

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 13/2002

Thursday, this the 3rd day of March, 2005.

C O R A M

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

P.A. Pushpalatha D/o Achuthan
Ex. Extra Departmental Sub Postmaster
Thariote, Areekara House
Via Pozhuthana, Wynad.

Applicant

By Advocate Mr.O.V. Radhakrishnan

Vs.

1. The Senior Superintendent of Post Offices
Calicut Division
Calicut-673 002
 2. Mariamma Thomas
Assistant Postmaster General (Vig)
Office of the Chief Postmaster General
Kerala Circle,
Thiruvananthapuram.
 3. Director of Postal Services (HQ)
Office of the Chief Postmaster General
Thiruvananthapuram.
 4. P. Kunhamamed Koya
Inquiring Authority
Assistant Superintendent of Post Offices
Calicut Sub Division
 5. Union of India
represented by its Secretary
Ministry of Communications
New Delhi.
 6. Mervin Alexander
Senior Superintendent of Post Offices
Ernakulam Division
Ad hoc Disciplinary Authority.
- Respondents

By Advocate Mr. C. Rajendran, SCGSC for R 1-3, 5 & 6

O R D E R

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

The applicant P. A. Pushpalatha, a dismissed Extra Departmental Sub Postmaster, is before us challenging inter alia the constitutionality, legality and fairness of the Departmental Enquiry which led to the imposition of the

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extreme penalty of dismissal on her and against which her appeal was unreasonably rejected, thereby leaving her with no option but to approach this Tribunal seeking the following reliefs:

- i. to call for the records relating to Annexures A2, A6, A7, A8, A-11. A-16, A-17, A-19, A-21 and A-24 and to set aside the same.
- ii. to issue appropriate direction or order directing the respondents to reinstate the applicant in service and to treat her as continuing in service without regard to Annexures A-21 and A-24.
- iii. to issue appropriate direction or order directing the respondents to disburse allowances for the period the applicant was illegally kept out of service and for the period she was unlawfully put off duty and also period from the date of her dismissal to the date of her reinstatement with full service benefits including arrears of allowance with 18% interest.
- iv. to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case; and
- v. to award costs to the applicant.

2. The applicant's case is that (1) She was appointed as Extra Departmental Sub Postmaster by the order dated 27.12.1988 of the Senior Superintendent of Post Offices, Calicut Division an officer borne on the Senior Time Scale of the Indian Postal Service, while the disciplinary action against her for alleged misconduct was initiated on 26.3.1993 the Senior Superintendent of Post Offices, Calicut Division an officer borne on the Junior Time Scale of the Indian Postal Service. In an arbitrary exercise of powers of Appointing Authority not vested in him but vested adhoc by A5 orders dated 1.7.1993 in SSPO Ernakulam Division, this

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Officer proceeded to appoint an Inquiry Authority by A7 orders dated 27.7.1993. This Inquiry Authority against whom a bias petition was rejected submitted his report (A-19) on 28.8.1995. The Senior Superintendent of Post Offices by A-13 orders dated 30.5.1997 removed the applicant from service. The applicant filed an appeal against the order of removal before the Director of Postal Services, Northern Region, Calicut on 14.8.1997 and the Appellate Authority by A-14 orders dated 30.4.1998 remitted back the case to the Disciplinary Authority for de novo proceedings from the stage of serving the copy of inquiry report and calling her representation. She also directed that the Disciplinary Authority would grant her a chance for personal hearing in case it is requested for by the applicant. By A-15 orders dated 31.7.1998 the Chief PMG empowered the Asstt. PMG (Vigilance) in his office to function as the Adhoc Disciplinary Authority for imposing all the penalties specified in Rule 7 of the EDA Conduct and Service Rules, providing that appeal would lie to the Director of Postal Services, Northern Region, Calicut. The adhoc disciplinary authority by A-18 communication dated 13.7.99 sent a copy of the report of the Inquiry Authority for enabling her to make a representation and offered her an opportunity for personal hearing. The applicant made her representation by A-20 communication dated 12.8.1999, and sought an appointment for personal hearing. She was granted a personal hearing on 29.10.99 and by Annexure A-21 orders dated 21.3.2000 the applicant was dismissed from service by the adhoc disciplinary authority. The applicant appealed against the order on 12.5.2000 (A-22) to the Director of Postal Services,

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Northern Region, Calicut and the appeal was transferred for disposal by Director of Postal Services (SR) in the office of the CPMG, Trivandrum on 9.10.2000. By A-24 orders dated 18.6.2001, the Appellate Authority, rejected the appeal.

3. It is the applicant's case firstly that in this whole exercise the inquiry report continued to be the centre-piece while the appointment of the Inquiry Authority itself by the first respondent on 27.7.1993 (A7), without disciplinary powers was patently incorrect and illegal. The adhoc Disciplinary authority went on to impose the extreme penalty of removal relying on the enquiry report which was the result of an enquiry conducted by an Inquiry Authority who was appointed by an authority who had already ceased to be the Disciplinary authority. Secondly, the appellate order remitting the matter to the Disciplinary authority to initiate proceedings from the stage of serving of a copy of the enquiry report was equally illegal and unfair as it arbitrarily overruled the objections raised by the applicant in regard to the substantive enquiry procedures. The penalty of dismissal and rejection of appeal against the penalty that followed were accordingly flawed. Thirdly the A-16 memo dated 17.3.1999 putting the applicant off duty retrospectively from 30.4.1998 was issued by the very same authority who had exercised disciplinary powers without authorization. The rules, according to the applicant do not provide for retrospective put off or deemed put off. Further, from 17.3.1999 to the date of dismissal (21.3.2001) the applicant was not paid subsistence allowance. Legally,

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the enquiry itself was vitiated by not examining all the material witnesses, by not supplying to the applicant documents requisitioned, and by reaching certain conclusions without any reasonable basis. An unauthorised enquiry vitiated by unfair practices and a prejudiced enquiry report upheld without application of mind at all levels, according to the applicant have caused grave damage to her.

4. The respondents on the other hand have explained that under Rule 3 of the ED Conduct and Service Rules the powers of appointing authority in the matter of awarding any of the penalties specified in Rule 7 may be exercised by an authority which has been shown in the schedule annexed to the rules or by any other authority empowered in this behalf by a special order of the Head of the Circle under circumstances to be recorded in writing. Thus, while the officer-in-charge of the Division i.e. the Senior Superintendent of Post Offices was the prescribed appointing authority of the applicant, it was considered necessary to appoint another officer as adhoc appointing authority for the purpose of imposition of penalties as the applicant's original appointing authority was higher in rank than the present appointing authority. While a senior officer was appointed under Rule 3A of ED Conduct and Service Rules, the prescribed Appointing authority notified under Rule 3(1) of the same rules continued to exercise the powers relating to enquiry. The Appellate orders remitting the proceedings back to the adhoc appointing authority from the stage of serving of a copy of the enquiry report was proper as the Appellate

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authority had no disagreement with the enquiry findings, she had allowed the applicant a fair opportunity to furnish her objections to the enquiry findings and present her case personally to the appropriate authority. The Appellate authority had passed a reasoned order. The subsequent dismissal order and rejection of appeal were in accordance with procedure, both fair and legal. In regard to the findings of the enquiry officer there were sound evidences against the applicant and records requisitioned but not furnished would not have materially influenced or altered the findings. The enquiry process was in no way vitiated. In regard to the applicant having been put off duty retrospectively from 30.4.1998, there was no case of exercise of any arbitrary power incorrectly, as on 30.4.1998 the A-14 Appellate orders were issued and the applicant was already unauthorisedly absent since 13.9.91. A-9 communication of EDSPM stating that the applicant had reported for duty, but was not allowed to join in the absence of orders, was wholly unauthorised. Since no leave was sanctioned, and the applicant was absent on the date of passing of A-14 orders, 'deemed put off' order was issued. In regard to the period prior to that, beginning with 13.9.1991, the applicant was unauthorisedly absent and therefore she could not be put off duty and as a result she was not entitled to any allowance.

5. Heard.

6. Under Rule 3 of the EEDA Conduct and Service Rules the officer in charge of the Division as shown in the Schedule to the Rules is the prescribed appointing authority.

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He exercises, in the normal course, all disciplinary powers, excepting when he is lower in rank to the original appointing authority. In that event Rule 3A can be invoked to appoint an authority equal or higher in rank than the original appointing authority for the purpose of awarding penalties specified in Rule 7. The respondents in the present case followed the correct procedure by A5 order in pursuance of Rule 3A, empowering the Senior Superintendent of Post Offices, Ernakulam Division to function as the appointing authority with powers to impose all the penalties. With the appointment of Senior Superintendent of Post Offices, Ernakulam, did the prescribed Appointing Authority Senior Superintendent of Post Offices, Calicut lose his authority in respect of the applicant? The learned counsel for the applicant, sought to persuade us to accept his contention that with a fresh Appointing authority notified on 1.7.1993, the prescribed authority had been rendered non-functional and hence any action taken by him in pursuance of his disciplinary role, after a fresh Appointing authority was installed, became by implication void. But the learned counsel for the respondents countered this by pointedly inviting our attention to the wording of Rule 3A in which the scope is limited to the 'award of penalties' only. In support of his contention he cited an instruction pre-existing the insertion of Rule 3-A into the Rule Book which reads as follows:

"The prescribed appointing authority is competent under Rule 7 and 8 of the Extra Departmental Agents (Conduct and Service) Rules to initiate disciplinary proceedings. There may not, therefore, be any objection if the prescribed appointing authority issues the charge sheet and also orders an enquiry in

a major disciplinary case. For satisfying the requirements of Art. 311(1) of the constitution, it would be sufficient, if the penalty of dismissal or removal from service is not awarded to an EDA by an authority lower than the authority which is to be treated as the appointing authority for the purpose of this Article of the Constitution. There will be no violation of art. 311 of the Constitution if the prescribed appointing authority issues the charge sheet and ultimately the penalty awarded by the adhoc disciplinary authority. It may however be desirable to appoint an adhoc disciplinary authority even before the issue of the chargesheet."

(DGP&T Letter No. 151/5/91-Vig.III dated the 6th December, 1981)

7. In the present case this instruction was followed. Insertion of Rule 3A would not render this instruction automatically void. Thus, the prescribed Appointing Authority initiated the disciplinary proceedings and the higher (adhoc) Appointing authority imposed the penalty. It has been judicially held (State of M.P. Vs Sharadul Singh, (1970 1 SCC 108)): 1970(3) SLR 302, State of Kerala Vs. Sukumaran Nair (1966 II LLJ 403) in respect of authorisations in Rules framed under Art. 309 or other statutory provisions, allowing an officer other than the punishing authority to initiate charges or to hold an enquiry, would not violate Art. 311(1). So, a similar implication arising in a non-statutory rule like EDA Conduct and Service Rules, should not be held as violative of Art. 311(1) of the Constitution. As to the question whether the prescribed Appointing Authority could appoint the Enquiry Officer and Presenting Officer after the higher Appointing Authority was installed, we see no difficulty in that as the prescribed Appointing Authority could take these steps by way of initiating the inquiry as long as the power to impose penalty is exercised by the notified higher authority.

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8. In regard to the reasonableness of the action of the first Appellate authority in remitting the proceedings from the stage of serving of the Inquiry Report, we find from A-14 first appellate order that the appellate authority was satisfied that the enquiry was held in conformity with Art. 311 of the Constitution and the only deficiency in the entire process related to the appellant(applicant) not availing the opportunity of personal hearing. Even though the disciplinary authority had fixed the date as 16.5.1999 at 4.30 p.m. with the venue as the office of the SSPO Calicut, the appellant allegedly received the communication barely 45 minutes before the scheduled time and hence failed to keep the appointment. This, the appellate authority felt, needed to be redressed by offering a fresh opportunity. So, she remitted back the case to the Disciplinary authority for de novo proceedings from the stage of serving of a copy the inquiry report. Rule 15 of EDAA Conduct and Service Rules provides that the Appellate authority may remit the case to 'the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.' In other words, there is no bar to remitting the case for de novo proceedings from a particular stage in the circumstances of the case. The applicant has not submitted any exceptional evidences of circumstances. So we are unable to see excepting through the eyes of the Appellate authority. We therefore grant it to the first Appellate authority that she did not err in determining the stage from which de novo proceedings would start. The second appellate order at Annexure A-24 (in

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response to Annexure A-22 appeal) has considered the points raised by the appellant before reaching the conclusion that no interference would be warranted. We have looked into the manner in which the points raised in the Appeal were disposed of. The point relating to initiation of disciplinary proceedings by the prescribed Appointing Authority, despite the appointment of a higher Appointing authority, has been correctly appreciated by the Appellate authority. About the rejection of bias petition, she has rightly gone by the orders of the DPS, Calicut at Annexure A-11. In regard to the non-supply of a copy of the preliminary investigation report, the appellate authority has held that as the report was not referred to in the charge memo there was no relevance of that report in the enquiry. We agree that unless a preliminary investigation report is cited as the basis for reaching any conclusion or for making an allegation, its submission could not have been demanded by the appellant. EDSO daily accounts and the visit remarks of SDI Kunnamangalam were rightly held as irrelevant. In regards to the witnesses who were listed in the charge sheet and who were not examined as prosecution witnesses, the appellant could have sought to examine them as defence witnesses by following the available procedure. In regard to the non-production of Pusparajan's public complaint' the document was not as such produced, but Pushparajan's written statement was on records. The point relating to non-production of SB-3 Cards and specimen signature book, the applicant evidently had not worked out the manner in which the documents could have been used as valuable defence evidence. In sum, we do not find the second appellate order in any manner deficient.

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9. Now, about the Inquiry Report we find nothing prima facie unfair in it. The charges were quite serious and have been held as proved by the Inquiry Officer. The witnesses and documents not produced have not materially weakened the applicant's defence. The applicant has gone through the enquiry process not merely technically, but substantively. There is no credible evidence to suggest that the enquiry was, in any manner vitiated.

10. The applicant's contention that the first respondent, not being the empowered appointing authority could not put off the applicant from duty, is not correct as the empowered higher authority was appointed only for the purpose of imposing penalties, while the prescribed authority retained the powers under Rule 9.

11. In regard to the treatment of the period of absence from 13.9.1991 to 29.4.1998, the applicant has claimed that she had applied for leave and had even reported for duty on 30.9.1993, but she was not allowed to join. In support of her contention, she has produced A9 communication addressed by EDSPM Thariote to the applicant with copy to SSPO Calicut. The respondents have not denied the fact, they have only contended that the letter was unauthorisedly issued by the EDSPM. Looking at the situation objectively, how could the EDSPM's communication be summarily discounted? It is quite probable that an employee who had been unauthorisedly absent since 13.9.1991 would suddenly appear on 30.9.1993 seeking to rejoin duty. At that juncture the EDSPM would not be very wrong in refusing to allow her to join while intimating the

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fact to the Divisional Authority. This is what the EDSPM did. The respondents could have got the matter investigated if they had any suspicion in regard to the authenticity or authorship of the letter. In the absence of any such action, mere discounting of a piece of evidence would not be fair. So, we have noted that the applicant was available for joining, but was not allowed to do so by the EDSPM as he had no instructions. But the applicant would not gain from this, as there is no evidence to suggest that she was indeed very keen to join. She had submitted no leave application until then and no leave had been sanctioned to her. Her sudden appearance one fine day would not legitimise her long absence. But what surprises us is that the charge memo dated 26.3.1993 (A2) was issued to her in her official address as EDSPM, Thariote. She received these communications and went on to participate in the enquiry also. So, was she indeed unauthorisedly absent or was she only keeping off duty hovering around the work place waiting for the most opportune time to reappear? Whatever be the case, she could have been put off duty once the chargesheets for a major penalty were issued on 26.3.1993. Thus, her absence from 13.9.91 to 25.3.1993 would rightly be unauthorised absence, while she could be on put off duty from 26.3.1993 to the date of her dismissal. The applicant could have been put off duty even from 13.9.1991 but the rules and instructions advise caution in taking recourse to this measure. DGPT letter dated 16.1.1979 quoted as DG's instruction 3 under Rule 9 of the 1999 edition of EDA Conduct and Service Rules, clearly directs that the question of putting off an ED Agent from duty should arise only when there is a prima facie case

against him and the nature of the offence is such that dismissal will be the probable penalty. That being the instruction, the prima facie case gets built up with the issue of charge memo and hence she would have been put off duty from that date. The put off period would have run continuously until her final dismissal. That would have to be done now. The applicant has sought the relief of regularisation of her period of absence as leave and duty but for non-regulation and unlawful put off. While we would not grant her that, we have to modify the relief and grant her whatever would be her due in the light of our judgment. Thus she would have to be treated as unauthorisedly absent from 13.9.91 to 25.3.1993, as on put off duty from 26.3.1993 to 20.3.2001 and as dismissed from service w.e.f. 21.3.2001. While she would not be entitled to any allowances for the period of unauthorised absence from 13.9.91 to 25.3.1993, she would be entitled to an amount of compensation as ex-gratia payment equal to 25% of her TRCA with admissible DA for part of the period of put off duty beginning from the date from which the provisions relating to entitlement of compensation allowance during put off duty were made applicable to Gramin Dak Sevaks, upto 29.4.1998 (the period from 30.4.1998 to 20.3.2001 having been already covered by A-17 orders). It appears from Annexure A-17 that the ex-gratia compensation orders on put off duty were made applicable from 13.1.1997. So, the applicant would be entitled to ex-gratia compensation from 13.1.1997 to 29.4.1998.

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12. In the light of the foregoing we order as follows:

i) Impugned orders at Annexures A-2, A-6, A-7, A-8, A-11, A-16, A-17, A-19, A-21 and A-24 stand.

ii) Applicant's claim of reinstatement disregarding A-21 and A-24 is disallowed.


iii) Unauthorised absence from 13.9.1991 to 25.3.1993 be treated as such, without any right to pay and allowances.

iv) The period from 26.3.1993 to 12.1.1997 be treated as put off duty without exgratia allowances, as exgratia compensation entitlement for put off duty commenced from 13.1.1997.

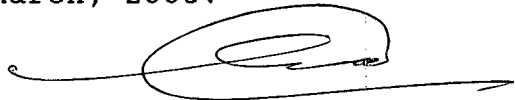
v) The period from 13.1.1997 to 29.4.1998 be treated as put off duty entitled to exgratia compensation allowance, the period from 30.4.1998 to 20.3.2001 having already been treated as put off duty with entitlement to exgratia compensation allowance.

13. We dispose of the Original Application with the above orders, directing the respondents to disburse the compensation as ex-gratia as per entitlement, within a period of two months from the date of issue of these orders. No order as to costs.

Dated the 3rd March, 2005.



H.P.DAS
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER