

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.87/2002

MONDAY, THIS THE 13th DAY OF SEPTEMBER, 2004

C O R A M

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

C.M. Parameswaran s/o Govindan
Postman, Poonkunnam Sub Office
residing at Madathiparambil House
Chemmanthatta, Kacheri-680 501. Applicant

By Advocate Mr. M.R. Rajendran Nair

V_S.

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

2. Member (Personnel),
Postal Services Board,
New Delhi.

3. Chief Post Master General, Kerala Circle
Trivandrum.

4. Director of Postal Services
Office of the Postmaster General
Central Region, Kochi.

5. Senior Superintendent of Post Offices,
Mysore Division,
Mysore

6. Senior Superintendent Of Post Offices
Trissur Division,
Trissur-680003

By Advocate Mr. M. Rajeev, ACGSC

The Application having been heard on 3.6.2004 the Tribunal delivered the following on 13.9.2004.

O R D E R

HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER

The applicant, a Postman in the Poonkunnam Sub-Office is aggrieved by the rejection of his revision petition by the third respondent against the appellate Order of the fourth respondent which refused to

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interfere with the penalty of reduction in rank imposed by the fifth respondent. He had approached this Tribunal earlier in O.A 936/1998 which was disposed of by permitting the applicant to prefer a revision petition, and in 947/1999 which was closed recording the submission made by the counsel for the applicant that the applicant had in the meantime been acquitted by an Appellate Court of the criminal charges in the same matter and the applicant could now submit all the facts before the concerned authority. As the facts stand, the miscellaneous case filed in the High Court by the Disciplinary Authority against the acquittal order of the applicant by the Sessions Court is pending. It would be worthwhile to recall that apart from departmental proceedings, a criminal case was instituted against the applicant on substantially the same set of facts and the First Class Judicial Magistrate Kunnamkulam had found the applicant guilty under Section 409 of the Indian Penal Code. The applicant had gone on appeal before the Sessions Court and the Sessions Court had suspended the Sentence. Before the verdict of the Sessions Court, the disciplinary authority in pursuance of Rule 19 of the CCS(CCA) Rules had on the basis of the verdict of the First Class Judicial Magistrate proposed to impose the penalty of dismissal on the applicant. While so, the Sessions Court had suspended the sentence and the disciplinary authority had gone before the High Court against this verdict of the Sessions Court, and the verdict of the High Court, as already stated, is still awaited.

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2. In the present application the applicant is seeking mainly the following reliefs:

- (i) Annexure A-3 being the penalty order issued by the Senior Superintendent of Post Offices, Mysore Division, Annexure A5 being the Appellate Order and Annexure A11 being the Revisional Order be quashed.
- (ii) The applicant's revision to the lower grade fixing his pay at the minimum of that scale, be declared illegal, and
- (iii) The respondents be directed to reinstate the applicant as Postal Assistant with all consequential benefits including arrears of pay and allowances.

3. The learned counsel for the applicant challenging the A3 orders argued that the penalty imposed combines reduction to lower time scale with a further reduction to the lowest stage of that scale, thereby awarding two punishments in one go, impermissible in law. He argued that when he was being reduced to a lower grade there was no further need to place him at the lowest stage of the lower scale attached to that reduced grade. The Appellate Order was challenged by him on the ground that it failed to give adequate consideration to the applicant's submission that he was denied reasonable opportunity by the enquiry officer as four out of six records requisitioned by him were not produced. Further, the inquiring authority relied upon a document in evaluating evidence against the applicant though that document was not marked as exhibit and admitted as evidence during the enquiry. Even though these facts were pointed out in the Appeal,

the Appellate Authority failed to consider the facts while refusing to interfere with the disciplinary order. The Revisional Order, the learned counsel argued was without jurisdiction as the third respondent by its own admission was not the Revisional authority.

4. The learned counsel for the respondents pointed out that the applicant was still under a shadow of doubt as to his fitness for further continuance in duty as the criminal miscellaneous case filed in the High Court by the Disciplinary Authority against the acquittal order of the applicant by the Session Court was still pending. He contended that the enquiry did not suffer from any procedural infirmities. In regard to submission of records, only such records were allowed by the Inquiry Officer, as had direct relevance to the case and the applicant had failed to specify the reasons why the whole of the records including balances of stamps held on a particular day were required to be produced without identification. The applicant had not challenged the Inquiry Officer's ruling during the enquiry. The learned counsel also argued that no case of lack of jurisdiction on the part of disciplinary authority or Revisional authority would be sustainable as the concerned authorities were exercising their delegated powers legitimately and fairly. It is true that A9 communication dated 28.5.2001 indicated the Revisional Authority as Member (P) but R-1 dated 29.5.2001 vested the revisional powers in the CPMG, which was rightly

12.6.2001

exercised. In regard to the charge of double penalty, the learned counsel argued, there would be no such case as reduction in grade carries with it the responsibility of identifying the stage of the scale.

5. Heard. The following charges were levelled against the applicant:

"Article I: that Shri C.M.Parameswaran, Postal Assistant, while working as Treasurer No:II in charge of stamps and postal stationery items at Kunnamkulam H.P.O, has failed to produce stamps and stationary items worth Rs.53,040/- (rupees fifty three thousand forty only) as enjoined in provisions of Rule 217 of P&T Manual Volume V before the Senior Superintendent of Post Offices, Trichur Postal Division, Trichur-680002, who has found stock of stamps and postal stationery items to the tune of Rs.1162016/15 only as against 1215056/15 being the balance in relation to HO accounts as on 12.9.1992 and has thus exhibited lack of integrity, devotion to duty and has acted in a manner unbecoming of a government servant and thereby in contravention of Rule 3(1)(I), 3(1)(ii) of CCS (Conduct) Rules, 1964.

Article II: That the said C.M.Parameswaran while working as Stamp Treasurer, Kunnamkulam HO from 7.8.1990 to 6.8.1992 has failed to maintain prescribed register of daily stamp balances of Kunnamkulam HO from 8.3.1991 to 13.5.1991, 26.5.1991, 28.5.1991, 2.6.1991 to 12.6.1991, 15.6.1991 to 3.1.1992 as required in note 3 below Rule 65 of FHB Volume II and thereby exhibited lack of integrity and devotion to duty in contravention to Rule 3(1)(I), 3(1)(ii) of CCS(Conduct) Rules 1964.

Article III: That during the aforesaid period and while functioning as Stamp Treasurer in the aforesaid office, Sri.C.M.Parameswaran has failed to account for an amount of Rs.53040/- being the sale proceeds of stamps and postal Stationery items of Kunnamkulam HO during the period from 7.8.1990 to 12.9.1992 in contravention of Rule 4(1) Rule 6 and Rule 103 of FHB Volume I and thereby exhibited lack of integrity, devotion to duty and also acted in a manner unbecoming of a Government Servant in contravention to Rule 3(1)(i) and 3(1)(iii) of CCS (Conduct) Rules 1964."

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6. The enquiry proved the charges beyond doubt and adhoc disciplinary authority (SSPO Mysore) imposed the penalty while a regular disciplinary authority had initiated the proceedings. The need for an adhoc disciplinary authority arose as after the initiation of proceedings, the incumbent disciplinary authority was transferred and the subsequent holders of the post were not found to be of appropriate level. The SSPO Mysore was the last of the adhoc disciplinary authorities in a row. The applicant in his revision petition had raised a technical point that SSP Ernakulam had only the powers to impose penalty and not the powers to institute proceedings. We however see from Rule 13 of CCS(CCA) Rules that a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (iv) of Rule 11 may institute proceedings for imposition of penalties specified in clauses (v) to (ix) of Rule 11 as well. In any case no such case has been made out in the application. In regard to the lack of jurisdiction on the part of the Chief Post Master General, who disposed of the revision petition, we find from R1 notification of the Ministry of Communication dated 29.5.2001 that the CPMG is in fact the appropriate Revisional authority in the present case. The notification is reproduced below:

Ministry of Communications
(Department of posts)

New Delhi, the 29th May 2001

NOTIFICATION

No. SO.. In exercise of the powers conferred by clause (VI) of Sub Rule (1) of Rule 29 of the Central Civil Services (Classification, Control

12-1-2001

and Appeal) Rules, 1965, the President hereby specifies that in the case of a government servant serving in the Department of posts for whom the appellate authority is subordinate to the authority designated as the Principal Chief Postmaster General or the Chief Postmaster General (other than the Chief Postmaster General of Senior Administrative Grade) of a Circle, the said Principal Chief Postmaster General or the said Chief Postmaster General, as the case may be, shall be the revising authority for the purpose of exercising the powers under the said Rule 29.

(No.C-11011/1/2001-VP)

Sd/-
(B.P.SHARMA)
DIRECTOR(VP)

7. Facts being such we hold that any challenge to the exercise of jurisdiction by the disciplinary authority, appellate authority and the Revisional authority would ^{be} unsustainable. We also do not see any infirmity in the disciplinary process. In regard to the merit of the charges, we find no reason to interfere when the processes have not been vitiated and the appropriate authorities in exercise of the powers vested in them have reached certain conclusions on the basis of facts and evidences available to them.

8. In the result we dismiss the application, leaving the parties to bear their own costs.

Dated the 13th September, 2004.

H. P. Das

H.P. DAS
ADMINISTRATIVE MEMBER

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A.V. HARIDASAN
VICE CHAIRMAN