CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 196/2009

Dated this the 24th day of February, 2011

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER
HON'BLE MR. V. AJAY KUMAR, JUDICIAL MEMBER

V.L. Sajith Das
Postman, Thirumala
Thiruvananthapuram ..... Applicant

(By Advocate Mr. Vishnu S. Chempazhanthiyil)

Vs

1 The Superintendent of Post Offices
Thiruvananthapuram South Division
Thiruvananthapuram - 695 014.

2 The Director of Postal Services
HQ, O/o CPMG
Thiruvananthapuram - 695 033

3 Union of India
Represented by the
Chief Post Master General
Kerala Circle,
Thiruvananthapuram - 695 033. .... Respondents

(By Advocate Ms. Deepthi Mary Varghese ACGSC)

The Application having been heard on 21.01.2011, the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by the action of the respondents in imposing the penalty of reduction by two stages from 3275/- to Rs. 3125/- in the pay scale of Rs. 3050-75-3950-80-4590 for a period of 4 years w.e.f. June, 2007 with further direction that the applicant would not earn increments during the period of reduction which was later modified by the appellate authority reducing the period of currency from 4 years to 2 years.

2 The facts in brief are as follows. The applicant while working as Postman in Thirumala Post Office was issued with a charge sheet under Rule 14 of CCS (CCA) Rules, 1965 (A-1). Upon denial of the allegations, an enquiry was conducted and the enquiry officer submitted report holding the applicant guilty of the charges (A-2). The disciplinary authority thereafter, passed orders imposing a penalty of reduction by two stages (A-3). Aggrieved, the applicant filed an appeal (A-4) which was disposed of without applying his mind modifying the currency of penalty to a period of 2 years (A-5). Hence, the applicant has filed this O.A on the ground that there is no evidence, the finding of the enquiry officer and disciplinary authority is perverse, there is no application of mind, the punishment is disproportionate to the gravity of the offence alleged against him the procedure laid down in CCS(CCA) Rules read with co-related provisions in the Postal Manual Vol. II and III were not complied with.

3 Per contra the respondents submitted that it is well settled law that the scope of judicial review of departmental proceedings is warranted only if there has been violation of the principles of natural

justice or the proceedings have been held in violation of statutory regulations prescribed the mode of such enquiry or the decision is vitiated by considerations extraneous to the evidence and merits of the case or the conclusion made by the authority is prima facie arbitrary or capricious that no reasonable person could have arrived at such conclusion or other similar grounds. It is also trite law that if there is some legal evidence on which the findings could be based, then adequacy on even reliability of such evidence would be outside the pale of judicial review. They stated that there was mass public complaint against the responsible and irregular deliver of mails by the applicant and also loss of 27 postal articles from his custody which were accidentally received by a member of public who had forwarded the same to CPMG for enquiry. The charges levelled against the applicant were proved in the enquiry. The disciplinary authority awarded the penalty of reduction of pay, on appeal it was reduced.

4 The applicant filed rejoinder reiterating the averments in the O.A. He further stated that the Rules envisage questioning of the accused generally if the government servant has not examined himself on the circumstances appearing against him in the evidence during the course of inquiry for the purpose of enabling him to explain any circumstances appearing against him.

5 The respondents filed additional reply statement refuting the allegations and averments in the rejoinder. They have also relied on the judgment of the Apex Court in the case of Sri Parma Nand Vs. State of Haryana and Others (1989 (2) SCC 177), State Bank of India Vs. Samarendra Kishore Endow (1994 (1)SLR 516) and reiterated their

contentions in the reply statement.

6 We have heard learned counsel for the parties and perused the records produced before us.

7 The applicant while working as Postman, Malayinkil Sub Office departmental proceedings were initiated against him. The articles of charges framed against the applicant are extracted below:

Article -I

That the said Shri V.L.Sajith Das while working as Postman Malayinkil SO failed to deliver and detained until 13.9.04 twenty seven postal articles received for delivery at Malayinkil which were entrusted to him for delivery on 5.8.2004, 6.8.2004, 9.8.2004, 14.8.2004, 16.8.2004, 17.8.2004, 18.8.2004 and 19.8.2004 . By the above said act Shri V.L. Sajith Das violated Rule 127 and 129 of Postal Manual Volume VI Part III (Sixth Edition) and thereby failed to maintain absolute integrity and devotion to duty contravening the provisions of Rule (1)(i) and 3(1)(ii) of CCS (Conduct) Rules,1964

Article -II

that the said Shri V.L. Sajith das while working as Postman, Malayinkil SO failed to take due care of the 27 ordinary Postal articles which were entrusted to him for delivery, while in his custody. By the above said act Shri V.L. Sajith Das violated Rule 127 of Postal Manual Vol. VI Part-III (sixth edition) contravening provisions of the Rule 3(1)(ii) and 3(1)(iii) of CCS (Conduct) rules, 1964.

The Enquiry Officer after analysis of the evidences adduced before him in the enquiry, came to the following conclusion:

8 Now coming to rules 127 and 129 of Postal Manual vol. VI Part-III (Sixth edition) which says the following:

Rule 127 says that Postmen are responsible for the articles and money orders entrusted to them for delivery/payment and rule 129 says that the delivery agent should return all the undelivered articles to the concerned assistant at the time fixed by the Postmaster and under no circumstances should the delivery agent keep the undelivered articles in his custody for more than 24 hours. It is crystal clear that both the rules were violated by the CGS.

From the oral and documentary evidences adduced during the enquiry as discussed in the foregoing para, I hold the articles I and II of Memo No. CPT/Misc/Mks dated 30.3.2005 as proved beyond any doubt.

9 The applicant brought on record two defence documents and three defence witnesses. He has not raised any allegation of bias during the course of the enquiry against the IO. However, on an objection made by the defence side vide Annexure R-2, the enquiry officer permitted the applicant to submit his written defence. The presenting officer was also directed to submit his written brief. We find that he has fully cooperated with the inquiry without raising any objection. Based on the evidence adduced during the inquiry, the defence statement submitted by the applicant the enquiry report was submitted finding the two charges proved. Appropriate penalty was imposed by the Disciplinary Authority. The Appellate Authority even though stated that the penalty awarded is commensurate with the gravity of the offence, considering the young age of the applicant, he took a lenient view and modified the penalty as reduction of pay by two stages and that on expiry of the\ period the reduction will not have the effect of postponing his future increments of pay.

10 In departmental proceedings, the scope of judicial review is very limited. In a catena of judments, the Apex Court has laid down the dictum in disciplinary proceedings. This Tribunal has occasion to consider similar case in O.A.46/2008 in which the Tribunal held as follows:

> 11 It is well settled law that the scope of judicial review of departmental proceedings is warranted only if there has been a violation of the principles of natural justice or the proceedings have been held in violation of statutory regulations prescribing the mode of such enquiry or the decision is vitiated by considerations extraneous to the evidence and merits of the case or if the conclusion made by the authority is ex facie arbitrary or capricious that no reasonable person could have arrived at such conclusion or other similar grounds. It is also reiterated that if there is some legal evidence on which the findings could be based, then adequacy on even reliability of such evidence would be outside the pale of judicial review. The factual findings of the disciplinary authority are, however, not open to challenge and the power of judicial review does not extend to examining the correctness or truth of the charges. While exercising powers of judicial review the Courts cannot embark upon an appreciation of evidence and arrive at a conclusion which is based on such evidence. In this view of the matter we do not find any reason to interfere with the orders of the Disciplinary authority.

12 As regards consideration of appeal it is the settled position of law that the appellate authority in a disciplinary proceeding acts in a quasi judicial capacity and the order passed by it has to be a reasoned one showing application of mind to the question raised by the appellant and if that is not done the appellate order is vitiated. The appellate authority has to keep in mind the following factors when an appeal is preferred to such authority (i) there should be proper application of mind and scrutiny of the records before it by the appellate authority to enable it to record its satisfaction in terms of the rules. (ii) it would pass a speaking order which would at least prima facie show that the authority concerned has applied its mind to the various contentions or points for determination raised before it and that it has particularly examined whether the penalty imposed is excessive and /or inadequate and (iii) the scope of applicability of the maxim ***audi alterem partem*** before the appellate authority depending upon the language of the relevant regulation/rule. The Hon'ble Supreme Court has reiterated this principle by observing that an Appellate Authority while deciding a statutory appeal is not only required to give a hearing to the Government servant but pass a reasoned order dealing with the contentions raised in the appeal. In this case, the appellate authority has taken into consideration all the points raised therein and taken the decision to dismiss the appeal after duly considering the entire matter.

13 The applicant has raised another ground that the punishment imposed on the two charges is highly excessive and disproportionate to the offence alleged. The principle of disproportionate punishment could be applied only if the evidence in the domestic inquiry is hopelessly inadequate. Mere statement that the punishment is disproportionate is not adequate. It is not only the amount involved but other factors like financial and moral responsibility vested on the applicant as the head of the office, the faith of the public and commitment to duty reposed on the applicant by virtue of the post she holds, mental set up and such other relevant considerations. Misconduct should be treated with iron hand in cases where a person deals with public finance act in fiduciary capacity. We reject this ground also.

14 In this view of the above discussion we do not see any merit in the O.A., it is dismissed. No costs.

11 In the case on hand we do not find any infirmity with the findings of the inquiry officer or the orders of the disciplinary and appellate authorities warranting interference of this Tribunal. In the light of the limited role of the Tribunal/Court in disciplinary proceedings, we do not find merit in th contentions of the applicant for judicial review of the punishment imposed on the applicant. Accordingly, the O.A is dismissed. No costs.

Dated 24.2.2011.

V. AJAY KUMAR
JUDICIAL MEMBER

K. NOORJEHAN
ADMINISTRATIVE MEMBER