

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

.....

O.A. NO.189/92

Tuesday, this the 14th day of 1993.

Shri N.Dharmadan, Member (Judicial)

Shri S.Kasipandian, Member (Administrative)

Shri K.C.Elias,
Postal Assistant,
Alwaye Head Post Office,
Alwaye. Applicant

By advocate Shri M.Paul Varghese

Versus

1. Sr. Supdt. of Post Offices,
Alwaye Postal Division,
Alwaye.
2. Senior Supdt. of Post Offices,
Ernakulam Postal Division,
Cochin-11.
3. Director of Postal Services,
Central Region,
Department of Posts,
Cochin-16.
4. Chief Post Master General,
Department of Posts,
Kerala Circle,
Trivandrum.
5. The Member (Personnel),
Postal Services Board,
Department of Posts,
Min. of Communications,
New Delhi.
6. Union of India, rep. by
its Secretary to Government,
Min. of Communications,
New Delhi.

By Advocate Shri TPM Ibrahim Khan.

O R D E R

N.Dharmadan, JM

The applicant, now working as a Postal Assistant, is aggrieved by the disciplinary proceedings initiated against him which culminated in the order passed by the disciplinary authority removing him from service. Even though the appellate authority reduced the punishment from removal to one of reduction of pay by two stages from Rs 1480 to Rs 1420 in the revised time scale of pay of Rs 975-1660 for a period of three

years. He was not satisfied with the same and filed a revision and approached this Tribunal.

2. According to the applicant, while he was working as Wireless License Inspector he was served with charge memo as contained in Annexure-A2. The charges are extracted below:

"Article I: That Sri K.C.Elias while functioning as WLI II Alwaye irregularly and unauthorisedly accepted from Sri N.V.Poulose Nammanaril, Vilangu Edathala, holder of Kizhakkambalam DBRL 125 current upto 31.12.72 a sum of Rs 90 in 1978 purportedly towards renewal fees of the said DBRL. That he failed to credit the amount to Govt. once having irregularly and unauthorisedly accepted the amount, that he failed to pursue the NR case properly either towards renewal or prosecution. That he treated the NR case in respect of the said DBRL irregularly collected by authorisedly furnishing in bogus remarks 'transferred to Edathala' in the BRL register of Kizhakambalam causing loss of revenue to the Govt. That the said Sri Elias thus failed to main absolute integrity and devotion to duty and conducted himself in a manner unbecoming of a Govt. servant thereby violating rule 3(1)(i) to (iii) of CCS(Conduct) Rules, 1964.

Article II : That the said Shri K.C.Elias while working as WLI Alwaye accepted irregularly and unauthorisedly from Shri M.R.Chollappan, Malayindupurampil Pazhamthottam PO, holder of DBRL Nos. 264, 265, 387 and 350 standing at Kizhakambalam PO a sum of Rs 160 purportedly for the renewal and cancellation of the said DBRLs. That he failed to credit the amount of Govt. once having irregularly and unauthorisedly accepted the amount, that he failed to pursue the NR case either towards renewal or prosecution that he irregularly treated the NR cases closed in respect of the said DBRLs causing loss of revenue to the Govt. That Shri K.C.Elias thus failed to maintain absolute integrity and devotion to duty and conducted himself in a manner unbecoming of a Govt. servant thereby violating rules 3(1)(i) to (iii) of CCS (Conduct) Rules, 1964.

Article III: That the said Shri K.C. Elias while working as WLI Always in January 1981 unauthorisedly and irregularly accepted from the holder of Edathala DBRL 146 with date of expiry 31.12.72, Shri Parasadkutty Kuzhivelipadi, Edathala, a sum of Rs 107/- purportedly for renewal and cancellation of the said DBRL; that he failed to credit the amount to Govt. once having irregularly and unauthorisedly accepted the amount that he failed to pursue NR case either towards renewal or prosecution, that he unauthorisedly made bogus entries against the DBRL 146 in the BRL register, causing loss of revenue to the Govt., that the said Shri Elias thus failed to maintain absolute integrity and devotion to duty and conducted himself in a manner unbecoming of a Govt. servat thereby violating rule 3(1)(i) to (iii) of CCS (Conduct) Rules, 1964.

3. He was suspended with effect from 17.2.82 and enquiry was ordered. After the enquiry when he was removed from service w.e.f. 13.9.83 finding guilty, the applicant filed TAK 198/87 challenging the orders passed by the disciplinary authority as also the appellate authority. The Tribunal as per Ann.A12 order dated 21.12.87 quashed the orders passed by the authorities mainly on the ground that the applicant was not served with a copy of the enquiry report in terms of the decision of the Supreme Court. The Tribunal made it clear that the enquiry can be continued from the stage of submission of the enquiry report. Accordingly further proceedings were continued in terms of the directions in the judgement, The applicant was again found guilty in 2 charges. Regarding the 3rd charge the enquiry officer found that the applicant was not guilty. Ann.A11 is the enquiry report. Regarding the 1st charge, according to the enquiry authority, out of the four parts of the first charge, only first 2 parts alone are proved. Regarding the other two parts the finding was in favour of the applicant. The same procedure was also followed in regard to the second charge. He splitted ^{up in charges} it into 3 parts and the applicant was found guilty in respect of the third part of that charge. Applicant was not found guilty in third charge. The disciplinary authority, as per Ann.A14 order, agreeing with the enquiry authority, imposed the penalty of removal from service. The applicant filed an appeal against the same, which was heard and disposed of by the appellate authority as per Ann.A18 order, reducing the penalty of removal to one of reinstatement of the applicant in service with reduction of his pay by two stages from Rs 1480/- to Rs 1420/- in the revised time scale of pay of Rs 975-1660 for a period of 3 years with immediate effect. It was further stated in that order that the applicant will earn increments during the currency of the penalty and that on the expiry of the period of penalty, the

reduction will not have the effect of postponing his future increments of pay. Against this, the applicant filed a revision petition which was considered and disposed of by Ann.A30 memorandum dated 22.5.92. All these orders along with two orders at Ann.A20 to A23 passed by the appellate authority regularising the period during which he was placed under suspension, have been challenged in this O.A.

4. The applicant raised two main grounds:

(i) he requested for the copies of 23 documents, but they were not made available to enable him to defend the case. Hence the orders are vitiated and violative of principles of natural justice; and

(ii) charges I and II were also not proved in the enquiry. The enquiring authority had followed a wrong procedure of splitting up the charges and he could ^{find the applicant guilty in respect of} only part of the same. So the punishment cannot be sustained.

5. Main attack of the applicant is against the order of the appellate authority. A reading of the order of the appellate authority would disclose that it was passed without a careful consideration of the above points raised by the applicant.

6. According to the appellate authority only the first charge ^{already} is proved against the applicant and ^{held} that the disciplinary authority erred in assessing the evidence. The appellate authority considered the contention of the applicant and observed as follows:

"The appellant's argument that these licences would have been renewed and cancelled is not supported by evidence. However, I find that he had requested for certain documents which were not produced. I find that the Disciplinary authority has erred in assessing the evidence properly. I find that the findings of the IO in respect of charge I is justified. The other charges are not proved. I am not also convinced that the punishment imposed on the appellant is commensurate with the quantum of his guilt. The Disciplinary Authority has come down heavily on the official. This statement, however, is not to be treated as a denegation of the seriousness of the charge which attracts a severe penalty."

5. The learned counsel for the applicant submitted that during the course of enquiry he made requests as would be seen from Annexures A5 and A7 for copies of 23 documents relevant for the enquiry for ^{Step 4} stepping up his defence, but the same were not made available. Only copies of 12 of the documents were supplied to him. Out of them some of the documents were not complete and hence he could not make the full use of the same in the defence properly. In fact the appellate authority found that the documents required by the applicant were not produced and according to the applicant this is sufficient to allow this case. He further submitted that he denied all the charges and hence, according to him, the penalty imposed in this case cannot be sustained. There is considerable force in his submission.

6. The order at Annexure A30 passed by the revisionary authority according to the applicant is barred by section 19(4) of the Administrative Tribunals Act, 1985.

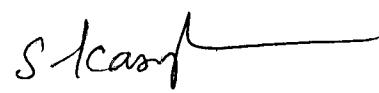
7. As already indicated the appellate authority did not apply the mind properly. ~~He~~ endorsed the finding of the enquiring authority and the disciplinary authority in respect of charge No. 1. But it was not noticed that an enquiring authority has split ^{up} the charges and found him guilty of part of the same. The appellate authority did not consider whether that finding is sufficient to penalise him particularly when he disagreed with the authorities in regard to the 2nd charge. No reasons are given for deviating from the decision of the disciplinary authority in this behalf. Under these circumstances we are of the view that the appellate order Ann.A18 cannot be sustained.

8. Regarding Ann.30 order passed by the revisionary authority the learned counsel for applicant submitted that this is only a show cause notice and it is not a final order, but the learned counsel for respondents stated that it can be treated as a decision rendered by the ^{revisionary} authority considering the grievance of the applicant. We have gone through the same.

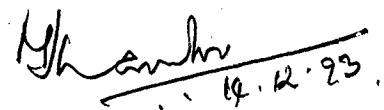
The revisionary authority did not agree with the appellate authority and decided to modify the penalty by increasing the duration of reduction of pay to five years and call upon him to file his representation. Since it is proved that the said order was passed after the filing of this case, we are of the view that the contention of the applicant that it is barred by section 19(4) of the Administrative Tribunals Act should succeed. The revisionary authority passed the order pending the Original Application and the applicant challenged the same by filing amendment to the application. The authority could have taken sanction or permission from the Tribunal before passing the order. However, having regard to the facts and circumstances of this case, we are of the view that it cannot be sustained in view of the provisions of the A.T.Act.

9. Accordingly, we set aside the order of the appellate authority Ann.A18 and remit the case back to the appellate authority for fresh consideration and disposal of the appeal in accordance with law. In view of the fact that the enquiry proceedings are pending from 1982 onwards, it goes without saying that the appellate authority shall dispose of the appeal within a period of 4 months from the date of receipt of a copy notwithstanding Ann.A30. ^{of the judgement,} Regarding the challenge of the applicant against Annexures A20 and A23 pertaining to regularisation of the period of suspension, the applicant has a case that they are contradictory to Ann.A16 an order passed by the Supdt.of Post Office, Alwaye on 29.11.88 and hence they are to be quashed. Since they are only consequential to Ann.A18 appellate orders they cannot be enforced before passing fresh orders on the appeal. The validity of the same would depend on the final decision on the appeal in terms of the above directions. In this view of the matter, we make it clear that the applicant may agitate the same separately before the concerned authorities after the final decision in the appeal that may be passed by the appellate authority, till which date these two orders shall not be implemented.

10. The application is allowed only to the extent indicated above. No costs.



(S.Kasipandian)
Member (A)


14.12.93

(N.Dharmadan)
Member (J)

14.12.93

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