CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 169/2009

Friday, this the 9th day of July, 2010.

CORAM:

HON'BLE Mr JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE Ms K.NOORJEHAN, ADMINISTRATIVE MEMBER

R.Sathyarajan,
Postman,
Vadesserikonam.P.O.
Thiruvananthapuram North Postal Division .. Applicant

By Advocate Mr Vishnu S Chempazhanthiyil

v.

1. Senior Superintendent of Post Offices,
Thiruvananthapuram North Division,
Thiruvananthapuram.

2. Union of India represented by
Director of Postal Services,
Office of the CPMG,
Kerala Circle,
Thiruvananthapuram - Respondents

By Advocate Mr Sunil Jacob Jose, SCGSC

The application having been heard on 30.6.2010, the Tribunal on 9.7.2010 delivered the following:-

ORDER

HON'BLE Mr JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

The applicant, a Postman working under the 1st respondent has filed this O.A challenging the penalty order dated 29.12.2006 and the appellate order dated 4.3.2008.

working as Postman, he was served with a charge memo dated 17.8.1998 alleging that the applicant while functioning as Postman of Beat No.6, Batch No.1 of G.P.O., Trivandrum on 24.7.1996 has torn one postal article addressed to M/s Vijo Plastics, Over Bridge, Trivandrum sent by Association of Arts & Commerce, Trivandrum-9 and thrown it away and thereby failed to maintain absolute integrity and devotion to duty and behaved in a manner unbecoming of a Government servant, violating Rule 3.1(i), 3.1(ii) and 3.1(iii) of CCS(Conduct) Rules 1964. The applicant had filed his explanation for the above charge. An enquiry has been conducted on the above charge and as per the enquiry report, the applicant has been found guilty of the charges framed against him. Thereafter on getting the explanation from the applicant, the 1st respondent imposed a penalty of reduction of his pay to the stage of 3500/- from Rs.3650/- in the time scale of pay of Rs.3050-75-3950-80-4590 for a period of 3 years with effect from 1.1.2007 and with further ordered that the applicant shall not earn increment of pay during the period of reduction and on expiry of this period, the reduction will have the effect of postponing his future increments for 3 years. Against the penalty order passed by the disciplinary authority, the applicant filed an appeal. However, on hearing the appeal, the appellate authority confirmed the order passed by the disciplinary authority though it was reduced to the effect that on expiry of the period of punishment of three years, the reduction of pay will not have the effect of postponing of his future increments of pay. Aggrieved by the above orders, the present O.A has been filed.

3. The O.A has been admitted and notice ordered to the respondents and in pursuance of the said notice from this Tribunal, respondents have filed a reply statement in which it is stated that the orders impugned are based on the evidence adduced before the inquiry officer and on the finding entered by the inquiry authority. That apart, it is stated in the reply that as the applicant has

committed the misconduct and after having a detailed inquiry under Rule 14 of the CCS(CCA) Rules 1965 the penalty order has been passed. It is further stated in the reply statement that the witnesses examined before the inquiry officer have given evidence in support of the prosecution and proved the charge against the applicant beyond any doubt. Further, it is stated in the reply statement that the appellate authority on hearing the appeal found that the inquiry officer found the applicant guilty of the charges on the basis of the findings entered by the inquiry authority, the disciplinary authority has passed the penalty order. If so, the orders under challenge have to be upheld by this Tribunal.

4. We have heard Shri Vishnu S Chempazhanthiyil, learned counsel appearing for the applicant and Shri Sunil Jacob Jose, learned SCGSC appearing for the respondents. The learned appearing for the applicant has taken mainly three contentions in attacking the orders under challenge. Firstly, the learned counsel submits that though on the same set of evidence and the charge the police has already charge sheeted a case against the applicant before the Judicial First Class Magistrate Court V, Trivandrum as CC No.635/2000 and after taking evidence, the learned Magistrate had acquitted the applicant as there is no evidence to prove the case against the applicant. If so, the counsel for the applicant submits that same allegations, the same charge and the same set of evidence have been relied on and the same witnesses examined by the Magistrate are made basis for disciplinary inquiry. The Magistrate honorably acquitted the applicant. Hence the applicant is entitled for exoneration of the disciplinary proceedings initiated against him. Further, learned counsel contends that none of the witnesses who were examined before the trial court has seen that the applicant had torn the postal article and thrown away it. Police though examined two witnesses as eye witnesses, they have not

supported the prosecution and they have stated that they did not see the applicant tearing the postal article or throwing the same on the day of the incident. Hence the entire evidence relied on by the inquiry officer for finding the applicant guilty of the charge are based on no evidence at all. Hence the charge against the applicant has to be set aside by this Tribunal and the punishment awarded by the disciplinary authority is baseless and without any evidence. Since the charge sheet filed by the Police under Section 52 of the IPC has been found baseless as it is without any evidence, the proceedings now initiated against the applicant by the department has also to be considered has no basis. Hence the punishment awarded by the disciplinary authority and confirmed by the appellate authority has to be set aside by this Tribunal. Lastly, the counsel for the applicant submits that there are judgments of the Apex Court to the effect that if the criminal cases charged on the same set of evidence and finally the criminal court acquits the delinquent officer, he shall not be found guilty in the disciplinary proceedings on the same set of evidence. Hence the benefit of doubt has to be given to the applicant by this Tribunal and the applicant has to be exonerated from all the charges. Further, it is the case of the applicant that though the incident had happened during 1996, it has continued for more than 12 years and finally the department found the applicant guilty. The long delay for continuation of the proceedings by itself had given much mental agony and sufficient punishment for the applicant and that delay itself is a reason to interfere with the proceedings started against the applicant.

5. The counsel for the respondents, Mr Sunil Jacob Jose in answering to the arguments of the counsel for the applicant submits that the witnesses now examined before the inquiry officer have categorically stated that the applicant was functioning as the Postman of Beat No.6 and on the day of the incident he was sent on duty to that area and it was proved by documents that the applicant

was responsible for delivering the postal articles entrusted to him on that day of the incident. If so, the presumption can be taken against the applicant that he himself torned the postal article without delivering to the addressee. Learned counsel further submits that as the addressee herself has stated that the postal article came to her address has not delivered to her by the applicant and the torn articles recovered by the postal authorities in the inventory are that of the letter addressed to the Vijo Plastics. If so, that evidence itself is enough to find that the applicant had wilfully and intentionally torned the postal articles without delivering the same to the addressee. Further, the counsel submits that the documents now produced before the inquiry authority would prove that the applicant and the applicant alone was functioning as Postman of Beat No.6 during the relevant time and the postal articles were entrusted with him. If so, the torned articles were recovered would prove that the same was torned by the postman, none else than the applicant. Hence the finding entered by the inquiry officer is based on complete evidence and the inquiry report has been accepted by the disciplinary authority and on going through the finding entered by the inquiry authority, the disciplinary authority has imposed the penalty. Hence the acquittal of the criminal case cannot be considered as a ground to eschew of the charge framed against the applicant. Apart from that the counsel submitted that the complainant, the addressee herself has deposed before the enquiry officer that though she had not received the postal article, she had not filed any complaint because the matter has no such importance or the information contained in the letter was not serious. However, the evidence of this witness who had given evidence before the inquiry officer has not been discredited by cross-examining the witness before the inquiry officer. If so, her evidence alone is enough to see that the applicant himself torned the postal article. The acquittal made by the trial Magistrate cannot be considered as a clear or honourable acquittal as there is no evidence to prove the prosecution case. But

that by itself cannot be taken as a ground for setting aside the charge filed against the applicant and the findings entered by the inquiry officer.

6. On an anxious consideration of the rival contentions by the learned counsel for the parties and on perusal of the records produced, including the inquiry file, we have to find out that whether the applicant is entitled for the exoneration which he claimed in the O.A or not. The case put forward by the applicant is that on the same set of evidence, facts and circumstances, the police has registered a case against the applicant and filed a charge sheet before the Judicial First Class Magistrate Court V, Trivandrum and on trial, the learned trial court had acquitted the applicant. If so, the same evidence now relied on by the disciplinary authority or the inquiry officer cannot be brushed aside or for finding that the charges against applicant has not been proved. It is well settled principle that a criminal case shall be proved by adducing cogent, convincing and dependable evidence beyond reasonable doubt but in a disciplinary proceeding, for misconduct as alleged in the charge memo given by the department, the alleged misconduct has to be proved only by preponderance of probability. It is an accepted position that on the evidence adduced before the inquiry authority and the analysis based on such evidence, the conclusion arrived at by the inquiry authority are only necessary for finding the delinquent officer as guilty of the charges or not. In this context from the facts which revealed before this Tribunal would show that the Judicial First Class Magistrate Court V, Trivandrum, the evidence adduced by the prosecution was confined to the offence coming under Section 52 of IPC. That offence has to be proved by evidence by adducing evidence beyond reasonable doubt. To prove the case against the applicant before the trial Magistrate, some witnesses were examined and some documents were produced by the prosecution. But the Magistrate after analysing the evidence found the applicant not guilty of the charge as it

lacks evidence against him to prove the charge. When we have perused all the inquiry file it is seen that the addressee of the destroyed postal article one Sethukutty Amma has been examined who had given evidence before the inquiry officer to the effect that the postal article came to her address has not been delivered to her. On this aspect, there was no cross examination by the defence counsel. Further, it has to be seen that all the documentary evidence produced before the inquiry officer would show that the applicant and the applicant alone was functioning as the Postman of Beat No.6 of Trivandrum and the postal article alleged to have been torn and thrown was entrusted with the applicant. In this context, the explanation of the defence given by the applicant is that he was not entrusted with any article as alleged in the charge on the day of the incident. But the documentary evidence produced by the department would show that the applicant was in charge of the area in question and the presumption is in favour of the management or the department that the applicant alone was entrusted with the postal article to deliver to the addressee. Apart from that, the mahazar prepared at the time of the recovery of the remanence of the torn article would also show that this was recovered from the area in which the applicant was on duty. Even though the applicant has a case that it is the union rivalry, there is no evidence or material placed before the inquiry authority to substantiate the case put forward by the applicant. If so, the finding entered by the inquiry authority are based on evidence. In the light of the above, the disciplinary authority has correctly relied on the report of the inquiry authority and the finding the applicant guilty of the misconduct charged against him. The next point to be considered is that whether the pendency of a criminal case on the same incident can be taken as a ground to eschew the departmental proceedings or not. As we have seen that the evidence adduced before the trial court viz, the Magistrate court and the evidence adduced before the inquiry officer are entirely different and hence the initiation of the departmental proceedings is fully justified and the disciplinary

authority had acted only on the basis of the finding entered into by the inquiry authority. The appellate authority also though reduced the rigour of punishment awarded by the disciplinary authority found that the enquiry report has to be accepted and the charge levelled against the applicant has been proved. The next question to be considered is whether the delay caused in finalising the disciplinary proceedings can be taken as a ground for exoneration of the applicant from the charge or not. In this context it has to be noted that the applicant himself have got a stay from this Tribunal for the continuation of the proceedings by alleging bias against the inquiry authority and the delay is not caused on the part of the department at all. Even if there is any delay, that delay cannot be considered as culpable from the facts and circumstances of the case. An employee like the applicant deserves no sympathy as Postal Department has to be considered as the communication media of ordinary citizen of the country. If such employees are not doing their duty properly and responsibly, the initiation of the disciplinary proceedings and the punishment awarded has to be upheld. On an overall assessment of the entire evidence and the facts and circumstances, we are of the view that the O.A fails and hence it is dismissed, without any order as to costs.

K.NOORJEHAN
ADMINISTRATIVE MEMBER

Thankappan

JUSTICE K.THANKAPPAN
JUDICIAL MEMBER

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