

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 141/2004

Monday this the 31st day of July, 2006

CORAM

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

C.Rajan,
aged 41 years, S/o Late Chellappan,
Extra Departmental Delivery Agent,
Konchira PO
Vembayam-695615.Applicant

(By Advocate Mr. M.V.Somarajan)

V.

- 1 The Senior Superintendent of Post Offices,
Trivandrum North Division,
Trivandrum.1.
- 2 The Chief Postmaster General,
Kerala Circle, Trivandrum.33.
- 3 Union of India, represented by
Secretary, Department of Posts,
New Delhi.Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The application having been finally heard on 3.7.2006, the Tribunal
on 31. 7.2006 delivered the following:

ORDER

Hon'ble Mr. George Paracken, Judicial Member

The applicant's grievance in this OA is that the
Annexure.A2 order dated 28.1.2002 passed by the Disciplinary
Authority and the Annexure.A4 order dated 30.4.2003 passed by the

Chief Post Master General alleged to be in compliance of the orders contained in the judgment of the Hon'ble High Court of Kerala in OP No.28631/2000-S is not in accordance with the directions of the Court.

2 The brief facts of the case are that the applicant was 'put off' duty from service on 13.11.87. Later on he was removed from service with effect from 13.7.92 as a penalty after holding departmental inquiry against him under Rule 8 of the P&T Extra Departmental Agent (Conduct and Service) Rules, 1965. Against the said penalty order he filed OA 1028/96 before this Tribunal but the same was dismissed on 4.1.2000. He filed OP No.28631/2000 before the Hon'ble High Court of Kerala and the said O.P was disposed of on 15.10.2001. The High Court relying on the judgment of the Hon'ble Supreme Court in the case of *Ramchander Vs. Union of India and others, 1986(3) SCC 103* set aside the appellate order being a decision taken in violation of the principles of natural justice. Exercising its discretionary powers, the High Court directed the authorities to reconsider the question of penalty to be imposed on the petitioner after affording an opportunity of being heard. There was also a finding in the judgment that the applicant was eligible to be treated as on duty from 13.11.1987 to 15.6.1990 and further up to 13.7.92, the date on which he was dismissed from service. Regarding payment of subsistence allowance the High Court has relied upon the decision of the Apex Court in *R.P.Kapoor Vs. Union*

of India and others, AIR 1984 SC 784:

"But, what amount should be paid to the public servant during such suspension will depend upon the provisions of the Statute or Rules in that connection. If, there is such a provision, the payment during suspension will be in accordance therewith. But, if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension"

3 The Hon'ble High Court left it to the Disciplinary Authority and Appellate Authority to take a decision as to what should be the wages/allowances to be paid to the petitioner while he was on put off duty in the light of the aforesaid judgment of the Apex Court in *R.P.Kapoor's case (supra)*.

4 In compliance of the aforesaid judgment of the High Court the Disciplinary Authority vide Annexure.A2 order dated 28.1.2002 reduced the penalty of removal from service imposed upon the applicant to "censure" and reinstated him in service with immediate effect. On such reinstatement, the applicant rejoined duty on 12.2.2002. However, the Appellate Authority has explained in its order the compelling circumstances under which the punishment had to be reduced from the severest one to the most minor one in paras 8 and 9 of its Annexure.A2 order dated 28.1.2002 which is extracted below:

"8 Now the question remaining to be considered is what lesser penalty can be imposed on the ED Agent to meet the ends of justice. As per Rule 9 of Department of Posts Gramin Dak Sevak (Conduct and Employment) Rules,2001 there are six penalties that can be imposed on an ED Agent (Gramin Dak Sevak) viz. (i) Censure (ii) Debarring of a Sevak from

appearing in the recruitment examination for the post of Postman and/or from being considered for recruitment as Postal Assistants/Sorting Assistants for a period of one year or two years or for a period not exceeding three years (iii) Debarring of a Sevak from being considered for recruitment to Group D for a period not exceeding three years (iv) Recovery from Time-Related-Continuity-Allowance of a whole or part of any pecuniary loss caused to the Department by negligence or breach of orders (v) Removal from employment which shall not be a disqualification for future employment and (vi) Dismissal from employment which shall ordinarily be a disqualification for future employment.

9 Penalty at Sl.(4) can be awarded only if there is any loss to the Department. The amount of Rs. 500/- which was misappropriated by the Ex-EDDA was paid to the payee subsequently. Hence there is no loss to the Department. It is true that Sri C.Rajan, Ex-EDDA, Konchira was having more than three years of service at the time he was originally put off from duty, i.e., from 13.11.1987. The period of duty from 13.11.1987 to 15.6.1990 has now been ordered to be treated as duty. He was also paid ex-gratia payment from 16.6.90 to 1 2.7.92. From 13.7.92, he was removed from service. Penalties at Sl.(2) and (3) can be awarded only if a Gramin Dak Sevak satisfies the condition relating to possession of minimum service of three years for appearing the postman examination and for being considered for Group D promotion. If the Ex-EDDA is ordered to be reinstated to duty keeping in view of the decision of the Hon'ble High Court, his service for admitting him to appear the postman examination and for considering him for Group D promotion would count only from the date of reinstatement. Any of the penalties at Sl.(2) and (3) cannot also be awarded at this juncture as it would become inoperative. The only lesser punishment now remaining is the one at Sl.(1) which is "Censure". The Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms O.M.No.22011/2/778-Estt(A) dated 16th February, 1979 prescribes that where it is considered after the conclusion of disciplinary proceedings, the officer concerned should be penalized, the disciplinary authority should award the penalty of "Censure" at least.

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In the above circumstances, the Appellate Authority has held that the applicant will not be eligible for any allowance for the period from 13.7.92 to the date of reinstatement and the said period also would not count for any other purpose. The applicant made Annexure A3 representation dated 21.9.2002 stating that the Annexure A2 order passed by the Sr. Superintendent of Post Offices in his capacity as Appellate Authority disallowing any payment for the period from 13.7.92 to 12.2.02 is against the directions of the Hon'ble High Court in the above said judgment dated 15.10.01. The CPMG duly considered the aforesaid A3 representation before confirming the decision of the Appellate Authority vide its A4 order dated 30.4.03. The CPMG has observed that the Disciplinary Authority has promptly issued orders for payment of full allowance for the period from 13.11.87 to 12.7.92 during which the petitioner had been under "put off" duty and complied with the High Court order by paying an amount of Rs. 28121/- The CPMG has justified the manner in which the Appellate Authority has decided to treat the period of "unemployment" of the petitioner from 13.7.92 to 12.2.02 ie., from the date of removal to the date of reinstatement, because the applicant was not exonerated either by the Hon'ble High Court or by the Appellate Authority in their respective orders. The CPMG also observed in its order that the direction of the High Court to the Disciplinary and Appellate Authorities was only regarding payment for the period during which the petitioner was under "put off" duty and

there was no direction about the payment of allowances for the aforesaid period of "unemployment".

5 We have heard Advocate Mr. M.V.Somarajan for the applicant and Advocate Mr.TPM Ibrahim Khan, SCGSC for the respondents. The only issue before us for our consideration is whether the impugned Annexures.A2 and A4 orders are in any manner contrary to the directions of the Hon'ble High Court of Kerala given to the respondents in its Annexure.A1 judgment dated 15.10.01 or not. Admittedly the respondents have paid the entire pay and allowances to the applicant for the period from 13.11.87 to 12.7.92 ie., the period during which the petitioner was under "put off" duty. The remaining period for which the applicant has laid his claim is from 13.7.92 to 12.2.02 ie., from the date of removal to the date of reinstatement. According to the applicant, in a case where only the penalty of censure was given to an employee, he also could not have been kept out of service without allowance coupled with break in service. However, the contention of the respondents is that the Hon'ble High Court has not given any direction to the respondents regarding treating the period of his "unemployment" from 13.7.92 to 12.2.02 as duty but it has been left to the discretion of the Disciplinary and Appellate Authorities and the Appellate Authority has rightly used its discretion and denied any payment for the said period first because he did not work during the said period and secondly and more importantly the applicant has not been exonerated either

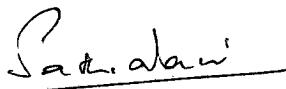
by the Hon'ble High Court or by the Appellate Authority. They have also duly explained the circumstances under which the extreme punishment of removal from service had to be reduced to the most minor penalty of censure. In our considered opinion the Appellate Authority has considered the entire facts and circumstances of the case in its totality and arrived at the decision that the applicant does not deserve any pay and allowances for the period from 13.7.92 to 12.2.02, ie., the period of his removal from service to the date of his re-joining duty on reinstatement and also not to treat the said period as duty for any purpose. The CPMG has also rightly confirmed the decision of the Appellate Authority. Both the orders are well reasoned giving hardly any scope for judicial intervention.

6 We, therefore, do not find any merit in the case and accordingly the O.A is dismissed. There shall be no order as to costs.

Dated this the 31st day of July, 2006


GEORGE PARACKEN
JUDICIAL MEMBER

s.


SATHI NAIR
VICE CHAIRMAN