

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 251 OF 2006

Dated the 21st day of November, 2007

CORAM:-

**HON'BLE SMT. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER**

K. Raghavan,
Sub Postmaster,
Chalvvara, PO.,
Kollam.

.. Applicant

[By Advocate: Mr. N. Nagresh)
-Versus-

1. Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram.
2. Director of Postal Services (SR),
Kerala Circle, Thiruvananthapuram.
3. Sr. Superintendent of Post Offices,
Kollam Division, Kollam.

.. Respondents

[By Advocates: Mr TPM Ibrahim Khan, SCGSC)

This application having been heard on 21st November, 2007
the Tribunal delivered the following -

ORDER

(Ms. Sathi Nair, Vice Chairman):

The applicant is aggrieved by the order dated 7.4.2005 of the 1st respondent enhancing the punishment imposed on him by the 3rd respondent by Annexure A3 order dated 6.2.2004 and confirmed by the 2nd respondent by A5 order dated 19th October, 2004.

2] In the Annexure A1 charge memo dated 19.5.2003 issued by the 3rd respondent, it was alleged that the applicant while working as SPM, Vadakkumthala East on 26.3.2003 did not pay the maturity amount of the RD account to Sri Sivanandan and used impolite language against the said customer. The applicant in his reply in A2 pointed out all the relevant facts and requested that the proceedings may be dropped and if given an opportunity to adduce evidence he will be able to disprove the charges against him. The 3rd respondent however passed an order withholding one increment for a period of six months without cumulative effect. The applicant thereafter preferred an appeal to the 3rd respondent pointing out that no enquiry had been held before imposing a punishment on him but the appeal was rejected by Annexure-A 5 dated 19.10.2004. Meanwhile the

✓

applicant was promoted to HSG II with effect from 15.12.2001 and as HSGI with effect from 24.1.2004. But he was not relieved to join the post of HSGI and aggrieved by the said action of the respondents the applicant filed a representation dated 29.11.04 marked as Annexure A6 to the 1st respondent. This was not a revision petition but the applicant was served with a show cause notice dated 28.2.2005 by the 1st respondent proposing to enhance the penalty to that of reduction of pay by one stage for a period of two years. The applicant submitted a reply but without considering the contentions of the applicant the enhanced penalty of reduction of pay by one stage for a period of one year was imposed by A10 impugned order dated 7.4.2005.

3] The applicant has assailed the impugned orders on the following grounds.

1. The disciplinary authority failed to consider the detailed replies given by the applicant and did not give any opportunity to him to produce any evidence by holding a Rule 14 enquiry.
2. The appellate authority ought to have given a personal hearing

3. A6 was not a Revision petition and the 1st respondent exceeded the jurisdiction in treating a representation as statutory revision and enhancing the punishment on the basis of that representation.

Finally he has contended that the intention of the respondents is only to deny due promotion to the applicant till he attains the age of superannuation.

4] The following reliefs are sought:-

- " i. call for the records relating to Annexure A3,A5,A6 and A10 and set aside the same;
- ii. direct the respondents to grant the applicant all consequential service benefits including re-fixation of pay, arrears of salary and retrospective promotion etc forthwith.
- III. issue such other appropriate order or directions this Hon'ble court may deem fit, just and proper in the facts and circumstances of the case.

5] A reply and additional reply statements have been filed by the respondents.

6] It has been submitted by the respondents that while the applicant was working as sub postmaster, Vadakkunthala East he was proceeded against under Rule 16 of CCS (CCA) Rules for his rude behaviour towards a customer and refusal to pay maturity value of RD account

2

71740 to one Sri Sivanandan. Enquiry conducted revealed that the applicant had behaved with the customer discourteously and after considering his written statement he was awarded the punishment of withholding of increment for six months. The appellate authority did not find any reason to interfere with the punishment and the applicant had submitted a revision petition and the 1st respondent modified the order of punishment after serving a show cause notice on the applicant as required under Rules.

7] It is further submitted that when the applicant was working as HSGII, he was promoted to HSGI, but his promotion could not be effected as the disciplinary proceedings was under way. The applicant is due to retire on 30.9.2008 only and the punishment of withholding the increment without cumulative effect does not in any way adversely affect the calculation of his average emoluments calculated on the basis of the last ten months salary. Hence there was no need to hold an enquiry under Rule 14. The contention of the applicant that Annexure A6 and Annexure A7 are only representations and not revision petition is only to create a smokescreen and to mislead the Tribunal and the applicant's prayers are devoid of any merit.

8

8] A rejoinder has been filed by the applicant reiterating that the punishment has resulted in reduction of his pension and DCRG and commutation benefits and he has been subjected to double punishment.

9] We heard The Learned counsel Sri Nagaresh for the applicant and Sri Shaji ACGSC for the respondents

The applicant's main challenge is against the A10 order of the 1st respondent enhancing the penalty as without jurisdiction on the ground that no revision petition was submitted by him and a representation given at annexure A6 against denial of promotion has been wrongly construed as a revision petition by the 1st respondent. This argument is not at all convincing as seen from the wording of A6 representation. No doubt it does not carry a subject heading that it is a revision petition but the contents would amply justify the interpretation given by the respondents. The applicant states in his representation "The impugned punishment was issued at a stage when it would affect my pensionary benefits. The disciplinary authority is forbidden from withholding of increment of a n official if it would adversely affect the pension by following Rule 16 CCS (CCA) Rules. In that context the Disciplinary authority has to

follow rule 16 (1) (b) of CCS Rules 1965. This is also a technical infirmity.

I request you to be kind enough to call for the records of this case and do justice to me by having a dispassionate assessment of the case."

10] From a reading of the above, the respondents cannot be blamed for considering the representation as a petition to reassess the punishment imposed. Be that as it may, the CCS(CCA) Rules empower the 1st respondent to review the orders of the Disciplinary authorities at any time even in the absence of such a representation. Rule 29 mandates thus :-

Revision

(1) Notwithstanding anything contained in the Rules-

(i) the President or

(ii)

(iii)

(iv)

(v)

(vi) any other authority specified in this behalf by the President by a general or special order, and within each time as may be prescribed in such general or special order;

may at any time, either on his or its own motion or otherwise call for the records of any enquiry and {revise} any order made under these

rules or under the rules repealed by rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the commission where such consultation is necessary, and may-

- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, or enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made the order to or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other orders as it may deem fit."

11] The first respondent being the competent authority under the above Rule can confirm, reduce, enhance or set aside the order passed by the disciplinary or the appellate authority. Only if any major penalty is to be imposed at this stage an enquiry under rule 14 has to be held. In the instant case the enhanced punishment given was a reduction of his pay by one stage from Rs. 7700 to Rs. 7550/- in the timescale of Rs. 5000 -150- 8000/- for a period of one year, which is a minor penalty. A show cause notice as mandated under the Rules was given to the applicant and all the contentions raised by the petitioner were considered and found baseless. It was considered that the punishment awarded for rude and discourteous behaviour with the customers was not commensurate with the gravity of the offence. Eventhough it was proposed to enhance the

✓

penalty a s reduction of pay by one stage for two years having regard to the domestic problems and indifferent health condition of the applicant, a lenient view was taken and reduction of pay by one stage for one year was ordered.

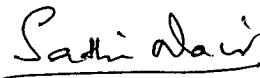
12] In a Department where customer satisfaction is of paramount importance, the respondents cannot be faulted for treating rude behaviour to the customer as a grave offence. The action of the revisionary authority was as per Rules and is legally sustainable. At any rate, we do not think that the penalty awarded by the Revisionary authority was shockingly disproportionate to the misconduct as held proved so as to warrant any interference from this court. Annexure A11 is an order in a separate proceeding and has no connection with the other impugned orders in this case.

13] For the reasons mentioned above we do not find any merit in the prayer of the applicant. OA is dismissed. No costs.

Dated the 21st November, 2007.


(George Paracken)

JUDICIAL MEMBER


(Sathi Nair)

VICE CHAIRMAN

stn