

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 130 of 2005

Friday, this the 8th day of June, 2007

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. GAUTAM RAY, ADMINISTRATIVE MEMBER**

K. Ramakrishnan,
S/o. Raman Nair,
Kulathekkattu House,
Puthukara, Ayyanthole,
TRICHUR : 680 003 ... Applicant.

(By Advocate Mr. A.K. Chinnan)

versus

1. Director of Postal Services,
Post Master Generalate Central Region,
Kochi - 682 016.
 2. Post Master General,
Central Region, Kochi - 682 016.
 3. The Member (Personnel),
Postal Services Board,
Department of Posts,
Ministry of Communications,
Government of India, New Delhi – 110 001.
 4. Union of India represented by its Secretary,
Department of Posts,
Ministry of Communications,
New Delhi. Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been heard on 6.6.2007
the Tribunal on8-6-07....delivered the following:

ORDER

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

As there has been ^{no} representation on behalf of the applicant for the last few

occasions, the matter has been considered invoking the provisions of Rule 15(1) of the CAT (P) Rules, 1986.

2. The facts of the case are as under:-

The applicant while functioning as Sub Post Master, Thrissur R.S. Was proceeded under Rule 14 of the CCS (CCA) Rules for certain alleged misconduct as contained in Annexure R-1 dated 27-01-1996. The Articles of charge are as under:-

Article I

That the aforesaid Shri K.Ramakrishnan, while functioning as Sub Postmaster Thrissur RS, failed to bring into the Post Office account a sum of Rs.7621/- (Rs.Seven thousand six hundred and twentyone only0) accepted by him on 28.6.1994 from Smt. Mariamma Kunjavara, MPKBY Agent with Authority No.4277/MP/89 and residing at V/600 Ukken's House, Ollukara P.O towards deposits in 54 RD a counts including RD account Nos. 460773,460830,460940,460942, 461016,461127,461203, 461236, 461239,461241, 461248, 461314, 461315,461320, 461322, 461324, 461373, 461387, 461397, 461398, 461440, 461479, 461690, 461719, 461781, 461816, 461840 and 461885 shown in the schedule dated 28.6.94, produced alongwith the cash on the same day and thereby violated Rules 4(1) and 103 of P&T Financial hand Book Volume I and thereby failed to maintain absolute integrity and devotion to duty contravening the provisions of Rules 3a(1)(i) and 3(1)(ii) of Central Civil Services (Conduct) Rules 1964.

Article II

That the aforesaid Shri K.Ramakrishnan while functioning as Sub Postmaster, Thrissur RS failed to write up the Sub office accounts for the peiod from 18.5.1994 to 29.6.1994 violating the provisions of Rules 84 A, 98 and 99 of Postal manual Volume VI Part III (Sixth Edition) and thereby failed to maintain absolute integrity and devotion to duty as enjoined in rules 3(1)(i) and 3(1)(ii) of Central Civil Services (Conduct) Rules 1964.

3. The applicant having denied the charges and having requested for hearing in person, vide letter dated 9th March, 1996 vide Annexure R-4, regular departmental inquiry was conducted. The inquiry officer submitted his report, rendering his

finding that the first charge stood proved, and second stood proved beyond doubt that the applicant failed to write up the S.O. Account for the period from 18-05-94 to 28-06-94 vide inquiry report dated 29-01-1997 at Annexure A-4. Copy of the inquiry report was made available to the applicant who had furnished his representation, vide Annexure R-10 dated 24-2-1997. According to the applicant, among other things, the inquiry officer had made the following underlined portion as addition in the charge when he in his report had stated, "the first charge in a nutshell is that the C.G.S. Accepted a sum of Rs 7621/- on 28-6-1994 from PW 3, Smt. Mariamma Kunjavara towards RD deposits and failed to credit into PO account on the same day but credited only on 14-7-94"

4. The Disciplinary authority considered the inquiry report and the representation and held that the charge having been proved, penalty of compulsory retirement was imposed vide order dated 17-04-1997 (Annexure A-6). The applicant filed an appeal, but it appears that the same was addressed to the Chief Post Master General, instead of Kochi and on direction from SSP Trichur, the appeal was addressed to the PMG, Kochi which was received on 11-07-1997. The appellate authority, however, not being satisfied with the explanation given by the applicant in not filing the appeal on time before the competent appellate authority, rejected the appeal as having become time barred. Order dated 9-1-1998 at Annexure A-7 refers. Revision petition filed by the applicant was also rejected, vide order dated 11th October, 1999 at Annexure A-8. The applicant has challenged the order of the Disciplinary authority, the order of the appellate authority and the order of the Revisional Authority.

5. The legal grounds raised include that the quantum of penalty is not commensurate with the gravity of the alleged misconduct; that when criminal case

was pending, the inquiry should not have been conducted; that the I.O. is of equal rank as that of the applicant, both being in the HSG; that the article of charge No. 1 is incomprehensible; the IO had inserted his own words in the article of charge; and this is a case of no evidence.

6. Respondents have resisted the OA. According to them, the charges have been proved based on evidences. Again, the IO was higher in status than the applicant. In so far as other grounds are concerned, they have stated that none of the grounds is tenable.

7. In the rejoinder, the applicant had submitted that the appellate authority ought to have condoned the delay. Additional reply was filed stating that the applicant who was a senior official ought to have submitted the appeal to the proper authority. The penalty order (dated 17-04-1997) was made available to the applicant on 25-04-1997 and he had enough time to submit his appeal by 8th June 1997. The decision of the appellate authority is based on the relevant conduct rules prescribed by the Department.

8. Counsel for the respondent had been heard.

9. It is true that the penalty order dated 17th April, 1997 was served on 25-4-1997. In the counter, the respondents have admitted the averment of the applicant that the appeal was wrongly filed before the CPMG, Trivandrum. It was on the advice of the SSP that the same was filed later before the PMG Cochin. The applicant was compulsorily retired as a matter of penalty. His anxiety was to file an appeal to vindicate his stand. The order of the Disciplinary authority did not mention the authority before whom the appeal would lie. The appeal was

addressed to the CPMG on time. It was thereafter that at the advice of the S.S.P. that the applicant filed his appeal to the PMG, Kochi, whereby filing of appeal was delayed by one month and four days. The appellate authority ought to have considered the fact that there was no delay on the part of the applicant in filing the appeal but he had chosen a wrong forum and in his appeal to the proper authority, he had requested that the appeal be disposed of as if it had been submitted on 7-6-97 ie the date when it was filed before the CPMG Trivandrum. The appellate authority, however, rejected the appeal on limitation. The decision of the appellate authority does not appear appropriate. For, appeal is the lone exculpatory ventilation available to the applicant. On an appeal, the appellate authority has to apply his mind and he has, if need be, to invoke, the powers of the Disciplinary authority to reappreciate the evidence. He has to afford an opportunity of being heard to the appellant, in cases where such personal hearing is justified and warranted. The Appellate authority, however, took a short cut to dismiss the appeal on the ground of delay, while sufficient cause for delay has been exhibited. And the applicant's bonafide in filing the appeal cannot be questioned. Rejection of the appeal would have been justified had the appeal for the first time been filed with a delay of about 34 days. That is not the case. The reason for delay is certainly justifiable. Even in the Limitation Act, provision exists for deducting the time taken in prosecuting the suits in a wrong forum.

10. It is worthwhile to refer to the decision of the Apex Court, wherein, the extent of responsibility attached to the appellate authority has been provided for.

In the case of ***Narinder Mohan Arya v. United India Insurance Co. Ltd., (2006) 4 SCC 713*** the Apex Court has held as under:-

"37. Consideration of appeals .(1) In case of an appeal against an order of suspension, the Appellate Authority shall consider whether in the light of the provisions of Rule 20 and having regard

to the circumstances of the case the order of suspension is justified or not and confirm or revoke the other accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 23, the Appellate Authority shall consider:

(a) whether the procedure prescribed in these Rules has been complied with and if not, whether such non-compliance has resulted in failure of justice;

(b) whether the findings are justified; and

(c) whether the penalty imposed is excessive, adequate or inadequate, and pass orders:

- I. setting aside, reducing, confirming or enhancing the penalty; or
- II. remitting 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.

* * *

32. The Appellate Authority, therefore, while disposing of the appeal is required to apply his mind with regard to the factors enumerated in sub-rule (2) of Rule 37 of the Rules. The judgment of the civil court being *inter partes* was relevant. The conduct of the appellant as noticed by the civil court was also relevant. The fact that the respondent has accepted the said judgment and acted upon it would be a relevant fact. The authority considering the memorial could have justifiably come to a different conclusion having regard to the findings of the civil court. But, it did not apply its mind. It could have for one reason or the other refused to take the subsequent event into consideration, but as he had a discretion in the matter, he was bound to consider the said question. He was required to show that he applied his mind to the relevant facts. He could not have without expressing his mind simply ignored the same.

33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking

order but the authority passing the same must show that there had been proper application of mind on his part as regards the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.

34. In Apparel Export Promotion Council v. A.K. Chopra 13 which has heavily been relied upon by Mr Gupta, this Court stated: (SCC p. 770, para 16)

16 . The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. (emphasis supplied)

35. The Appellate Authority, therefore, could not ignore to exercise the said power.

36. The order of the Appellate Authority demonstrates total non-application of mind. The Appellate Authority, when the Rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as to enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression consider is of some significance. In the context of the Rules, the Appellate Authority was required to see as to whether (i) the procedure laid down in the Rules was complied with; (ii) the enquiry officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive”

While such is the responsibility of the Appellate authority, throwing the appeal on account of delay is not, as stated above, justified. Hence, the order of the appellate authority and consequently the order of the revisional authority are liable to be set aside. We accordingly set aside Annexure A-7 and A-8 orders. The appellate authority shall consider the case on merit and give an opportunity to the applicant

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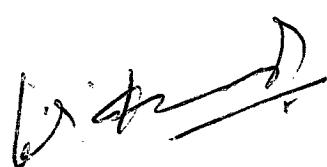
and the appeal shall be disposed of by a reasoned and speaking order, meeting all the grounds raised in the appeal, within a period of three months from the date of communication of this order. In case the applicant is aggrieved by the order of the appellate authority, he may take further legal course as per law.

11. With the above direction, the OA is disposed of. No cost.

Dated the 8th June 2007.



GAUTAM RAY
ADMINISTRATIVE MEMBER



Dr. K.B.S. RAJAN
JUDICIAL MEMBER

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