

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 169 of 2013

Wednesday, this the 21st day of August, 2013

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member

Hon'ble Mr. K. George Joseph, Administrative Member

K.P. Kottan, aged 60,

S/o. Unnithan, Formerly Mail Overseer,

Kunnamangalam, Retired Residing at "Sreevihar",

Manassery, Mokkam – 673 602.

..... **Applicant**

(By Advocate – Mrs. R. Jagada Bai)

V e r s u s

1. Union of India, represented by the Secretary
to Department of Posts, New Delhi – 110 001.

2. The Senior Superintendent of Post Offices,
Calicut Division, Calicut 673 003.

3. Shri P. Riyaz, (Age and father's name not available),
Assistant Superintendent of Post Offices (OD) &
Inquiring Authority, Office of the Senior Superintendent of
Post Offices, Kozhikode Division,
Kozhikode 673 003.

..... **Respondents**

(By Advocate – Mr. Sunil Jacob Jose, SCGSC)

This application having been heard on 16.08.2013, the Tribunal on
21.08.13 delivered the following:

ORDER

By Hon'ble Dr. K.B.S. Rajan, Judicial Member -

The applicant, while functioning as mail overseer was involved in a
 criminal case (under Negotiable Instruments Act) and was convicted as well
 as sentenced to simple imprisonment till the rising of the court. Appeal

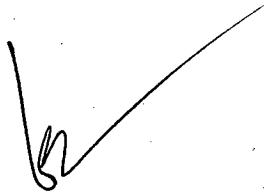


before Sessions Court failed but the High Court by its judgment dated 16th July, 2012 in Crl. R.P. No. 1202 of 2012 set aside both the conviction as well as sentence. The applicant applied for voluntary retirement, but the same had been refused and OA filed by the applicant before the Tribunal against the same has also been dismissed. The respondents have issued a major penalty charge sheet under Rule 14 of the CCS(CC&A) Rules, 1965 just a month in advance of the normal date of superannuation alleging that the applicant had suppressed the information of his conviction and sentence at the material point of time and on retirement of the applicant the said proceedings became proceedings under Rule 9 of the CCS(Pension) Rules, 1972.

2. The applicant has challenged the above on various grounds, including that in fact he had already informed the respondents of the fact of his conviction at the material point of time in 2008. The reliefs sought are as under:-

- (1) Set aside Annexure A2 and Annexure A6.
- (2) Direct the respondent No. 2 to pay all eligible terminal benefits to him with all consequential and attendant benefits.
- (3) Any such remedy deemed fit and proper as this Hon'ble Tribunal may be pleased to order.
- (4) Grant costs to the applicant."

3. Respondents have contested the OA. According to them, the intimation had not reached and the same is a grave misconduct.

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4. The applicant has filed his rejoinder stating that Annexure A-12 intimation was submitted by him but the Senior Superintendent who was the custodian of that document denied the receipt of the same and the very same authority was conducting the proceedings, which is illegal. In any event, even assuming without accepting that the intimation was not given, then again, the same cannot be held to be a grave misconduct, but only a procedural lapse as held by the Tribunal in order dated 06.07.2011 in OA No. 3130 of 2010 of the Principal Bench. The applicant's conviction and sentence stood set aside by the judgment of the High Court.

5. Counsel for the respondents submitted that the departmental proceedings initiated prior to the date of superannuation automatically gets converted into one under Rule 9 of the CCS (Pension) Rules, 1972 and the same has to be taken to its logical end.

6. Arguments were heard and documents perused. The facts (save intimation as to conviction and sentence) have all been admitted. The proceedings initiated were also relating to the non intimation of the fact of conviction. The said proceedings were initiated just month prior to the date of superannuation of the applicant. It is the case of the respondents that the applicant failed to intimate the fact of conviction on time. He was required to communicate the same as per the conduct rules. The stand of the applicant however, is that (a) he did communicate the matter of conviction vide Annexure A-12 and (b) even if not for argument sake, the lapse on his part is not such a grave misconduct, which would entail penalty affecting



his pension. Rule 9 of the CCS (Pension) Rules, 1972 reads as under:-

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :

Provided that

Provided further that

2(a) The departmental proceedings referred to in sub rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government Servant be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

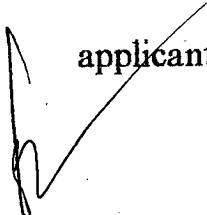
7. The term 'grave misconduct' has not been defined in the rules. In the instant case the charge sheet alleged that the applicant has violated the provisions of Rule 18 of Volume III of the P & T Manual, which reads as under:-

18. It is the duty of a Government servant who may be convicted by a Court of law or arrested, to inform his official superior of the fact of his conviction and the circumstances connected therewith as soon as it is possible for him to do so. Failure in this regard will be regarded as suppression of material information and will render him liable to disciplinary action on this ground alone, apart from the penalty called for on the basis of the offence on which his conviction was based.

8. The applicant was issued with a memo, vide Annexure A2 dated 08.05.2012 wherein it was proposed to impose appropriate penalty under Rule 19 of the CCS (CC&A) Rules, 1965 for his conviction and sentence

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vide judgment dated 08-08-2008. The applicant had given his explanation on 05.06.2012 [Annexure A-3, in which he had referred to his representation dated 12-08-2008 (Annexure A-12)] whereby according to him he had given the intimation of his conviction. No action was taken thereafter. In the meantime, the applicant's Crl. Revision Petition before the High Court was allowed and his conviction and sentence have all been quashed and set aside on 19th July, 2012. Thus, the respondents have been precluded from proceeding with the earlier show cause notice at Annexure A-1. It was on 12.09.2012 that another show cause notice was issued stating that the applicant failed to inform the authorities about the conviction, which he was duty bound as per the provisions of Rule 18 of the Postal Manual Vol. III. The same was immediately replied, maintaining that he had already informed through proper channel vide letter dated 12.08.2008 (Annexure A-12). Thus, the applicant had been consistently been maintaining that he had informed about his conviction as could be seen from Annexure A-3 dated 05.06.2012 and A-5 dated 14.09.2012. The charge sheet dated 01.10.2012 reflects that no such explanation is seen received. It appears that issue of charge sheet dated 01.10.2012 is an afterthought. For, the applicant had been consistent in maintaining that he had given the intimation as could be seen from Annexure A-3 as also A-5. In contra distinction to the same, there has been no mention in the initial show cause notice dated 08.05.012 that the applicant had failed to intimate the respondents about the conviction. Again, when the applicant had given his explanation dated 05.06.2012 there has been no intimation to the applicant about the non receipt of the said intimation dated 12.08.2008.



When the respondents were contemplating to proceed further with the initial show cause memo for imposition of penalty under Rule 19 of the CCS(CC&A) Rules, 1965, the applicant was honourably acquitted and thus, the contemplated action could not succeed. Hence another memo, this time about non intimation!

9. Assuming that the action on the part of the respondents has been bonafide, then again, non intimation is a procedural lapse. Non intimation would entail penal proceedings as contained in Rule 18. But, the procedural lapse should be viewed only as a mere misconduct. It is not one of grave misconduct. Such a lapse would have deserved proceedings under minor penalty, as held by the Principal Bench in the case of R.P. Sharma vs Union of India (OA 3139 of 2010). The applicant was not kept in imprisonment for more than 48 hours. The applicant is a low paid employee and has to rely upon his megre pension. He has been honourably acquitted by the High Court and the stigma of conviction too does not subsist. As such, interest of justice would be met if the charge sheet is quashed and set aside as has been done in the case of R.P. Sharma (supra).

10. Accordingly, the OA is allowed. Impugned order at Annexure A-2 and A-6 are hereby quashed and set aside. Respondents are directed to pass suitable orders converting the provisional pension as one of regular in character and also release the withheld terminal benefits to the applicant.

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11. This order shall be complied with, within a period of two months from the date of communication of this order.

12. No costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(DR. K.B.S. RAJAN)
JUDICIAL MEMBER

“SA”