

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 30.3.1990

PRESENT

HON'BLE SHRI N. V. KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER.

O. A. 124/89

A. S. Govinda Marar

Applicant

vs.

1. Superintendent of Post Offices,
Alwaye Division, Alwaye-683 101

2. Senior Superintendent of Post Offices
Ernakulam Division, Cochin-11

3. Desk Officer (VIG III),
Government of India,
Ministry of Communications,
Department of Posts,
Dak Bhavan, Parliament Street,
New Delhi and

4. Union of India represented by its
Secretary, Ministry of Communications
New Delhi

Respondents

M/s. O. V. Radhakrishnan,
K. Radhamani Amma and
Raju K. Mathew

Counsel for
the applicant

Mr. K. Karthikeya Panicker, ACGSC

Counsel for the
respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

This is the second attempt of the applicant to forestall the disciplinary proceedings initiated against him for his lapses, on technical grounds.

2. While working as Postal Assistant, Alwaye Head Post Office, the Superintendent of Post Offices (first respondent) placed him under suspension by proceedings dated 8.2.1980. The following are the charges against him:

b/

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"Article I : That the said Sri A. S. Govinda Marar while functioning as Postal Assistant Alwaye HO on 25.1.80 fraudulently withdrew a sum of Rs. 1000/- from Alwaye 5 year TC a/c No. 3000040 in the name of Smt. V. K. Indira, purportedly towards interest and thereby failing to maintain absolute integrity and devotion to duty in violation of rule 3(1)(i) and 3(1)(ii) of CCS (Conduct) Rules, 1964.

Article II: That the said Sri A. S. Govinda Marar while functioning as Postal Assistant Alwaye HO on 25.1.80 fraudulently withdrew a sum of Rs. 1000/- from Alwaye 5 year T. D. account No. 3000041 standing in the name of Smt. K. G. Saudamini purportedly towards interest and thereby failed to maintain absolute integrity and devotion to duty in violation of rule 3(1)(i) and 3(1)(ii) of CCS(Conduct) rules, 1964."

3. In the enquiry the charges were proved after considering the evidence Ext. P-1 to P-19, Ext. A-1 to A-7 and the statements of CW-1 to CW-9. The Disciplinary Authority (first respondent) by proceedings dated 5.2.82 ordered compulsory retirement of the applicant. The appeal and review filed against them were rejected.

4. He filed O.P. 6212/84 challenging the enquiry reports orders of compulsory retirement, and the orders confirming *inter alia* the same in appeal and review raising/the technical contention that the Senior Superintendent of Post Offices (herein-after referred to as SSPO) is incompetent and he passed the order without jurisdiction and authority. This was transferred to this Tribunal and disposed of as TA 413/86. The operative portion of the judgment, Ext. A-1, reads as follows:

"We hold that the enquiry is vitiated and hence the order imposing the penalty cannot be sustained. We quash the order dated 5.2.1982 imposing the penalty of compulsory retirement on the applicant, as confirmed by the order of the appellate authority and of the reviewing authority, and remit the matter to the disciplinary authority, who shall afford an opportunity to the applicant to make his representation on the report of the enquiry officer and to be spent in the further proceedings should be treated would depend upon the ultimate result of the proceedings!"

5. Pursuant to Ext. A-1 the applicant was placed under deemed suspension by the first respondent on 10.10.88.

Ext. A-2 is the order. Subsequently, the Desk Officer (VIG, III), Government of India (3rd respondent issued an order dated 11.1.89 (Ext. A-3) stating that the first respondent being lower in rank than the authority who initially appointed the applicant is not competent and hence the President in pursuance of provisions of Rule 12 of the Central Civil Services (Classification Control and Appeal) Rules 1965 has ordered that the second respondent shall be empowered to function as the disciplinary authority of the applicant with powers to impose all penalties specified in Rule 11 of the said Rules, after the judgment of the Tribunal Ext. A-1 dated 19.8.88. This was issued in exercise of the power under Ext. A-4 notification of President of India under Article 77 of the Constitution of India.

6. Accordingly SSPO, Ernakulam Division issued Ext. A-5 memorandum calling upon him to submit representation, if any, in the light of the enquiry report, copy of which has already been made available to him. When the applicant challenged the authority of the second respondent to function as the disciplinary authority of the applicant under Ext. A-3 the respondents filed M.P. 447/89 producing Ext. A-6 'guidelines for working and proposals for introduction of Desk Officer system in Ministries.'

7. The applicant is challenging Ext. A-2, A-3, A-5 and A-6 as unconstitutional, ultravires and void.

8. The learned counsel, Sri O. V. Radhakrishnan, appearing on behalf of the applicant raised the following grounds for attacking the orders:

- i) Ext. A-2 was passed by a Group 'B' Officer who is not competent to impose a major penalty and that Rule 10(4) of CCS (CCA) Rules empowers only the disciplinary authority who is competent to initiate proceedings and no such competent authority having jurisdiction has taken disciplinary action in this case.

(ii) Ext. A-3, A-5 and A-6 are illegal and ultravires because the President has not given valid authorisation of delegation under Article 77(2) of the Constitution of India to constitute a disciplinary authority in this case. Desk Officer has jurisdiction. Hence, the disciplinary authority appointed under Ext. A-3 has no jurisdiction and he is not competent to continue the disciplinary proceedings against the applicant.

9. In substance the applicant after the judgment,

Ext. A-1, challenges the continuance of disciplinary

proceedings against him on the ground of lack of

jurisdiction of the disciplinary authority. The case

was heard and taken up for orders on 12.12.1989.

10. Though the case was originally heard and taken up

for orders on 12.12.1989, we wanted some clarifications

regarding the validity of Annexure A-3 order passed

in this case. Accordingly, we again posted the case

for "to be spoken to" on 13.2.1990 and after considerable

discussions at the Bar, the learned ACGSC submitted

that he will file a statement withdrawing the impugned

Annexure A-3 order and he filed the statement on

9.3.1990. The concluding portion reads as follows:

"3. The appointment of the ad hoc disciplinary authority vide Annexure A-3 order was necessitated as the applicant was appointed by the Sr. Supdt. of Post Offices, a Group A officer and the Supdt. of Post Offices, Alwaye, under whom he is working is a Group-B Officer. Now, the Alwaye Division has since been upgraded to Class-I Division and the officer holding the post of Senior Supdt. of Post Offices, Alwaye Division is a Group A Officer competent to proceed against the applicant. Being so, an ad hoc disciplinary authority is not required to proceed with the disciplinary proceedings against the applicant and as such the department is withdrawing Annexure-3 order. After the withdrawal of Annexure-3 order the Sr. Supdt. of POs Alwaye Division will proceed with the enquiry proceedings as directed by this Hon'ble Tribunal in TA 413/86."

11. In the light of the aforesaid statement we are not considering the merits of this case except in regard to Annexure A-2 which according to us had not been passed by the disciplinary authority as required under Rule 10(4) of the CCS(CCA) Rules 1965. We therefore quash the same.

12. Therefore, we need only dispose of this case with the following directions:

- i) We direct the fourth respondent to pass appropriate orders as indicated in the aforesaid statement dated 9.3.1990 and proceed with the enquiry as directed by this Tribunal in the judgment in TA 413/86.
- ii) In case the disciplinary authority decides to continue with the disciplinary proceedings from the stage indicated in the judgment of the Tribunal in TA 413/86, the provisions of Rule 10(4) of CCS (CCA) Rules would apply and the applicant shall, ^{be} ~~without any further formal~~ ^{order} be deemed to have been placed under suspension by the appointing authority from the date of the original order of compulsory retirement dated 5.2.1982. and shall continue to remain suspended until further orders. ^{Formal orders} ~~if necessary will have to be passed by the concerned authority.~~
- (iii) The applicant will be entitled to subsistence allowance in accordance with law.

13. With the aforesaid observations we dispose of the Original Application.

14. There will be no order as to costs.

N. Dharmadan

(N. Dharmadan) 30.3.90.
Judicial Member

krishnan

(N. V. Krishnan)
Administrative Member

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