In the Tribunal's order in OA721/2002 it was observed that an enquiry should have been held to establish the alleged negligence. Therefore the respondents initiated the fresh proceedings. There was no restriction on initiating the required enquiry. The charge of negligence is proved in the enquiry. It was the duty of the applicant along with the SPM to remit the surplus cash in the Bank. This was not done by the applicant though she was fully aware of the strike call. All the required formalities had been done before imposing the penalty.



4. We have heard the learned counsel for the applicant Shri TCG Sway and the learned counsel for the respondent Shri MM Saidu Muhammed . We have also perused the records carefully.

5. The issue for consideration in this OA is whether the penalty imposed on the applicant by way of recovery of a sum of Rs.40,000 from her salary for the alleged negligence can be sustained in the eye of the law. It is not disputed that there was a burglary in the post office between 5.12.2000 and 7.12.2000 when the postal employees were on strike. The applicant was the Treasurer and the Sub Post Master was one Mr.M.P.Poulose. The respondents had proceeded against both Mr. Poulose as well as the applicant. A penalty of recovery of an amount of Rs.50364 was imposed on Mr.Poulose by order dated 30.4.2001 and by a separate order dated 20.6.2001 an amount of Rs.36000 was ordered to be recovered from the applicant. In OA149/2003 this Tribunal quashed the penalty imposed on Mr.Poulose. In OA721/2002 this Tribunal quashed the penalty imposed on the applicant. However the respondents again initiated enquiry proceedings in both the cases on the ground that the Tribunal had observed in the judgments that this was a fit case in which there should have been an enquiry before imposition of the minor penalty. Mr. Poulose challenged the fresh charge sheet and the appointment of the enquiry officer in OA97 of 2007. While allowing the OA97 of 2007 the Tribunal had held the Tribunal having already quashed the earlier proceedings on merit, there is no question of issue of a fresh charge sheet on the same facts and material. In the case of the applicant the respondents proceeded with the enquiry and at the conclusion of the enquiry the penalty of recovery of



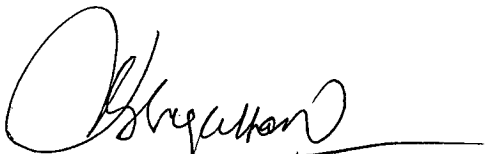
Rs.40000 was imposed, which is under challenge. The grounds on which the charge sheet against Mr.Poulose was quashed by this Tribunal are squarely applicable to this case also. In OA721/2002 while quashing the penalty imposed on the applicant this Tribunal had not given liberty to the respondents to initiate fresh proceedings. On merits also the charge of negligence against the applicant cannot be sustained. The charge against the applicant was that she failed to ensure whether the Sub Postmaster has locked the body lock before locking treasury cage. How could the subordinate official "ensure" that the responsibility entrusted to a superior is discharged by him? The applicant was only responsible for locking of the padlock. The responsibility for locking the body lock of the iron safe was that of the Sub Post Master. The respondents have admitted in their reply that departmental investigations reveal that the levers of the body lock were in open condition (without damage) leading to the conclusion that it was not locked at the close of office hours on 4.12.2000. On the other hand padlock was found to have been broken by the burglars. Therefore the applicant who was responsible only for locking the padlock, cannot be said to have contributed to the loss of cash kept in the iron safe. The applicant cannot be responsible for the burglary per se. The charge against the applicant is therefore totally misconceived. We are therefore of the considered opinion that the penalty imposed on the applicant cannot be sustained in the eye of law.

6. For the reasons stated above, the OA is allowed, The penalty order dated 29.12.2006 (A10) is quashed and set aside. Any recovery made pursuant to the penalty order dated 29.12.2006 shall be refunded to the



applicant within a period of three months from the date of receipt of this order. The parties will bear their own costs.

Dated, the 20th August, 2008.



Dr.K.S.SUGATHAN
ADMINISTRATIVE MEMBER

VS



GEORGE PARACKEN
JUDICIAL MEMBER