

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 83 of 2011

Wednesday this the 7th day of March, 2012

CORAM:

**HON'BLE MR. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

P.V. Mohandas,
S/o. Sri Vava,
Assistant Superintendent of Post Offices,
Thrissur Postal Division (under orders of
reversion to the cadre of Postal Assistant),
Residing at 'Revathy', CC No. 26/1358,
Thevara, Cochin - 682 013,
Ernakulam District.

... Applicant

[By Advocates Mr. O.V. Radhakrishnan, Sr. with
Mr. Gens George]

v e r s u s

1. Postmaster General, Central Region,
Cochin- 682 018.
2. Senior Superintendent of Post Offices,
Ernakulam Postal Division,
Cochin-682 011.
3. Union of India, represented by its Secretary,
Ministry of Communications,
Department of Post,
Dak Bhavan, New Delhi - 110 001.

... Respondents

[By Advocate Mr. Pradeep Krishna, ACGSC]

The application having been heard on 21.02.2012, the Tribunal
on 7/3/2012 delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member -

The applicant entered service as Postal Assistant on 07.09.1979.
Consequent upon his becoming successful in an All India Competitive



Examination, the applicant was promoted as Inspector of Post Offices on 06.11.1989. He was promoted further as Assistant Superintendent of Post Offices (ASP) on 04.01.1995. While working as ASP, Thrissur Postal Division, he was proceeded against, for the misconduct of selecting two persons who were not having the highest marks in SSLC as Extra Departmental Messenger and Extra Departmental Delivery Agent. He was awarded the penalty of compulsory retirement from service vide order dated 31.01.2001. The penalty order was confirmed by the Appellate Authority and the Revisional Authority. O.A. No. 789/2003 challenging the said orders filed before this Tribunal was dismissed on 13.03.2006. By order dated 16.01.2009 in Writ Petition (C) No. 35435/2007, Hon'ble High Court of Kerala remanded the O.A. to this Tribunal, which was disposed of by order dated 28.07.2009 remitting the matter to the Appellate Authority to consider the lone aspect whether the applicant deserves any other penalty than termination from service. R.A.No. 47/09 filed by the department was disposed of on 04.11.09, directing the Postmaster General to act as the Appellate Authority, who passed the order confirming the penalty of compulsory retirement dated 01.04.2010. This Tribunal had issued an order dated 16.06.2010 informing the respondents that sue moto contempt would be taken if the order of this Tribunal was not complied with. The department filed Writ Petition (C) No. 23275/2010 against the said order. By judgment dated 01.11.2010, the said Writ Petition was disposed of observing that there is no need to go into the question of indiscipline levelled against the respondent as it was already confirmed by this Tribunal and directed that the department should consider a lesser punishment to the respondent as suggested by this Tribunal. After getting his representation against the proposed punishment, the 1st



respondent passed an order dated 23.12.2010 reinstating him in service with immediate effect and reverting him to the cadre of Postal Assistant for a period of 2 years with cumulative effect. The applicant filed Contempt Petition (C) No. 73/2011 in the Hon'ble High Court of Kerala, which was dismissed on 19.01.2011 reserving it open to the applicant to take appropriate steps to challenge the proceedings before the appropriate forum. Accordingly this O.A. was filed by the applicant for the following reliefs:

- i. to declare that Annexures A-12 and A-13 orders, reverting the petitioner to the post of Postal Assistant in the stage of Rs. 5200/- in the scale of pay of Rs. 5200-20,200 for a period of 2 years with cumulative effect are passed in total disregard of the finding of this Hon'ble Tribunal in Annexure A-4 order dated 28.7.2009 that the omission on the part of the applicant is only a negligence simpliciter and that the penalty of compulsory retirement is shockingly disproportionate, are passed in flagrant violation of the direction to impose any other penalty which has been clarified to be a lesser penalty by the Hon'ble High Court in Annexure A-7 judgment dated 1.11.2010;
- ii. to declare that Annexures A-12 and A-13 orders reverting the applicant to the post of Postal Assistant, two ranks below in hierarchy to the post of Assistant Superintendent of Post Offices he was holding, with cumulative effect, is not a penalty authorised to be imposed under Rule 11 of the CCS & CCA Rules;
- iii. to declare that the penalty of reversion to the cadre of Postal Assistant at the stage of Rs. 5200/- in the pay scale of Rs. 5200-20,200 is shockingly disproportionate to the misconduct found to be a negligence simpliciter by this Hon'ble Tribunal in Annexure A-4 order and hence is violative of the doctrine of proportionality and Article 14 of the Constitution of India;
- iv. to issue appropriate direction or order directing the 1st respondent not to impose a major penalty of the applicant, having regard to the finding of this Hon'ble Tribunal in Annexure A-4 order, that the omission on the part of the applicant is only a negligence simpliciter, which has been upheld by the Hon'ble High Court in Annexure A-7 judgment;
- v. to call for the records leading to Annexure A-12 and A-13 and to set aside the same;



vi. to grant such other reliefs which this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case; and

vii. to allow the above Original Application with costs."

2. The applicant contended that Annexure A-12 and A-13 orders are issued in defiance of the direction issued by this Tribunal and affirmed by the Hon'ble High Court of Kerala. No major penalty can be imposed on the applicant for an omission which has been found to be a negligence simplicitor. The 1st respondent is legally obliged to impose a penalty consistent with the principle of proportionality. The penalty imposed as per Annexure A-12 order is shockingly disproportionate having regard to the gravity of the misconduct. The penalty of reversion to the cadre of Postal Assistant at the stage of Rs. 5200/- which is the initial stage, for a period of 2 years with cumulative effect is not a penalty falling within Rule 11 of the CCS (CCA) Rules, 1965. The applicant was not given an opportunity to represent against the penalty of reversion to the post of Postal Assistant as it was proposed to impose lesser penalty and it was not indicated that it was proposed to revert him to the post of Postal Assistant, which is two ranks below the post he was holding in the hierarchy. In *Ram Prakash Agnihotri vs. District Judge, U.P. and Others*, (1991) Supp.1 SCC 190, it was held that reduction should be to the next lower rank in the hierarchy. The penalty of reduction to the lowest post of Postal Assistant for a period of 2 years was issued without regard to the fact that the date of superannuation of the applicant is 31.10.2012. The order of penalty would run beyond the date of superannuation resulting in invidious discrimination. The pension that is payable to the applicant on retiring from the post post of Postal Assistant is



Rs. 3800/- apart from the reduction of other retiral benefits, such as DCRG, commutation value, leave salary etc. This pension should be much less than the pension he is getting on compulsory retirement. Therefore, Annexure A-12 order operates as a graver and harsher punishment. No penalty other than that is statutorily prescribed can be imposed under the guise that there is no prohibition to impose such a penalty. Annexure A-12 order of penalty is not in accordance with Annexure A-18 amended rules for the following infirmities:

- (i) Reduction was not to a lower grade, but to the lowest grade;
- (ii) It was not for a specific period leaving room for promotion on the expiry of the said specified period;
- (iii) No direction was passed as to whether or not the period of reduction to lower grade shall operate to postpone future increments of his pay and if so, to what extent;
- (iv) A direction was not given that on promotion on expiry of the specified period whether or not, the applicant shall regain his original seniority in the higher grade, and
- (v) the applicant was illegally reverted to the cadre of Postal Assistant for a period of 2 years with cumulative effect, which penalty is unknown to Annexure A-18 Rules.

As per Rule 129 of the Postal Manual Vol.III, an appellate order replaces the punishment order. It follows that Annexure A-12 appellate order dated 23.12.2010 is issued in replacement of Annexure A-1 order of punishment dated 31.01.2001. Annexure A-1 order of punishment of compulsory retirement was given effect to with effect from 15.02.2001. On passing orders awarding lesser punishment, the applicant cannot be made to suffer a harsher punishment from a posterior date over and above the punishment already suffered by him.



3. The respondents contended that nowhere in the CCS (CCA) Rules, 1965, it is stated that the penalty of reduction should necessarily be 'next below grade'. There is no bar in reverting him to the post of Postal Assistant. Annexure A-12 order was issued fulfilling all rules and regulations and directions of this Tribunal and Hon'ble High Court. It cannot be said that reverting the applicant to the post of Postal Assistant operates as a harsher penalty than the penalty of compulsory retirement from service. The respondents have awarded lesser penalty prescribed under Rule 11 (vi) of CCS (CCA) Rules, 1965 and Annexures A-12 and A-13 orders are legally valid. The difference between a lesser punishment and harsher punishment is to be decided on consideration of various factors. The reduction in rank is prescribed statutorily as a penalty. The appropriate authority has decided to impose the punishment of reduction in rank by two stages in the same feeder category. There is no illegality in issuance of the order to reinstate the applicant, reverting in the rank of Postal Assistant which was initially occupied by him.

4. We have heard Mr. O.V. Radhakrishnan (Senior) with Mr. Gens George, learned counsel for the applicant and Mr. Pradeep Krishna, ACGSC, learned ACGSC appearing for the respondents and perused the records.

5. For the sake of convenience, the relevant part of the order dated 28.07.2009 in O.A. No. 789/2003 is extracted as under:

"20. In view of the above, the finding of the inquiry officer cannot be faulted with. However, since it has not been proved that selection of second meritorious candidates is on account of extraneous consideration, the omission on the part of the



applicant should be treated as one of negligence simplicitor. The question then is whether the penalty imposed is commensurate with the gravity of the misconduct. We are of the opinion that penalty of compulsory retirement for such a misconduct which is not scented with any ulterior motives is shockingly disproportionate. In this regard, reliance could be placed on the decision by the Apex Court in the case of *Union of India v. K.G. Soni*, (2006) 6 SCC 794, wherein, the Apex court has held as under:-

"In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed."

Thus, as the Tribunal cannot substitute any punishment, we have to remand the matter to the appellate authority to consider the lone aspect as to whether the applicant deserves any other penalty than termination from service.

21. In view of the above, this OA is disposed of with a direction to the appellate authority to consider the case of the applicant in the light of the above discussions and arrive at a judicious conclusion and communicate the same to the applicant within a period of two months from the date of communication of this order. No costs. "

This Tribunal held that the misconduct on the part of the applicant as one of negligence simplicitor and the penalty of compulsory retirement for such a misconduct is shockingly disproportionate and remanded the matter to the Appellate Authority for a judicious decision as to a lesser penalty.

6. By order dated 23.12.2010, in purported compliance of the order of the Hon'ble High Court to consider a lesser punishment as directed by this Tribunal, after sending the applicant a proposal about the proposed punishment and giving him an opportunity to represent against the same, the disciplinary authority passed the order of punishment as under :



"9. Now therefore, on appeal in connection with the orders of Hon. High Court of Kerala in WP(C) 23275/2010 and after considering the reply submitted by the official dated 7.12.2010. I, G. Ninan, Post Master General, Central Region, Kochi 682 018, here by order that Sri P.V. Mohandas, retired Assistant Superintendent of Post Offices, Thrissur Postal division, be reinstated to service with immediate effect, reverting him to the cadre of Postal Assistant carrying pay scale of Rs. 5200-20200 with grade pay of Rs. 2400/- at the stage of Rs. 5200/- for a period of 2 years with cumulative effect.

10. The period spent by Sri P.V. Mohandas in between date of compulsory retirement and reinstatement will not be eligible for any amount for the period he has not worked since he had received pension during those period as ordered by Hon. High Court of Kerala."

7. The letter dated 03.12.2010 sent to the applicant regarding the proposed punishment mentioned only "a lesser punishment of reduction to a lower grade" (Annexure A-8). The proposal of punishment did not convey the proposed punishment correctly and precisely. The applicant vide his representation dated 07.12.2010 had pointed out that the proposal was not clear; that he was undergoing substantial monetary loss for many years and that he is to retire on 31.10.2012 and sought no further punishment failing which only a minor penalty. The proposal of punishment sent to the applicant was not specific and thereby prevented him from representing effectively against the proposed punishment. Further, the points of substantial monetary loss suffered and the date of retirement of the applicant were not considered by the Appellate Authority in the impugned order. We find that the impugned order is passed without following the principles of natural justice and the Appellate Authority has failed to comply with the directions of Hon'ble High Court and this Tribunal in letter and spirit.



8. The applicant was awarded the penalty of compulsory retirement from service vide order dated 31.01.2001 which was made effective from 15.02.2001. The purported lesser penalty was awarded vide order dated 23.12.2010. For almost 10 years, the applicant suffered the penalty of compulsory retirement and consequential monetary loss. As contended by the applicant, the Annexure A-12 appellate order replaces the Annexure A-1 order. In taking a judicious decision as to the lesser penalty to be imposed on the applicant, the aspect of penalty already suffered by him should have been taken into account. Non consideration of this material point which does not call for a direction from this Tribunal, also vitiates the impugned order.

9. Rule 11 (vi) of CCS (CCA) Rules, 1965, as amended by notification dated 02.02.2010 (Annexure A-18) reads as under :

“(vi) reduction to lower time scale of pay, grade, post or service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time scale of pay, grade, post or Service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period -

(a) the period of reduction to time scale of pay, grade, post or service shall operate to postpone future increments of his pay, and if so, to what extent; and

(b) the Government servant shall regain his original seniority in the higher time scale of pay, grade, post or service;”“(vi) reduction to lower time scale of pay, grade, post or service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time scale of pay, grade, post or Service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period -

The reversion has to be for a specific period. But a reversion with cumulative



effect, as stated in the impugned order, does not find a place in Rule 11. Further, the impugned order does not indicate promotion on expiry of the specified period; whether the future increments are postponed and if so, to what extent; whether he will regain his original seniority in the higher grade. These infirmities in our considered view render the impugned order illegal.

10. The reversion of the applicant as per the impugned order dated 23.12.2010 is for 2 years. The applicant is to retire on 31.10.2012. Even on counting that reversion starts on 23.12.2010, it will expire on 22.12.2012 only. The order of reversion cannot operate beyond the date of retirement. The penalty order dated 23.12.2010 is not implementable in full. Issuing an order of penalty which cannot run its full course, shows the lack of application of mind. The applicant had alerted the Appellate Authority about his date of retirement. The Appellate Authority on a charge of negligence, can be put in the same box as the applicant.

11. As the applicant is to retire during the currency of the penalty of reversion, his pension will only be Rs. 3800/- per month instead of Rs. 5546/-, the pension amount, he receives as pension now on compulsory retirement, as submitted during hearing. This would in effect mean that the applicant has to suffer the effect of compulsory retirement for 11 years as of now, reversion to the lower post of Postal Assistant and perpetual reduction in pension, on account of the "lesser punishment" now inflicted upon the applicant. In fact, the impugned order dated 23.12.2010 turns out to be a harsher and graver and more shockingly disproportionate punishment than the penalty order of compulsory retirement dated 31.01.2001, contrary to the directions of the

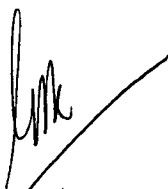


Hon'ble High Court and this Tribunal.

12. In the light of the above findings, we hold that the impugned order is unsustainable in law. Having regard to the facts and circumstances of the instant case, we do not consider it fit to remand the matter again to the Appellate Authority for reconsideration of penalty. In our considered opinion, the applicant has already suffered adequate punishment commensurate with the gravity of misconduct on his part by the operation of the order of compulsory retirement till now and it is exemplary, to serve as a deterrent to others. Any further punishment is not called for in the interest of justice. Therefore, we allow the O.A. as under.

13. Annexure A-13 order dated 23.12.2010 is set aside. The respondents are directed to reinstate the applicant as Assistant Superintendent of Post Offices within a period of 60 days from the date of receipt of a copy of this order. As directed by the Hon'ble High Court, no back wages are to be paid. As the applicant is to retire on 31.10.2012, the retirement benefits already paid, if any, should not be recovered, but be adjusted against the payments on his retirement on superannuation. No costs.

(Dated, the 7th March, 2012)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE PR RAMAN
JUDICIAL MEMBER

cvr.