

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 97 of 2007

.....Friday, this the 20th day of June, 2008

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE DR. K S SUGATHAN, ADMINISTRATIVE MEMBERS

M.P. Poulose,
S/o. Paulo,
Postmaster HSG II, Kalady M.D.G.,
residing at Mullasedath House,
Kalady P.O. : 685 574 ... Applicant.

(By Advocate Mr. P.C. Sebastian)

v e r s u s

1. The Director Postal Services,
Central Region, Kochi – 682 018
2. The Sr. Supdt. of Post Offices,
Aluva Division, Aluva : 683 101
3. Union of India, represented by
Secretary, Ministry of Communications,
Department of Posts, New Delhi. ... Respondents.

(By Advocate Mr. P.A. Aziz, ACGSC)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The legal issue involved in this case is as to whether the authorities could issue a fresh charge sheet in respect of the same set of facts, when the earlier disciplinary proceedings issued on the same set of facts had been, on merit, held to be illegal in the eye of law and no permission explicit or implicit for issue of a fresh charge sheet had been given by the Tribunal.



2. The facts: The applicant was functioning as Sub Postmaster, Angamally between 13-05-1998 to 03-05-2002. During the period 05-12-2000 to 07-12-2000 there was a general strike by the Postal Staff all over the country and the entire staff of Angamally Post Office were no exception to it. When the staff of Angamally Post Office reported for duty after the strike on 7-12-2000 it was found that the office cash safe was found broken open by force by thieves and cash worth Rs 86,364.85 kept in the safe was found stolen. Due complaint was lodged with the Police authorities but there was no headway. Action under Rule16 of the CCS (CC&A) was taken against the applicant and another lady Postal Assistant by issue of charge sheet dated 30-04-2001, vide Annexure A-1. The applicant was awarded the penalty of recovery of a sum of Rs 50,364.85 in 36 instalments, vide Annexure A-2. Appeal and revision filed by the applicant were also dismissed, vide Annexure A-3 and A-4. The applicant had filed OA No 249/2003, which was decided as under:-

“It is an admitted fact that burglary occurred some time between 5-12-2000 to 07-12-2000, during which period the entire postal staff were on strike. The embedded iron safe has a body lock and a pad lock. The pad lock was seen cut and removed with hacksaw blade and the safe was found open. From the findings of the disciplinary authority and the materials available on record, negligence cannot be attributed against the applicant and the alleged loss incurred..... Admittedly there is no enquiry conducted by the respondents to the loss incurred and negligence aspect, apportionment etc., therefore, the impugned action cannot be said to be reasonable.”

3. With the above finding and decision, the OA was allowed and the impugned disciplinary authority's penalty order, the appellate authority's order and the

revisional authority's order were all quashed and set aside. The amount recovered from the applicant was directed to be refunded to the applicant. Annexure A-5 refers.

4. The respondents had complied with the order, by refunding the amount recovered.

5. That should have been the end of it. But the respondents had, vide the impugned Memorandum dated 10-10-2006 (Annexure A-9) once again initiated action on the self same charge but this time under the major Penalty Proceedings. Vide Annexure A-11, inquiry officer had also been appointed. The applicant has challenged the action of the respondent impugning the aforesaid Annexure A-9 and A-11 orders. The grounds inter-alia included that the Tribunal while quashing the earlier penalty orders etc., had not permitted the respondents to initiate fresh proceedings. As such, once a penalty order had been quashed and set aside on merit, the authorities have no power to initiate action against the self same matter.

6. Respondents have contested the O.A. According to them, in its order dated 20-10-2005 the Tribunal has remarked that if the charges are factual and if they are denied by the delinquent employee, an enquiry should be called for and this is the minimum requirement of the principles of natural justice. It was in compliance of this order of the Tribunal, fresh proceedings under Rule 14 of CCS(CC&A) Rules, 1965 were initiated. The averment of the applicant that he was punished on the

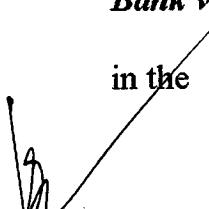


same set of facts and allegations by the Disciplinary authority does not sustain as the Tribunal has set aside the punishment by the order dated 25-10-2005.

7. Counsel for the applicant argued that the decision by the Tribunal to quash the penalty order etc., was one on merit after rendering the finding that there is no negligence on the part of the applicant in respect of loss sustained by the Government in the theft. Once the penalty order had been quashed, the respondents cannot initiate any further action on the self same matter.

8. Counsel for the respondents has referred to the counter and stated that the Tribunal has emphasised the observation of the Tribunal as stated above.

9. Arguments were heard and documents perused. Admittedly, the Tribunal had quashed the penalty order etc., not on technical grounds but on full finding that negligence cannot be attributed to the applicant nor for that matter the alleged loss to the government. Had the quashing of the earlier penalty order been on technical grounds, the Tribunal would have permitted the respondents to initiate fresh proceedings. That is not the case here. Once the penalty proceedings were initiated and the same ended either in exoneration as per the Disciplinary or appellate authority or by judicial intervention, then there is no question of a initiation of fresh proceedings on the self same matter. The Apex Court had occasion to deal with a matter of almost similar situation. In the case of *Canara Bank v. Swapan Kumar Pani*, (2006) 3 SCC 251, the gist of the charge contained in the article of charge was that the first respondent had unauthorisedly and with

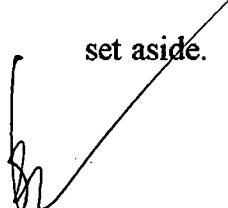


ulterior motive removed the special bearer bonds worth Rs.2 lakhs from the Bank's safe custody on 6-11-1985 on which date he was holding the second set of keys of the double lock having obtained the keys from the Manager's drawers and while removing the said bonds kept blank sheets of B-2 register therein. The said bearer bonds had been taken as collateral security from M/s Utkal Iron & Steel Industries towards sanctioning of ML limit of Rs.10 lakhs. In the departmental proceedings he was found to be not guilty of the said charges pursuant whereto he was exonerated by an order of the disciplinary authority dated 29-3-1989. Again a charge sheet containing almost identical charges was issued on 31-3-1989.

10. The Apex Court has, in that case held as under: -

13. the charges levelled against the first respondent herein are in two parts; (i) that he had on 6-11-1985 removed 20 special bearer bonds pledged by the Managing Director of M/s Utkal Iron & Steel Industries from the strong room of the Bank; and (ii) out of those special bearer bonds five bearer bonds were disposed of at Calcutta for RS.59,500. Admittedly, the first part of the charge was covered by the first charge-sheet dated 20-5-1987. He having been exonerated therefrom, no fresh charge sheet could have been issued in the absence of any statutory power in this behalf.

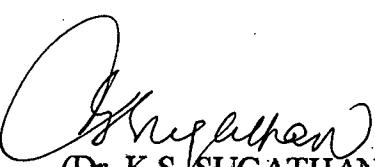
14. The above decision of the Apex Court squarely applies to the case in hand. The Tribunal having already quashed the earlier proceedings on merit, there is no question of issue of a fresh charge sheet on the self same matter and material. Thus, the impugned Annexure A-9 and A-11 orders are liable to be quashed and set aside.

A handwritten signature in black ink, appearing to be a stylized 'S' or 'S. N.' followed by a surname.

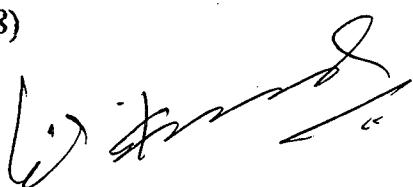
15. In view of the above, the OA succeeds. The impugned Annexure A-9 and A-11 orders are quashed and set aside.

16. Under the above circumstances, there shall be no orders as to costs.

(Dated, the 20th June, 2008)



(Dr. K S SUGATHAN)
ADMINISTRATIVE MEMBER



(DR. K B S RAJAN)
JUDICIAL MEMBER

CVR.