

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.237/2009

Tuesday this 13 th day of July, 2010

CORAM:

**HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE MRS.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

Sathyanesa Kurup P.R., aged 46 years,
S/o.Radhakrishna Kurup,
Telephone Mechanic(Under Compulsory Retirement),
Perumbalam Telephone Exchange, Alappuzha,
Residing at Punnooreth House, Erezha North,
Chettikulangara, Mavelikkara. Applicant

By Advocate: Sri P.Nandakumar

vs.

1. Bharat Sanchar Nigam Limited,
Represented by its Chief General Manager,
Telecom Kerala Circle, Thiruvananthapuram.
2. General Manager, Telecom,
BSNL, Alapuzha.
3. Deputy General Manager(P&A),
O/o GMT, BSNL, Alapuzha. Respondents

By Advocate:Mr.Baiju or Mr.Johnson Gomez

The Application having been heard on 7.7.2010, the Tribunal on 13.7.10
delivered the following:-

ORDER

HON'BLE MR.JUSTICE K.THANKAPPAN,JUDICIAL MEMEBR:

The applicant,aggrieved by the order dated 4.3.2008 passed by the
Disciplinary Authority, by which a penalty of compulsory retirement

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from service has been imposed against the applicant, has filed this Original Application praying that the penalty order as well as the Appellate order confirming the order passed by the Disciplinary Authority, shall be quashed.

2. The bare facts leading to the filing of this Original Application are that, while the applicant was working as Telephone Mechanic under the third respondent in the Bharat Sanchar Nigam Ltd., was served with two show cause notices dated 24.1.2008 and 25.2.2008 directing the applicant to file his representation, if any, for the proposed penalty of dismissal from service. It is alleged in the said notices that as the applicant was tried and convicted by the Judicial Magistrate of First Class,Ambalapuzha for an offence punishable under Section 138 of the Negotiable Instruments Act,1881, the Trial Magistrate found the applicant guilty of the offence and convicted him and sentenced to a punishment of simple imprisonment of six months and ordered to pay Rs.30,000/- to the complainant as compensation under Section 357(3) of the Code of Criminal Procedure. That was the basis for the show-cause notices. Subsequently by the order dated 4.3.2008 the third respondent imposed a penalty of compulsory retirement from service . Against the said order passed by the Disciplinary Authority, the applicant filed an appeal before the Appellate Authority, namely the second respondent. As per the order dated 7.6.2008, the Appellate Authority confirmed the order passed by the Disciplinary Authority. Aggrieved by the above orders, the applicant has approached this Tribunal.



3 The O.A. has been admitted by this Tribunal and notices ordered to the respondents. In pursuance to the notice received from this Tribunal the respondents have filed a reply statement and an additional reply statement supporting the orders impugned. On receipt of the reply statement, the applicant has filed a rejoinder reiterating the averments contained in the Original Application and further produced a medical certificate (Annexure A10) dated 26.6.2008 for justifying his absence from 12.5.2008 to 26.6.2008.

4. We have heard the counsel appearing for the applicant Mr.P.Nandakumar and the counsel appearing for the respondents Mr.Baiju for Mr.Johnson Gomez. We have also perused the documents produced before this Tribunal. The learned counsel appearing for the applicant had contended that though the applicant was convicted by the Trial Magistrate and the judgment of the Trial Magistrate has been upheld by the Appellate Court, the Hon'ble High Court of Kerala as per the order dated 24.1.2008 passed in Criminal R.P.No.132/2008 compounded the offence under Section 320 of the Code of Criminal Procedure and acquitted the applicant. In the light of the above order passed by the Hon'ble High Court, the applicant has to be reinstated in service as the offence coming under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter be referred to as 'NI Act') does not involve any moral turpitude. The offence coming under Section 138 of the NI Act and the composition made by the Hon'ble High Court would clearly indicate that

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the applicant was found not guilty of the offence or he was exonerated from the charge levelled before the Judicial Magistrate of First Class for the offence alleged against him. The counsel further submits that as per the dictums laid down by the Hon'ble High Court of Kerala in the judgments reported in 2005(3) KLT 955 in KSRTC VS. Abdul Latheef(DB) and 2008(4) KLT 16 in Jain Babu vs. Joseph, the applicant has to be treated as exonerated from the charges and he cannot be considered as either convicted or unbecoming of a Govt. servant. Hence the initiation of the proceedings against the applicant as per the notices dated 24.1.2008 and 25.2.2008 and penalty of compulsory retirement ordered by the Department are irregular and illegal. Hence this Tribunal may interfere in the matter and quash the impugned orders and direct the respondents to reinstate the applicant in service with all consequential benefits.

5. The O.A. has been resisted by the respondents. The learned counsel for the respondents submitted that since a complaint was filed against the applicant alleging commission of an offence punishable under Section 138 of the NI Act and the applicant faced the trial and on closing the trial, the applicant was found guilty of the offence, as per the provisions of the Service Rules when an employee is convicted by a Criminal Court, disciplinary proceedings can be initiated against such employees and penalty can be imposed as per Rule 40 of the BSNL CDA Rules, 2006. The rule permits that if an employee has been convicted of a criminal charge or on the strength of facts and

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conclusions arrived at a judicial trial and where the Disciplinary Authority is satisfied for the reasons to be recorded, it is not necessary to have any enquiry be conducted but such employees can be punished as per the CDA Rules. Hence Annexure A5, the penalty order passed by the Disciplinary Authority, confirmed by the Appellate Authority, is justifiable and this Tribunal shall not enquire with the orders. Further the counsel submitted that the decisions relied on by the counsel for the applicant are not applicable to the facts of the case as the applicant has not given any explanation for the notices issued to him by the Department.

6. On a careful analysis of the arguments of the counsel appearing for the parties and the decisions relied on by the counsel for the applicant, the question to be considered is that whether the applicant is entitled for the reliefs which he claimed or not. Before answering this question as per the Conduct Rules applicable to a Govt. employee, the disciplinary proceedings can be initiated either on the arrest of such Govt employee or on conviction by a Criminal Court and if there is evidence to show that the conviction still exists, the Disciplinary Authority or the Department will be justified in imposing the penalty as prescribed under the law. But the question raised in this O.A. is that as the Hon'ble High Court of Kerala had passed an order compounding the offence charged against the applicant under Section 138 of the NI Act as per the order dated 24.1.2008, if so, whether the Conduct Rules or Disciplinary Enquiry Rules are applicable to the applicant or not and what will be the



effect of an order passed under Section 320 of the Criminal Procedure in compounding an offence. In this context it has to be borne in mind that an offence under Rule 138 requires no Mens rea or the mental element to commit such an offence as prescribed under Section 138 of the NI Act. The basis of the offence is the issuance of a cheque in favour of holder as a Negotiable Instrument as a contract between two parties for repayment of an amount owned by the drawer. If so, the offence described under Section 138 of NI Act does not involve any moral turpitude or unbecoming of a Govt. servant. This view is fortified by the Hon'ble High Court of Kerala in Abdul Latheef's case(cited supra) as that "Offence under S.138 of the Act being an offence in the commercial practice cannot be taken as one involving moral turpitude". Further the latest view laid down in Jain Babu's case(cited supra), it is clearly stated that:-

"7. The crux or the gravamen of the offence under S.138 of the Negotiable Instruments Act is the dishonour of the cheque on the ground of insufficiency of funds. But the right to prosecute would accrue only if a demand made for payment does not result in payment of the amount within the stipulated time. In this view of the matter, it is a technical offence and virtually the core of the liability to be prosecuted for the offence is the inability/refusal of a person to make payment when the demand is made consequent to dishonour. In this view of the matter, I am satisfied that the offence under S.138 of the Negotiable Instruments Act is both technical as also one involving no moral turpitude.":

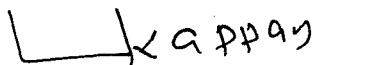
Apart from the above principles laid down by the Hon'ble High Court of Kerala, the facts of the case in hand would show that the case



registered against the applicant under S.138 of the NI Act has been compounded under Section 320 of the Code of Criminal Procedure as per the order dated 24.1.2008. If so, it can be considered as the applicant has been acquitted of the charges which means that he should be considered as exonerated of the charges. If so, a disciplinary proceedings on the basis of the conviction entered by the Trial Court cannot stand in the eye of law. A composition under Section 320 of the Code of Criminal Procedure amounts to an acquittal which means that there will not be any stigma against such accused after the composition of the offence. If so, the order passed by the Disciplinary Authority namely Annexure A5 and the Appellate Order passed by the Appellate Authority have no stand in the eye of law. The consequence is that the application succeeds. Therefore we are of the considered view that the applicant is entitled for his reinstatement in service with all consequential service benefits. Accordingly Annexure A5 order dated 4.3.2008 and the Appellate Order dated 7.6.2008 are hereby quashed. It is further directed that the applicant shall be reinstated in service forthwith. No order as to costs.



(K.NOORJEHAN)
MEMBER(A)



(JUSTICE K.THANKAPPAN)
MEMBER(J)

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