CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 160 of 2007

Thursday..., this the 26th day of April, 2007

C O R A M:
HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Puthiyadavan Narayanan,
S/o. Sri K. Karunakaran Nair,
Assistant Postmaster (Accounts),
Taliparamba HPO, Residing at 'Sruthi',
Thrichambaram, Taliparamba, Kannur District. ... Applicant.

(By Advocate Mr. O.V. Radhakrishnan, Sr. with Mr. Antony Mukkath)

v e r s u s

1. Superintendent of Post Offices,
Kannur Division, Kannur : 670 001

2. Director of Postal Services (Headquarters),
Kerala Circle, Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram : 695 033

3. Director of Postal Services,
Northern Region, Office of the Postmaster General,
Calicut : 673 011

4. Chief Postmaster General, Kerala Circle,
Thiruvananthapuram : 695 033

5. Union of India represented by its
Secretary, Ministry of Communications,
New Delhi - 110 001

6. P. Ramakrishnan,
Senior Superintendent of Post Offices,
Thrissur Division, Thrissur.

7. K. Sukumaran,
Inquiry Officer and Assistant Supdt. Of Post Offices,
Kannur Division, Kannur. ... Respondents.

(By Advocate Mr. P.M. Saji, ACGSC)

The Original Application having been heard on 23.04.07, this Tribunal on 26.04.07 delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

This OA raises the following questions of law:-

(a) When the Appellate authority without setting aside the order of penalty imposed by the Disciplinary Authority remits the matter to the Disciplinary Authority 'to finalize the case afresh' after performing the drill as contained under Rule 16(1)(b) of the CCS CC&A Rules, 1965, whether the earlier penalty order subsists or is it impliedly cancelled?

(b) When certain proforma has been provided for, in respect of proceeding with the case under Rule 16(1)(b) of the Rules, whether the same could be varied depending on the facts and circumstances of the case?

(c) Whether at the time of issue of charge sheet under the provisions of Rule 16(1)(b) of the CCS (CC&A)Rules, 1965, the initial memorandum issued could be cancelled?

2. Now the Facts capsule:

(a) On 12-01-2004, the applicant was served with Annexure A-2 Show Cause Memo proposing to take action against him. The applicant denied the charges and filed his representation on 19-04-2004 and he had also requested for an inquiry under Rule 16 (1)(b) of the Rules. However, rejecting the request, the Disciplinary Authority had passed the Annexure A-3 order dated 31-05-2004, imposing a minor penalty of withholding of one increment for a period of one year without cumulative effect. The applicant preferred Annexure A-4 Appeal dated 21-06-2004. The

appellate authority has passed the following order dated 04-02-2005 vide Annexure A-5:

> *I have gone through the appeal and the connected records in detail. Since there was no cogent reasoning for not allowing inquiry under Rule 16(1)(b) of CCS(CCA) Rules, 1965, the appeal has some merit. The entire case was based on oral and personal complaints against the appellant and, hence, it would be in the interest of natural justice to allow inquiry under Rule 16(1)(b) in such cases, thereby giving adequate opportunity to the appellant. Without going into the merits of the case, the case is remitted back to the disciplinary authority to hold inquiry under Rule 16(1)(b) of the CCS(CCA) Rules, 1965 and finalize the case afresh."*

(b) The Disciplinary Authority, in pursuance of the aforesaid Annexure A-5 order of the Appellate Authority, issued a memorandum dated 30-12-2005 (Annexure A-6) withdrawing the Annexure A-2 Memorandum of charge dated 12-01-2004 and proposing to hold inquiry under Rule 16(1)(b) of the CCS (CC&A) Rules, 1965. By Annexure A-7 letter dated 25-04-2006, the applicant had requested for appointment of an ad hoc disciplinary authority, as the regular disciplinary authority who had passed the earlier order of penalty would decide to appoint Inquiry Officer of his choice and pass final orders in this proceedings also. This request was, however, turned down, vide Annexure A-8 order dated 25-04-2006, on the ground that there is no such provision in the Rules.

(c) The applicant has, through this OA challenged the following orders:-

(i) Annexure A-2 order dated 12-01-2004
(ii) Annexure A-3 Memo dated 31-05-2004
(iii) Annexure A-5 Memo dated 04-02-2005
(iv) Annexure A-6 Memo dated 30-12-2005
(v) Annexure A-8 Memo dated 25-04-2006

3. The following are the grounds of challenge:-

(a) Annexure A-6 Memo dated 30-12-2005 whereby Annexure A-2 Charge Sheet was withdrawn is contrary to the terms of Annexure A-5 order of the Appellate Authority. The Appellate Authority does not authorize the Disciplinary Authority to hold a denovo inquiry but only directed to hold an inquiry under Rule 16(1)(b). The Disciplinary Authority has no authority to convert Rule 16 proceedings to one of Rule 14 proceedings.

(b) The disciplinary authority does not enjoy the power to withdraw a charge sheet and thus, withdrawal of Annexure A-2 charge sheet is illegal.

(c) The Disciplinary Authority, in this case may be one of the key witnesses and hence, he cannot function in his capacity as the Disciplinary Authority.

(d) Rejection of Annexure A-7 representation vide Anexure A-8 order passed on the appeal is patently illegal and a non speaking order. The appellate authority has power to correct the disciplinary authority to avoid hardship to the delinquent.

(e) Annexure A-5 order of the Appellate Authority is supposed to be a self contained and a speaking or reasoned order, whereas the the Appellate Authority's order at Annexure A-5 is not so. Hence, the same is illegal.

(f) Annexure A-8 order is vitiated and is void for non-application of mind.

(g) The Appellate authority has failed to give cogent reason in rejecting the request of the applicant for appointment and ad hoc disciplinary authority.

4. Respondents contested the O.A. According to them, save Annexure A-8 order, all other orders under challenge being more than one year anterior to the date of filing of the OA, the OA is barred by limitation. As regards challenge against Annexure A-8 order too, the same is not maintainable as the applicant has failed to point out any provision of law against the appellate power to direct issue of charge sheet (Annexure A-6) dated 30-12-2005 or for the appointment of ad hoc disciplinary authority. No fresh charge or imputation has been levelled against the applicant and hence, the second prayer also cannot be granted to the applicant. Further, in the present case applicant has not availed of other remedies and hence, the OA is liable to be rejected under Sec 20(1) of the Administrative Tribunals Act, 1985 too. The applicant has not been prejudiced with the withdrawal of Annexure A-2 memo on the issue of Annexure A-6 Memo. Mere substitution of the first sentence of the model form with first 3 short paragraphs as narration of events is the only change from the model form. When the appellate authority has allowed the appeal and remitted the matter for finalizing the case afresh directing the Disciplinary Authority to conduct inquiry under rule 16(1)(b) as prayed for the applicant, the disciplinary proceedings which culminated in the punishment order merges with the appellate order and as such punishment order need not be set aside specifically in the appellate order. Consequently, the original charge sheet is deemed to be withdrawn unless the stage from which the trial should be conducted is specified

in the appellate order.

5. Counsel for the applicant argued that for setting aside a penalty order, there shall be a specific mention in the appellate order. In the absence of the same, the penalty order stands and the purport of the direction of the appellate authority is to conduct the inquiry in accordance with the provisions of Rule 16(1)(b) of the Rules and submit the inquiry report to the appellate authority, and the applicant shall react to the same and keeping in view the inquiry report and the representation against the same by the applicant, the appellate authority shall decide whether the penalty already imposed (prior to the inquiry under rule 16(1)(b) of the Rules) should be confirmed or modified or set aside. Again, in so far as the charge memo issued under Rule 16(1)(b), by virtue of the fact that the earlier Rule 16(1) Memo having been cancelled, there is an apprehension in the mind of the applicant that the same might culminate into one for major penalty under Rule 14 of the CCS (CCA) Rules 1965.

6. Counsel for the respondent as a preliminary objection raised the issue of limitation. As stated in the counter, save Annexure A-8 all the other impugned orders date back more than one year anterior to the date of filing of the OA and thus, qua these documents, the OA is hit by limitation. As regards various contentions raised by the senior counsel for the applicant, it has been argued by the counsel for the respondents that there is no basis for the apprehension that the revised memo issued would be considered as one for major penalty

proceedings. According to the counsel for the respondents, the very specific mention in the said Annexure A-6 Memorandum as to Rule 16(1)(b) of the Rules and a brief history of the case would go to prove that there is absolutely no scope of the Memorandum being considered as one for major penalty. Thus, the apprehension of the applicant is baseless. As regards the contention that the penalty already imposed shall remain intact in view of the fact that the same has not been set aside by the Appellate Authority, the counsel for the respondents said that when a matter is remitted back to the disciplinary authority for holding a fresh inquiry, axiomatically, the earlier order suffers a total eclipse and thus the penalty imposed would not be surviving. The fresh decision of the disciplinary authority would be shaped on the basis of the inquiry report. Otherwise, conducting the inquiry keeping the earlier penalty order intact would mean affording of post decisional hearing, which is not contemplated in the scheme of the Disciplinary Proceedings. The counsel for the respondents submitted that the effect of remitting of the case to the Disciplinary Authority by the Appellate Authority, without setting aside the earlier penalty order, has been analyzed in the decision 1980 SLJ 280 = 1980 (1) SLR 123 (**M.R. Subramanyam vs Commandant, Madras, Eng. Group and Centre and Others**) wherein in para 7 it has been held as under:

> "7. It has been contended for the second respondent by Shri U.L. Narayana Rao, the learned counsel, that from the above orders, it would be clear that the original enquiry which resulted in the order of dismissal of the petitioner had not been set aside by the appellate authority and, therefore, the 2nd respondent was justified in endorsing the same and ordering a denovo enquiry without withdrawing the order of dismissal earlier made pursuant to enquiry which had been held by the appellate authority to suffer from procedural lapse. It is difficult

to accede to this contention. The appellate order, though brief, if properly understood, in substance, means no more than that the entire proceedings resulting in the dismissal was a procedural lapse. The matter has been remitted for the denovo proceedings to the first respondent. If understood as such, it is clear that the 2nd respondent was in error in coming to the conclusion that the original dismissal order would still survive after the order in appeal was made as extracted above. Dismissal cannot be presumed without enquiry de novo. I am, therefore, of the view that the petitioner is entitled to the benefits flowing from the order in appeal and must be held to be deemed to be in service subject however to fresh enquiry in accordance with Rules. Therefore, Exhibit-E is liable to be quashed as illegal and without jurisdiction and it is so quashed in so far as it states that the original order of dismissal is operative and that the petitioner should cease to work."

7. In addition, the counsel for the respondents submitted that provisions of Rules 126 and 129 of Postal Manual Vol. III read with Rule 16(1)(b) when harmoniously held would confirm the fact that the respondents are acting strictly in accordance with the provisions of the Rules and the action of the respondents cannot be faulted with.

8. Rejoinder had been filed by the applicant, reiterating the points raised in the O.A.

9. Senior Counsel for the applicants in rejoinder to the arguments of the counsel for the respondents contended that under the provisions of Rule 27(2) of the CCS (CC&A) Rules, 1965, the appellate authority has the following power:-

"In the case of an appeal against an orer imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the Appellate Authority shall consider.... and pass orders -

*(i) confirming, enhancing, reducing or setting aside the penalty, **or***
(ii) or remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of these cases."

Thus, if recourse is taken to (ii) above, the question of setting aside of the penalty does not arise, argued the senior counsel for the applicant. And, in so far as Rule 126 of the Postal Manual Volume III is concerned, the stipulation is that it is only when an order of penalty is set aside and the matter remitted back, the consequences shall be as contained in that Rule. As regards Rule 129, the same is not applicable to the facts of the case since, that meets with a situation when the appellate order is set aside. As regards the precedent relied upon by the counsel for the respondents, the contention of the senior counsel for the applicant is that the same is distinguishable, inasmuch as that case related to imposition of major penalty of dismissal after holding a full fledged inquiry, while the one meted to the applicant is one of minor penalty without holding the inquiry. As regards limitation aspect, the senior counsel did not advert to that aspect.

10. Arguments were heard and documents perused. First as to limitation. It is observed from the documents that barring Annexure A-8, other orders impugned belong to a period anterior to one year from the date of filing of the

O.A. As such, the counsel for the respondents is right when he contended that the case is barred by limitation. Thus, in so far as the impugned orders at Annexure A-2, A-3 (if these two subsisted), A-5 and A-6, challenge by the applicant of the same is patently time-barred.

11. Notwithstanding the bar of limitation, let us consider on merit so far as challenge to the afore said orders is concerned. What exactly had happened was that the applicant was meted with a minor penalty of withholding of increment for one year without any cumulative effect, against which the applicant moved the appellate authority for quashing of the order. Reason or the ground for the same was that despite his request for an inquiry, the same was not arranged. The appellate authority, on considering the appeal, felt that an opportunity to defend the case not having been afforded to the applicant the same vitiated the proceedings and hence, he had directed for holding an inquiry and the matter be finalized afresh. It was exactly on that basis that Annexure A-5 was issued. Cancellation of Annexure A-2 initial memo issued under the provisions of Rule 16(1)(a) was a must in view of initiation of the proceedings under Rule 16(1)(b) of the Rules after penalty was imposed. Earlier Memo could have been allowed to subsist and proceedings under 16(1)(b) could have been in continuation of the same had the earlier memo not culminated in the issue of Annexure A-3 penalty order. Thus, cancellation of the earlier Annexure A-2 order dated 12-01-2004 cannot be faulted with.

12. The appellate authority, while allowing the appeal preferred by the

applicant, had, without going into the merit of the case, remitted the matter back to the disciplinary authotiry and the Disciplinary Authority, in pursuance to the said Appellate Authority's order at Annexure A-6, proceeded to follow the procedure under Rule 16(1)(b) of the Rules. This called for necessary withdrawing of the earlier Annexure A-2 Memo and accordingly, the withdrawal was reflected in the Annexure A-6 order. There is absolutely no illegality in such cancellation of earlier memorandum. (*Question No. (c) in para 1 is answered).* It is to be stated at this juncture that the format prescribed for issuing the memo indicates that the charge Memo is in continuation of the earlier memo. Apparently, the same is under a circumstance when the proceedings were pending and not as in the instant case, after the imposition of penalty followed by appeal against the penalty and the order by the Appellate Authority for conducting the proceedings under Rule 16(1)(b). Thus, slight modification in the format does not vitiate the proceedings in this case; rather, the same is fully warranted. (*Question (b) at para 1 is answered in affirmative).* Once the initial Memo (Annexure A-2) is withdrawn, needless to mention that penalty imposed on the basis of the said charge memo too has to go. Thus, on the issue of Annexure A-6 Memorandum, the initial penalty imposed does no longer survive. (*Question (a) in para 1 is answered).* Further, the authority relied upon by the counsel for the respondent (1980 SLJ 280 (supra) fully supports the case of the respondent. The contention of the applicant that the same does not apply to a case of minor penalty proceedings since in the case of minor penalty proceedings, there cannot be a de-novo inquiry as earlier there was no inquiry is also not acceptable. De-novo means only 'starting from the beginning' or

'anew'. It may be in a particular case a re-inquiry and in some other, a new inquiry. The contention of the applicant's senior counsel that the penalty shall be intact and on receipt of inquiry report the Appellate Authority shall consider whether the penalty imposed should be confirmed or modified or set aside is thus unacceptable. Thus, even on merit, the impugned orders at Annexure A-5 and A-6 stands judicial scrutiny and there is no illegality. Challenge of Annexure A-2 and A-3 cannot be there, as these orders do not subsist as on the date of filing of the OA.

13. As regards challenge against issue of Annexure A-8, which is within limitation, it is to be seen whether rejection of the request of the applicant to appoint ad hoc disciplinary authority is legally valid. The ground for such request by the applicant is that the Disciplinary Authority once having formed a conclusion and imposed penalty, would have the same mind set even now and he may appoint an Inquiry Officer of his choice and the penalty as imposed earlier would follow even after the proceedings. We are disinclined to agree with this contention, as the same is far fetched. First of all, once a person has been appointed as the Inquiry Officer, the presumption is that the person so appointed being entrusted with the task of discharging a quasi-judicial function, he would act unbiased and dispassionately, unless proved otherwise on the basis of evidences. Again, the finding of the Inquiry Officer cannot be at the dictates of the Disciplinary Authority as the same has to be based upon the evidences and the applicant has full opportunity to vindicate his stand. The applicant's very request in his appeal for holding the inquiry is that it is the sole

exculpatory ventilation available to him. Hence, there is no substance in the ground raised in Annexure A-7 representation for appointment of Ad hoc Disciplinary authority. If the contention of the applicant could be accepted, such a situation of appointing ad hoc Disciplinary Authority cannot be avoided in any of the cases where the appellate authority directs de novo inquiry, in which event, the Rules would have so reflected that in such an event, an ad hoc disciplinary authority shall be appointed. The rules are not as such. Hence, no fault could be found in the issuance of Annexure A-8 rejecting the request of the applicant for appointment of an ad hoc disciplinary authority. Of course, in the event of the said Disciplinary Authority becoming a witness, there could be a change in the Disciplinary Authority (Ad Hoc) at that juncture. Annexure III to the Charge sheet does not reflect the Disciplinary authority as one of the witnesses.

14. Thus, viewed from any angle, limitation or on merit, the OA does not survive and is, therefore, dismissed.

15. Under the circumstances, there shall be no orders as to costs.

(Dated, the 26th April, 2007)

Dr. K B S RAJAN
JUDICIAL MEMBER

MRS. SATHI NAIR
VICE CHAIRMAN

cvr.