

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A NO.240/2001

THURSDAY, THIS THE 2nd DAY OF JANUARY, 2003.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

Smt. P. Sumathy
Ex Extra Departmental Delivery Agent
Kalluvathukal P.O.
residing at S.R. Villa
Mevanakonam, Kalluvathukal P.O.
Kollam.

Applicant

By Advocate Mr. P. C. Sebastian

Vs.

1. The Chief Postmaster General
Kerala Circle
Thiruvananthapuram
2. The Director of Postal Services
Southern Region
Office of the Chief Postmaster General
Kerala Circle
Thiruvananthapuram
3. The Senior Superintendent of Post Offices
Kollam Division
Kollam.
4. The Union of India
represented by Secretary
Ministry of Communications
New Delhi.

Respondents

By Advocate MR. K.R. Rajkumar, ACGSC

The Application having been heard on 31.10.2002 the Tribunal
delivered the following on 2.1.2003.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant aggrieved by A1 order dated 11.2.2000
issued by the first respondent rejecting her revision
petition filed this O.A. seeking the following reliefs:

(i)to call for the records of the inquiry leading to
the issue of Annexure A1, A2, A3 and A4 and quash
them.



(ii) to declare that the removal of applicant from service is illegal and direct the respondent to reinstate 'applicant' into service with all consequential benefits.

(iii) to grant such other relief which may be prayed for and which this Hon'ble Tribunal may deem fit and proper to grant in the facts and circumstances of the case.

(iv) to award costs in favour of the applicant.

2. Applicant was initially appointed as Extra Departmental Branch Postmaster, Kalluvathukal with effect from 6.7.1975 by the 3rd respondent. When the said post office was upgraded as E.D. Sub Post Office applicant was appointed as Extra Departmental Sub Post Master by the 3rd respondent with effect from 25.12.1979. Again when the said post office was upgraded as a Departmental Sub Post Office applicant's post was abolished on 27.2.1981. The applicant being a retrenched E.D. Agent was appointed as E.D. Packer in the same office by the Assistant Superintendent of Post Offices, Kollam South Sub Division. Later she was appointed as Extra Departmental Delivery Agent by transfer by the same authority. While working as EDDA applicant was placed under 'put off' duty as per Memo No. DA/Kalluvathukal dated 18.6.1993 by the Assistant Superintendent of Post Offices, Kollam South Sub Division and disciplinary proceedings initiated under Rule 8 of the P&T ED Agents (Conduct & Service) Rules, 1964. Since the normal disciplinary authority was a witness, Sri P. Ravindran Nair, Assistant Superintendents of Post Offices, Kollam Divisional Office was appointed as adhoc Disciplinary Authority who issued a Charge Memo No. OS/ADA/1/94 dated 28.2.94 to the applicant containing three charges. After holding departmental enquiry under Rule 8 of P&T Extra Departmental Agents the said adhoc disciplinary authority as per his proceedings dated 31.12.94 imposed on the applicant, punishment of removal from service. However on her appeal the third respondent the appellate authority taking a lenient view modified the punishment.



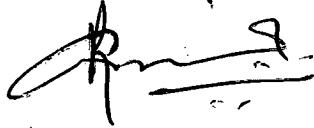
debarring her from appearing in any departmental examination for promotion to higher post for a period of three years from the date of reinstatement as per Order No. A-01/95-96 dated 18.3.1996. Applicant was reinstated in service w.e.f. 2.4.1996 and had been thereafter working as EDDA, Kalluvathukkal. While so the 1st respondent called for the records relating to the Rule 8 Proceedings and the appellate orders passed by the SSPO Kollam division and conducted a review and issued Order No. Vig/6-4/96 dated 24.12.1996 quashing the punishment order as well as the appellate order and ordered for a de-novo enquiry against the applicant, from the stage of appointing the adhoc disciplinary authority under rule 8 proceedings against the applicant. The reason for A-4 de novo inquiry against the applicant was that the disciplinary authority who issued the punishment order against the appellant was lower in rank than her original appointing authority. Pursuant to A4 the first respondent empowered the 3rd respondent to function as adhoc disciplinary authority against the appellant. The 3rd respondent thereafter initiated proceedings under Rule 8 of P&T ED Agents (Conduct & Service) Rules as per his Memo No. E1/2/93-94 Rule 8-2/97 dated 26.2.97. The statement of articles of charge framed against the applicant in the said memo contained the very same articles of charge as in the previous enquiry. By order dated 10.3.1997 the third respondent appointed Shri R. Venunathan Pillai IPO (C&P.G) Kollam as Inquiring Authority and Sri A.R. Raghunathan SDI(P) Karunagapally Sub Division as Presenting Officer. The Enquiry Officer submitted his report on 30.7.98 to the 3rd respondent with the findings that all the articles of charge were proved against the applicant. Though applicant had submitted a representation dated 14.4.98 pointing out that no valid evidences had been brought in to establish the charges,



the adhoc disciplinary authority found the applicant guilty of the charges and awarded her the extreme penalty of removal as per Annexure A-3 dated 30.12.98. Against A3 punishment order applicant submitted appeal dated 17.2.99. She had also requested for a personal hearing. However, no personal hearing was granted. The Appellate authority by A2 order rejected the applicants's appeal. Aggrieved the applicant filed Revision Petition dated 23.9.99 to the first respondent. The Revision Petition was rejected by the first respondent. Alleging that the rejection of Revision Petition was without proper appreciation of the case, applicant filed this Original Application seeking the above reliefs. According to the applicant A1, A2, A3 and A5 were vitiated by procedural illegality and violation of statutory provisions and therefore were liable to be quashed. According to her the denovo enquiry was ordered by the first respondent under a serious misdirection in law resulting in serious prejudice to the applicant. During the enquiry she had submitted request for production of additional documents in which one postman book maintained by applicant as EDDA prior to 22.4.93 was also called for. But the inquiring authority rejected her request stating that the same was not relevant to the case. One of the charge was that applicant had made unauthorised corrections in the postman's book. It was therefore necessary for her to prove that the alleged corrections were bonafide relying on similar instances in the past while cross examining the departmental witnesses. The said request was rejected by the Enquiry Officer stating that the same was not relevant for the case. According to her the denial of her request for additional document was highly arbitrary and had resulted in denial of opportunity to her to establish her innocence. Further exhibits P3, P7, P15 and P-17 were statements recorded from the prosecution witnesses

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during the course of the preliminary inquiry by PW7 behind the back of the applicant. These documents were marked during the inquiry while examining the said witnesses. The inquiry proceedings showed that the said documents were marked as exhibits and taken on record as evidence without reading out the contents to the witnesses. According to her these were in contravention of the provisions of contained in Government of India, Department of Personnel & Administrative Reforms O.M.No.134/7/75-ADV-I dated 11.6.1976 reproduced under Rule 14 of CCS (CCA) Rules. This stipulated that the statement of witnesses already recorded at the preliminary inquiry/investigation are to be read out to the witnesses concerned and should be taken on record on their admission. According to her, the failure to follow the said rule of procedure had rendered the said documents inadmissible pieces of evidence. The Inquiring Authority had relied on those documents as evidence to arrive at his findings. According to her the impugned punishment had been imposed on her based on mainly on the expert opinion of PW6 - the handwriting expert. But PW6 had rendered his opinion only on comparison of the specimen signatures specially collected and not with reference to any admitted documents of identical nature of previous transactions. According to her the expert opinion ought to have been taken with reference to admitted paid vouchers of M.Os received by the payees earlier. Since the payees in question were admittedly regular recipients of Money Orders as such would not have any difficulty for the prosecution in getting the expert opinion with reference to such admitted vouchers as required by the rules on the subject. Further the depositions of PW8 and DW1 were witnesses to the actual payment of the Money Orders in

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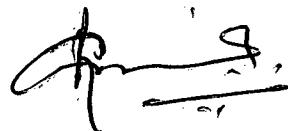
question were not given due weight by the adhoc disciplinary authority. Their testimony had been rejected without proper consideration.

3. Respondents filed reply statement resisting the claim of the applicant. According to them the additional document required by the applicant was rejected by the Enquiry Officer as the cause of action in this case arose much after 22.3.94 and the Postman Book for the period relevant to the case from 22.12.94 had been produced as prosecution documents. According to them the applicant had been given all chances to prove her innocence during the inquiry. The offence committed by the applicant was serious in nature which deserved extreme punishment. A de-novo inquiry had been ordered as there were infirmities in the first inquiry and as per relevant provisions. According to them the O.A. was devoid of merits and was liable to be rejected.

4. Heard the learned counsel for the applicant. None appeared for the respondents.

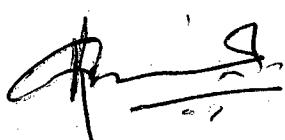
5. We have given careful consideration to the submissions made by the learned counsel for the applicant and the rival pleadings and have also perused the documents brought on record.

6. The main ground advanced by the applicant was that the de-novo enquiry ordered by the first respondent was a serious misdirection of law resulting in serious prejudice to the applicant. The learned counsel for the applicant submitted that there was no provision for quashing the earlier proceedings and ordering de-novo enquiry under the CCS (CCA) Rules. He also submitted that the grounds advanced

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for quashing the earlier proceedings were also not factually correct. The applicant was initially appointed as EDBPM, Kalluvathukal and she was subsequently appointed as EDSPM when the post office was upgraded. Under these circumstances the appointment was done by the third respondent on 6.7.95 and 25.12.1979. Further she being a retrenched ED Agent was appointed as ED Packer in the same office by the Assistant Superintendent of Post Offices, Quilon South Division. According to him as per the rules governing the selection and appointment of ED Agents, each appointment is against a particular post and there is no transfer from one post to another, as in the case of departmental employee. According to him in view of this even when ED Agents already in service was transferred to another post under certain limited circumstances such a transfer was to be considered to be a fresh appointment. As such the 1st respondent misdirected in law in quashing earlier proceedings on the ground that the adhoc disciplinary authority in the case was lower in rank to the appointing authority. The Senior Superintendent of Post Offices was in fact the appellate authority as far as the applicant was concerned. Hence by ordering a de-novo inquiry and appointing the 3rd respondent as disciplinary authority applicant was deprived of her right of appeal in the normal course.

7. We find from the reply statement that the respondents had not specifically denied the averment made by the applicant that he was appointed as ED Packer in the Kalluvathukal Sub Post Office by the Assistant Superintendent of Post Offices, Quilon South Division on being declared surplus. The specific averments of the respondents in this connection are as following:



"The applicant was first appointed in service as Branch Postmaster, Kalluvathukkal by Senior Superintendent of Post Offices, Kollam and therefore Senior Superintendent of Post Offices Kollam is the appointing authority of the applicant. Later the post was upgraded as Extra Departmental Sub Postmaster, Kalluvathukkal and subsequently abolished and the applicant; was appointed as Extra Departmental Delivery Agent, Kalluvathukkal. Though Assistant Superintendent of Post Offices, Kollam is the appointing authority of the post of Extra Departmental Delivery Agent, Kalluvathukkal, Senior Superintendent of Post Offices is the original appointing authority of the applicant, and he is competent to impose the major penalties on the applicant."

The above reason had been given by the respondents in justification of the de-novo proceedings.

8. On careful consideration of the rival pleadings we find force in the applicant's submissions. We have come to the conclusion especially because it is the respondents who had appointed the Assistant Superintendent of Post Offices Quilon Division office as adhoc disciplinary authority. Thus when the Department themselves have appointed the Assistant Superintendent of Post Offices, Quilon Divisional Office as the adhoc disciplinary authority it cannot be that another authority at the same level comes to the conclusion that the action taken pursuant to the said appointment are vitiated and the whole proceedings are cancelled. We find from A4 order NO.Vig/6-4/96 dated 24.12.96 the Assistant Superintendent of Post Offices (OS) in the office of the Superintendent of Post Offices was appointed as adhoc Disciplinary Authority against Rule 8 proceedings against the applicant vide circular office Memo dated 16.12.93. When such is the case we are of the view that without superseding the circle office memo dated 16.12.93 no fresh adhoc disciplinary authority could be appointed. Respondents' case is that the first respondent in exercise of power of the



Revisionary Authority under Rule 16 had passed A-4 order. The powers of the Revisionary authority are derived from Rule 16 of the EDA (Conduct & Service) Rules which reads as under:

16. Revision

Notwithstanding anything contained in these rules:

- (i) the Central Government; or
- (ii) the Head of the Circle, or Postmaster General (Region) as the case may be;
- (iii) any authority immediately superior to the authority passing the orders
- (iv) any other authority specified in this behalf by the Central Government by general or special order and within such time as may be prescribed in such general or special orders:

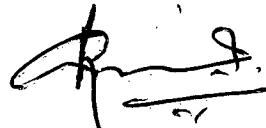
may, at any time, either on its own motion or otherwise call for records of any enquiry or disciplinary case and revise and order made under these Rules, reopen the case and after making such enquiry as it considers necessary, may

- (a) confirm, modify or set aside the order,
or
- (b) pass such orders as it deem fit:

Provided that no such case shall be reopened under this rule after the expiry of 6 months from the date of the order to be revised except by the Central Government or by the Head of the Circle or by the Postmaster General (Region) and also before the expiry of the time-limit of three months prescribed for preferring an appeal.

Provided further that no order imposing or enhancing any penalty shall be made by any Revisionary Authority unless the employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalty specified in Clauses (V) of Rule 7 or to enhance the penalty imposed except after the enquiry in the manner laid down in Rule 8, in case no such enquiry has already been held.

It is evident from the above rule that the revisionary authority mentioned therein can only act as laid down therein. On a plain reading of the above rule we find that



the actions which can be taken by the revisionary authority does not include ordering cancellation of the entire proceedings and starting de-novo proceedings.

9. One of the reasons given by the first respondent in A-4 order for de-novo enquiry is that the appointing authority of the applicant was higher than the adhoc disciplinary authority appointed by the circle office memo dated 16.12.93. When a memo is issued by the Circle office, it has to be taken that the same had been issued in the name and authority of the Head of the Circle. This would lead to the conclusion that an Adhoc Disciplinary Authority appointed by the Head of the Circle in December, 1993, had been found to be irregular by another Head of the Circle in December, 1996. We cannot hold this to be a valid order. An authority who in exercise of the powers vested in him having exercised the same, cannot revise the same in later point of time when he finds that the outcome did not suit him.

10. Further, the action of the revisionary authority has resulted in the applicant being issued with a fresh charge memo by the third respondent by which the third respondent became a disciplinary authority. The third respondent acting as the disciplinary authority, on the same set of facts and circumstances imposed the punishment of removal from service on the applicant. However, the same authority while dealing with the case of the applicant as the appellate authority had imposed a much lesser punishment on the applicant. Thus by the action of the first respondent an enhancement of the penalty imposed on the applicant had been effected by the third respondent who is in equal rank as that of the appellate authority.

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11. Further there is no dispute that the applicant was appointed as ED Packer and later as EDDA by Assistant Superintendent of Post Offices. The specific averment of the applicant that as per the rules governing the selection and appointment of ED Agents each appointment was against a particular post and there was no transfer from one post to another and even when such transfers were given under certain circumstances the same were treated as fresh appointments had not been specifically denied by the respondents.

12. In view of the foregoing we find force in the applicant's plea that A4 order dated 24.12.96 issued by the first respondent ordering de-novo enquiry was ultravires and illegal.

13. The next ground advanced by the applicant was that he had submitted a request for production of additional documents of Postman Book maintained by the applicant prior to 22.4.93 but the inquiring authority rejected the same as not relevant. In terms of the instructions contained in CCS(CCA) rules as well as a general practice whenever the additional documents are called for by a delinquent employee, the relevancy or otherwise of the same has to be seen from the point of view of the defence. According to the applicant one of the charges against the applicant was that he had made unauthorised corrections in the Postman Book and she wanted the additional document to prove that the said corrections were effected relying on similar instances in the past while cross examining the departmental witnesses. In this view of the matter we find that the rejection of the request of the applicant for the additional documents in the de-novo enquiry by the inquiring authority has caused prejudice to the defence of the applicant.

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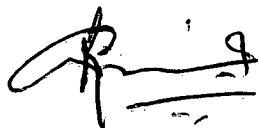
14. Another ground advanced by the applicant was that the ext. P3, P7, P-15 and P-17 which were recorded during the preliminary enquiry had been taken as evidence in the enquiry without being read out to the prosecution witnesses PW1, PW2, PW3 and PW4 respectively. According to the applicant this was in violation of the Govt. instructions dated 11.6.76. Respondents in their reply statement had not specifically averred that the submissions were read out during the course of the enquiry and the witnesses had admitted the same. They averred as follows:

Exhibits P3, P7 and P-15 were recorded by the preliminary Inquiry Officer during the normal course of enquiry and they were not recorded behind the back of the applicant as alleged. The documents were identified and marked as per rules, after understanding the contents and admitted by the deponents. The procedure adopted by the Inquiry Officer during enquiry is in accordance with the rule and there is no violation of provision of Rule 8 inquiry proceedings.

The Govt. of India OM dated 11.6.1996 reads as under:

(26) Statement of witness recorded at the preliminary inquiry/investigation to be read out to him and got admitted as evidence:- The present procedure followed in departmental inquiries held under the CCS (CCA) Rules, 1965, and other corresponding Disciplinary Rules is to disregard statements made by witnesses during the preliminary inquiry/investigation except for the purpose of contradicting the witnesses and to record the evidence of the witnesses de-novo as examination-in-chief by the Inquiry Authority. The question whether statements made by the witnesses during the preliminary inquiry/investigation can be straightaway taken on record as evidence in examination-in-chief at oral inquiries has been examined in consultation with the Department of Legal Affairs, the Central Vigilance Commission and the Central Bureau of Investigation.

2. On considering the observations made by the Supreme Court in certain cases it may be legally permissible and in accord with the principles of natural justice to take on record the statements made by witnesses during the preliminary inquiry/investigation at oral inquires, if the statement is



admitted by the witness on its being read out to him. It is felt that by adopting this procedure it should be possible to reduce the time taken in conducting departmental inquiries. It has, therefore, been decided that in future, instead of recording the evidence of the prosecution witnesses *de-novo*, wherever it is possible, the statement of a witness already recorded at the preliminary inquiry/investigation may be read out to him at the oral inquiry and if it is admitted by him, the cross examination of the witness may commence thereafter straightaway. A copy of the said statement should, however, be made available to the delinquent officer sufficiently in advance, i.e., at least three days before the date on which it is to come up at the inquiry.

3. As regards the statements recorded by the Investigating Officer of the Central Bureau of Investigation which are not signed, it has been decided that the statement of the witness recorded by the Investigating Officer will be read out to him and a certificate will be recorded thereunder that it had been read out to the person concerned and has been accepted by him.

It is evident from the above that Govt. of India had issued instructions that the statements of witnesses already recorded in the preliminary enquiry would have to be read out to them and cross examination of the witnesses could commence thereafter straightaway. When Govt. of India issues such instructions it is meant to be followed by all the subordinate authorities. In the absence of any specific averments in the reply statement it has to be taken that what had been averred by the applicant in the O.A. was the true state of affairs. If that be so ext. P3, P7, etc. taken as evidence had not been marked as exhibits following the laid down procedure and any conclusion arrived at on the basis of such inadmissible evidences cannot be held as valid.

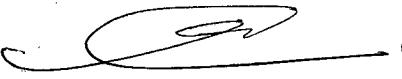
15. In the light of the above detailed analysis we are of the considered view that this OA succeeds and the applicant is entitled for the reliefs sought for. Accordingly we set

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aside and quash A1, A2, A3 and A4 and direct the respondents to reinstate the applicant in service forthwith with all consequential benefits.

16. The Original Application stands allowed as above with no order as to costs.

Dated the 2nd January, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

kmn



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER