

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.90/93

Tuesday, this the 9th day of November, 1993.

SHRI N DHARMADAN, JUDICIAL MEMBER  
AND  
SHRI S KASIPANDIAN, ADMINISTRATIVE MEMBER

L Arul Raj, Postal Assistant  
(Under Compulsory Retirement) Kattappana  
Post Office, Idukki District, now residing  
at 3rd Division, Benamy Estate,  
Elappara Village. - Applicant

By Advocate Shri KRB Kaimal

Vs.

1. Union of India represented by  
the Secretary to Government of India,  
Ministry of Communication,  
New Delhi.
2. Director of Postal Services,  
Central Region, Kochi.
3. Superintendent of Post Offices,  
Idukki Division, Thodupuzha. - Respondents

By Advocate Shri M Mohamed Navaz, ACGSC

O\_R\_D\_E\_R

N DHARMADAN, JUDICIAL MEMBER

The applicant is aggrieved by the penalty advise  
Annexure-I and the appellate order Annexure-II as also the  
refusal of the respondents to regularise his services from  
the date of suspension namely, 23.4.1983 till 27.12.1988 on  
which date he joined duty as per the order Annexure-V dated  
9.12.1988.

2. According to the applicant, while he was working  
as a Postal Assistant, a criminal case was registered

against him on a complaint filed by the Department, alleging misappropriation of 18,917.00. The very next day viz, 23.4.1983, he was suspended from service. The criminal case ended in Annexure-IV judgement dated 17.10.1986 acquitting him from the criminal charges. As per Annexure-V order dated 9.12.1988, he was ordered to be reinstated in service. Accordingly, he joined duty on 27.12.1988. Later, Annexure-VI show cause notice dated 16.1.1989 was issued directing him to show cause why period of suspension should not be treated as duty for limited purposes. The applicant filed his objection. Disposing of the objection, Annexure-XI order was passed on 19.12.1989. It reads as follows:

"Please refer to your representation dated 18.9.89 and 28.9.89, regarding regularisation of period of suspension. The period of suspension will be regularised at the appropriate time taking into account the whole issues involved in it."

3. In the meantime a memo of charges, Annexure-VII was served on the applicant on 4.4.1989. After an enquiry, Annexure-I penalty advise dated 24.7.1991 was passed imposing the penalty of compulsory retirement of the applicant. He filed an appeal which was rejected as per Annexure-II order dated 10.6.1992. In these background, the applicant has filed this application under Section 19 of the Administrative Tribunals Act with the following prayers:

"(i) an order quashing/setting aside Annexure-I and II orders;

(ii) a direction to reinstate the applicant in service with continuity of service and full back wages;

(iii) a direction to third respondent to treat the period of suspension of the applicant from 23.4.1983 to 27.12.1988 as duty for all purposes including full pay and allowance and to disburse arrears of salary to the applicant."

4. Shri KRB Kaimal appearing on behalf of the applicant submitted that in the delayed disciplinary enquiry, the materials produced before the criminal court alone were relied on by the enquiry authority. Hence there is really a reappraisal of the evidence already examined by a criminal court which culminated in Annexure-IV judgement acquitting the applicant. According to him, there is a legal flaw in adopting such a procedure in the disciplinary proceedings. He submitted that the disciplinary authority's order is unsustainable. The appellate authority also followed same procedure. He did not examine all the questions raised by the applicant in the proper perspective.

5. It is a settled proposition of law that the disciplinary authority has the power and jurisdiction to initiate disciplinary <sup>proceedings</sup> against the applicant simultaneously along with criminal proceedings even inspite of the fact that a criminal case is already pending against the delinquent in respect of some offence. The scope of enquiry in both the criminal case and the disciplinary proceeding ~~are~~ different. In civil case the accused is entitled to benefit of doubt and acquittal in case the prosecution fails to establish the case with satisfactory evidence. But in disciplinary proceedings, punishment would be imposed if preponderance of probability is established by department based on available evidence. It is not necessary to prove all the charges as in the case of criminal prosecution.

There is no legal infirmity in placing relevance on the same set of evidence in both criminal case and disciplinary proceedings.

6. In the instant case, the objection raised by the applicant, that the enquiry authority has only reappraised the evidence and hence the order passed by disciplinary authority cannot be upheld, is not on sound premises. As indicated above, the disciplinary authority as also the appellate authority can rely on the same set of evidence which were considered by the criminal court. The relevant portion of the appellate authority's order discussing the contentions and the decision and the findings there of are extracted below:

"It is also not correct to say that the Disciplinary Authority had reviewed his decision and ordered production of documents as already made clear above. His plea that he was already acquitted by the court and therefore there is no scope for further departmental action is not correct. Charges in the criminal case were that the appellant committed criminal breach of Trust by taking an amount of Rs.18,917.40 and utilising the amount for his own purpose and commission of falsification of accounts with intention to misappropriate the amount. The charge in the departmental case was his failure to maintain devotion to duty and absolute integrity and conduct unbecoming of a Govt. servant by not crediting the amount collected by him towards telephone revenue on 17.2.83. As such there is no meaning in the plea of the appellant that the departmental inquiry was unwarranted as he was acquitted in the court case. Therefore there is no irregularity in the conduct of the departmental inquiry on a charge different from the one mentioned in the charge sheet filed in the Court. Acquittal in the criminal case is not a bar to the department to proceed against the appellant for violating departmental rules. There is no need for the Disciplinary Authority to issue a charge sheet to the appellant just for his representing for regularisation of the period of suspension as a matter of revenge."

7. On a careful examination of these orders, we are satisfied that the applicant's contention cannot be sustained

The disciplinary and appellate authorities have considered the contentions and came to the conclusion that the charges in the criminal case and the disciplinary enquiry are different. It was also found that the evidence available in this case are sufficient for sustaining the charges. Accordingly, we are satisfied that the penalty impugned in this case cannot be disturbed.

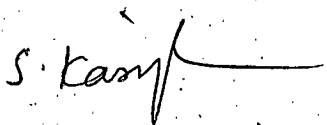
8. The only other claim remains for consideration in this case is the question of regularisation of the period from 23.4.1983 to 27.4.1988 during which the applicant was under suspension. It is admitted that the applicant was suspended on 23.4.1983 when a criminal case was filed against the applicant alleging misappropriation of money. Admittedly, the criminal case ended in acquittal <sup>an y</sup> ~~from~~ 17.10.1986. The judgement is produced as Annexure-IV. Thereafter the department passed Annexure-V <sup>order y</sup> for reinstatement of the applicant in service. He was actually reinstated in service. While directing the reinstatement, the department should have considered the question as to how the period of suspension should be treated in regard to the regularisation of the service for giving him the service benefit in accordance with law. A show cause notice was issued only in 1989. In that show cause notice also there is no proposal for regularising the period for all purposes. Hence the applicant filed this application challenging all the orders. We have already held that the penalty order is not liable to be set aside. But the other contention raised by the applicant about the

failure of the respondents to regularise his service after the acquittal by the criminal court deserves consideration. It is seen that it took nearly an year for giving a reply to the applicant considering the <sup>objection 4</sup> petitioner. Annexure-XI is the reply. It reveals that there is no consideration of the contention of the applicant. Even after this Annexure-XI, they have not taken a decision as to how the period of suspension is to be treated for regularising his service. In fact during the period of suspension no disciplinary proceedings were initiated and during the pendency of disciplinary proceedings, he was also not suspended from service. He was placed under suspension when a criminal complaint was filed by the department. The criminal case ended in his favour and he was reinstated in service. Immediately thereafter, the respondents were obliged to take decision about the regularisation of the period particularly, when disciplinary proceeding were initiated only after the acquittal of the applicant in the criminal case without placing him under suspension during the pendency of departmental proceedings.

8. Under these circumstances, we are of the view that this application can be disposed of with appropriate direction to the third respondent to consider the regularisation of the service of the applicant for the period from 23.4.1983 till 27.4.1988 in the light of the submission made by the learned counsel for applicant that the applicant was

suspended only on account of the filing of the criminal case which ended in his favour, and not due to any disciplinary proceedings placing him under suspension from service. We do so. He shall pass orders in accordance with law, within three months from the date of receipt of a copy of this judgement.

9. The application is disposed of as above. No costs.

  
(S KASIPANDIAN)  
ADMINISTRATIVE MEMBER

  
(N DHARMADAN)  
JUDICIAL MEMBER

trs