CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.157/08

Friday this the 27th day of March 2009

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER

M.V.Assimon,
S/o.Varkey,
Ex.GDS MD, Mankulam P.O.
Residing at Mullananickal House,
Mankulam P.O., Chithirapuram – 685 565. ...Applicant

(By Advocate Mr.P.C.Sebastian)

Versus

1. The Director of Postal Services,
Central Region, Kochi – 682 018.

2. The Assistant Superintendent of Post Offices,
(H.Q.) Idukki Division, Thodupuzha – 685 584.
(Disciplinary Authority)

3. The Sub Divisional Inspector of Post Offices,
Kattappana Sub Division, Kattappana.
(Inquiry Authority)

4. Union of India represented
by Secretary to Government of India,
Ministry of Communications,
Department of Posts, New Delhi. ...Respondents

(By Advocate Mr.George Joseph,ACGSC)

This application having been heard on 27th February 2009 the Tribunal on 27th March 2009 delivered the following :-

O R D E R

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The grievance of the applicant is against the inquiry report dated 29.9.2005 forwarded by the 2nd respondent vide Annexure A-2 letter dated 13.10.2005, Annexure A-3 order of the 2nd respondent dated 31.1.2006

imposing the penalty of removal from service with immediate effect and Annexure A-5 appellate order dated 28.2.2007 by which the punishment of removal from service was upheld and the appeal was rejected.

2. The brief facts of the case are that the applicant while working as Gramin Dak Sevak Mail Deliverer, Mankulam P.O was placed under put off duty with effect from 31.4.2002 on the ground of non payment of money orders to the payees concerned. Thereafter, vide Annexure A-1 letter dated 29.10.2003, the 2nd respondent proposed to take action against him under Rule 10 of the Department of Posts GDS (Conduct and Employment) Rules 2001 on the following charges :-

Article - I

That the said Sri.M.V.Assimon while functioning as GDSMD, Mankulam on 14.8.2001 failed to pay the value of Moradabad MO No.738 dated 8.8.01 for Rs.500/- entrusted to him for payment to the payee Mrs.Lilamma Thomas, Nedumkallel House, Mankulam PO, but shown it as paid on 14.8.01 without actually paying the value of the MO to the payee and without obtaining the signature of the payee in the place provided for in the money order paid voucher, thereby failed to maintain absolute integrity and devotion to duty violating Rule 21 of Department of Posts, Gramin Dak Sevak (Conduct and Employment) Rules 2001.

Article - II

That the said Sri.M.V.Assimon while functioning as GDS MD, Mankulam treated Palem (Vishakhapatenam) MO No.1365 dt. 19.2.02 for Rs.2000/- payable to Sri.Mathew Joseph, Varickayil (H), Mankulam PO Perumbankuth as paid to the payee on 26.2.02 without actually paying the value of the MO to the payee and without obtaining the signature of the payee in the MO form in the place provided for the purpose thereby failed to maintain absolute integrity and devotion to duty violating Rule 21 of Dept of Posts Gramin Dak Sevak (Conduct and Employment) Rules 2001.

3. After detailed inquiry, the 3rd respondent which is the inquiry authority submitted Annexure A-2 inquiry report dated 29.9.2005, according to which, the first charge has been proved but the second charge "cannot be said to have been proved conclusively." A copy of the aforesaid inquiry report was forwarded to the applicant by the 2nd respondent vide letter dated 13.10.2005 (Annexure A-2). According to the said letter, the disciplinary authority disagreed with the inquiry authority on his findings in respect of article II and held that it was proved conclusively against the applicant as the payee of the money order, Shri.Mathew Joseph Varickayil has deposed during the inquiry that he had received the value of the money order from the applicant only after 20 days from the date it was booked on 19.2.2002 but it was shown to have been paid on 26.2.2002. He has, therefore, directed the applicant to submit his representation/reply to the disciplinary authority within 15 days. The applicant submitted his representation dated 27.10.2005. Thereafter, the Disciplinary Authority has passed the impugned Annexure A-3 punishment order imposing the penalty of removal from service upon the applicant. According to the applicant, the said penalty is extremely severe and it was imposed upon him even after the 2nd article of charge was not found proved by the inquiry authority but holding the same as proved conclusively by the disciplinary authority without giving him reasonable opportunities. The applicant submitted Annexure A-4 appeal dated 15.5.2006 to the Superintendent of Post Offices, Idukki Division, but the same was also dismissed by Annexure A-5 appellate order.

4. The applicant challenged the aforesaid impugned orders on various grounds. He alleged that the respondents have not granted him the protection and safeguards of the provisions of Article 311 of the Constitution of India and taken the statements recorded from the witnesses during the course of the preliminary investigation as evidence as against the instructions of the Department of Personnel and Administrative Reforms contained in O.M.No.134/7/75-AVD I dated 11.6.1976, under Rule 14 of the CCS (CCA) Rules. He has cited the proceedings held on 4.11.2004 on which date the written statement dated 5.2.2003 given by Smt. Leelamma Thomas (SW6), the payee of the money order mentioned in the 1st article of charge, to the Mail Overseer Munnar was marked as S-16. He has also alleged the violation of the provisions contained in sub rule (18) of Rule 14 of CCS(CCA) Rules, according to which, it is mandatory for the inquiry officer on the closure of evidence, if the charged employee did not make self examination during the inquiring to question the charged employee on evidences appearing against him and to give opportunity to explain or clarify them. The 3rd respondent which was the inquiry authority did not follow the said rule properly as it had not asked any questions to the applicant against any evidence appearing against him in the prosecution case. Further, the inquiry authority has arrived at the findings in respect of the 1st article of charge relying on S-14 opinion of the Government Examiner of Questioned Documents, Hyderabad without examining the maker of those documents and without affording an opportunity to the applicant to cross examine him. On the other hand, the inquiry officer relied upon the statement of the payee of the money order mentioned in the 1st article of charge which was self contradictory and prima facie not credible as she had stated before the inquiry authority that

she did not receive the value of the money order in question which was dated 8.8.2001 at Mordabad but admitted subsequently in cross examination that money orders and letters sent from Mordabad were received by her and she did not make any complaint regarding the non payment of the money orders in question. The appellate authority has also not considered his case in accordance with the relevant rules. The punishment of removal from service imposed upon him is highly disproportionate and the disciplinary authority and the appellate authority has not taken into account the fact that the applicant has been working as GDS MD without any complaint for more than a decade and his family entirely depends upon him for survival.

5. The learned counsel for the applicant, Shri.P.C.Sebastian, relied upon the judgment of the Apex Court in **Ministry of Finance and another Vs. S.B.Ramesh** [1998 SCC (L&S) 865] and contended that sub rule (18) of Rule 14 of the CCS (CCA) Rules has not been followed in the present case. The said sub rule provides as under :-

> "(18) The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him."

The contention of the delinquent official in S.B.Ramesh's case (supra) was also that the order of compulsory retirement was imposed upon him without complying with sub rule (18) of Rule 14 of CCS (CCA) Rules, 1965. The findings of this Tribunal in that case was as under :-

> ".....even if the Enquiry Officer has set the applicant ex parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate in the enquiry hereafter/or even if the Enquiry Authority did not choose to give the applicant an opportunity to cross-examine the witness examined in support of the charge, he should have given an opportunity to the applicant to appear and then proceeded to question him under sub rule (18) of Rule 14 of the CCS (CCA) Rules. The omission to do this is a serious error committed by the Enquiry Authority."

The Apex Court agreed with the aforesaid findings of this Tribunal and held that the departmental inquiry conducted in the case was totally unsatisfactory and without observing the minimum required procedure for proving the charge.

6. Shri.Sebastian has also relied upon the Apex Court's judgment in **Moni Shankar Vs. Union of India and another** [(2008) 3 SCC 484] and contended that similar provisions contained in Rule 9(21) of the Railway Servants (Discipline & Appeal) Rules, 1968 has not been followed in his case. The said sub rule reads as under :-

> "(21) The inquiring authority may, after the Railway servant closes his case, and shall, if the Railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Railway servant to explain any circumstances appearing in the evidence against him."

The Apex Court considered the aforesaid contentions and held as under :-

> "20. The enquiry officer had put the following questions to the appellant :
>
> "Having heard all the P.Ws, please state if you plead guilty? Please state if you require any additional documents/witness in your defence at this stage? Do you wish to submit your oral defence or written defence brief? Are you satisfied with the enquiry proceedings and can I conclude the enquiry?"

21. Such a question does not comply with Rule 9(21) of the Rules. What were the circumstances appearing against the appellant had not been disclosed."

7. Further, he relied upon paras 11 and 12 of the judgment of the Apex Court in **D.K.Yadav Vs. J.M.A.Industries Ltd.** [(1993) 3 SCC 259] which are extracted below and argued that before issuing the impugned penalty order, which amounts to depriving of his livelihood, no reasonable opportunity was granted to him.

"11. The law must therefore be now taken to be well settled procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi judicial inquiry and not to administrative inquiry. It must logically apply to both.

12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable."

8. The respondents have denied the allegations of the applicant that the inquiry proceedings were vitiated on account of the non observation of statutory provisions and violation of principles of natural justice. According to them, the applicant has availed himself off the opportunity to cross examine all the witnesses. On merits, it was submitted that the applicant admitted that he had sent money through a messenger in the case of Shri.Mathew Joseph and not paid to him directly. Regarding S-16 statement, they have submitted that the same was introduced through the witness Smt.Lilamma Thomas and the applicant has not made any objection with her deposition. As regards the contention of the applicant that the inquiry officer has not asked him any question on the points which were against him, they have submitted that the inquiry officer had specifically asked him whether he had anything to say on the points which stood against him but he has chosen to give only written reply. Moreover, he had not raised any objection in this regard in his appeal.

9. They have relied upon the judgment of the Apex Court in **R.S.Saini Vs. State Bank of Punjab and others** [1999 (8) SCC 90] wherein it was held as under :-

> " The inquiry authority is the sole judge of the fact so long as there is some legal evidence to substantiate the findings, the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ petitions."

10. Further they have relied upon the judgment of the Apex Court in **Bank of India and another Vs. Degala Suria Narayana** [JT 1999 (4) SC 489] wherein it was held as under :-

> " Strict rules of evidence are not applicable to departmental proceedings. The only requirement of law is that the allegation against delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravament of the charge against the delinquent officer."

11. They have also relied upon the judgment of the Apex Court in **State Bank of India and others Vs. Luther Kondhpan** [1999 SCC (L&S) 1228] wherein it was held as under :-

> " Learned counsel appearing for the respondent then urged that the respondent was denied an opportunity of personal hearing before the disciplinary authority. We have pursued the reply filed by the respondent to the show cause notice. In the said reply it is no where mentioned that respondent desires personal hearing. Under such circumstances, the order of termination cannot be held vitiated on that account."

12. They have also submitted that there was no need for cross examining the expert as the signature appearing on the paid vouchers was entirely different from the specimen signature taken from the payee and any person acting reasonably and with objectivity can say that those signatures were different. They have further submitted that the charges proved against the applicant were very serious. The duty of the applicant involves dealing with Government money payable to the public and one who acts against the rules prescribed for money transaction cannot be retained in the department and hence the punishment awarded is quite proportionate to the gravity of the misconduct committed by the applicant.

13. We have heard Shri.P.C.Sebastian for the applicant and Shri.George Joseph,ACGSC for the respondents. We do not find any merit in the argument of the learned counsel for the applicant that the statement recorded from witnesses during the course of the preliminary investigation has been taken as evidence. The SW 6, Smt.Lilamma Thomas whose S-16 statement given during the preliminary enquiry was very much available during the enquiry proceedings and the applicant had every opportunity to cross examine her. The other ground adduced by the learned counsel for the applicant that Rule 14(18) of CCS CCA Rules has been violated by the enquiry officer has also no merit as the Annexure A-6 Daily Order Sheet dated 13.5.2005 produced by the applicant himself shows that since the "charged GDS did not wish to self examination", the IO questioned him on the evidences against him. Further, the S-14 opinion of Govt. Examiner of questioned documents Hyderabad dated 30.5.2003 was not the only document by which the charge against the applicant was proved. It is on record that the charge against the applicant was proved by way of other documents and depositions by the witnesses. We also see that the allegation of the applicant against the Appellate Authority is also unfounded. It has given good and sufficient reasons in its order. As held by the Apex Court in **State of Punjab Vs. Bhag Singh** [AIR 2004 SC 1203] :-

> " Even in respect of administrative order Lord Denning M.R in Breen Vs. Amalgamated Engineering Union [1971 (1) All ER 1148] observed "the giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. Vs. Crabtree [1974 LCR 120], it was observed : "failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals

the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi judicial performance."

As regards the quantum of punishment, it is a settled law that the scope of interference of Courts and Tribunals is very limited. In **U.P.SRTC Vs. Ram Kishan Arora** [(2007) 4 SCC 627 the Apex Court has held as under :-

" In Amrit Vanaspati Co. Ltd. Vs. Khem Chand this Court held : (SCC p.332, para 9)

"In our opinion, the High Court while exercising powers under writ jurisdiction cannot deal with aspects like whether the quantum of punishment meted out by the management to a workman for a particular misconduct is sufficient or not. This apart, the High Court while exercising powers under the writ jurisdiction cannot interfere with the factual findings of the Labour Court which are based on appreciation of facts adduced before it by leading evidence. In our opinion, the High Court has gravely erred in holding that the evidence of respondent 1 was not considered by the Labour Court and had returned the finding that the evidence of respondent 1 did not inspire any confidence. We are of the opinion that the High Court is not right in interfering with the well considered order passed by the Labour Court confirming the order of dismissal."

For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The award of the Labour Court is also set aside and the punishment of removal imposed by the disciplinary authority is upheld. The appeal is allowed. In the facts and circumstances of this case, there shall be no order as to costs."

Again **M.P.State Agro Industries Development Corporation & Anr. Vs. Jahan Khan** [2007 AIR SCW 5712] the Apex Court has held as under :-

" Be that as it may, we are of the opinion that in the light of our interpretation of the aforenoted Regulations, the imposition of penalty vide composite order dated 19th December 1989 directing recovery of loss of Rs.16903.41 and stoppage of three increments with cumulative effect, is a major penalty, clearly envisaging a regular enquiry before punishing the respondent. Since admittedly this procedure was not followed, the High Court was justified in coming to the conclusion that imposition of the impugned penalty without holding enquiry was illegal and without jurisdiction.

Before parting with the case, we may also deal with the submission of learned counsel for the appellants that a remedy by way of an appeal being available to the respondent, the High Court ought not to have entertained his petition filed under Articles 226/227 of the Constitution. There is no gainsaying that in a give case, the High Court may not entertain a writ petition under Article 226 of the Constitution on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. The rule of exclusion of writ jurisdiction due to availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of the availability of an alternative remedy, a writ court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies, namely, (i) where the writ petition seeks enforcement of any of the fundamental rights (ii) where there is failure of principles of natural justice or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an act is challenged. In these circumstances, an alternate remedy does not operate as a bar.

In the instant case, though it is true that the penalty order impugned in the writ petition was appealable in terms of the aforenoted regulations but having coming to the conclusion that the order was per se illegal being violative of principles of natural justice, it cannot be said that the High Court fell into an error in entertaining the writ petition filed by the respondents.

For the foregoing reasons, the appeals are devoid of merit and consequently the same deserved to be dismissed, which we hereby do, leaving the parties to bear their own costs. Appeal dismissed."

As regards the evidence is concerned, the Apex Court has held in **R.S.Saini Vs. State of Punjab & Anr.** [(1999) 8 SCC 90] as under :-

> ".....The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings."

Again in **High Court of Judicature at Bombay through its Registrar Vs. Shashikant S.Patil & Anr.** [2000 SCC (L&S) 144] it was held as under :-

> " When such a constitutional function was exercised by the administrative side of the High Court any judicial review thereon should have been made not only with great care and circumspection, but confining strictly to the parameters set by the Court in the afore cited decisions. In the present case, as per the judgment under appeal the Division Bench of the Bombay High Court appears to have snipped off the decision of the Disciplinary Committee of the High Court as if the Bench had appeal powers over the decision of the five Judges on the administrative side. At any rate the Division Bench has clearly exceeded its jurisdictional frontiers by interfering with such an order passed by the High Court on the administrative side.
>
> We, therefore, allow this appeal and set aside the impugned judgment of the Division Bench of the Bombay High Court."

14. It is seen that the charge leveled against the applicant it is very serious. It involves financial indiscipline. The Postman deals with public money. The money orders are entrusted to him in good faith for delivering it to the persons concerned at the right time. The Department reposes its trust in him expecting that he will do his duty faithfully and sincerely. It is seen from the records that the the 1st article of charge against the applicant has been proved as there was evidences

to show that he has not paid the money order to the person concerned. Integrity of an employee is much more important than his efficiency. Once the faith in its employee is lost, no department would like to retain him in service.

15. In view of the above position, we do not find any merit in this Original Application and it is accordingly dismissed. There shall be no order as to costs.

(Dated this the 27th day of March 2009)

K.NOORJEHAN
ADMINISTRATIVE MEMBER

GEORGE PARACKEN
JUDICIAL MEMBER

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