

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 252/2001

Tuesday, this the 4th day of March, 2003.

CORAM :

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T. NAYAR, ADMINISTRATIVE MEMBER

M.C. Sathyarajan,
S/o N.P. Padmanabhan,
Lower Division Clerk,
O/o the Deputy Director of
Accounts(Postal), Kerala Circle,
Trivandrum, now residing at
B-1, Postal Staff Quarters,
Paruthipara, Nalanchira P.O.,
Trivandrum. ... Applicant

(By Advocate Mr. S.M. Prasanth)

Vs

1. Union of India, rep. by the
Secretary to the Ministry of
Communications,
Department of Posts,
New Delhi.
2. Chief Post Master General,
Kerala Circle,
Department of Posts,
Trivandrum.
3. The Deputy Director, Accounts(Postal),
Department of Posts,
Kerala Circle,
IV th Floor, GPO Complex,
Trivandrum. ... Respondents

(By Mr. T.A. Unnikrishnan, ACGSC)

The application having been heard on 4.3.2003, the
Tribunal on the same day delivered the following :

ORDER

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN

In this application the applicant, an L.D.C. in the
Office of the Deputy Director of Accounts(Postal), Kerala Circle,
Trivandrum has challenged Annexure A3 order dated 1.9.1997 of the
3rd respondent imposing a penalty of reduction of pay by one
stage from Rs.1225/- to Rs.1200/- in the Time Scale of pay of
Rs.950-1500/- for a period of four years(non-recurring) and

Annexure A4 order dated 26.8.1998 of the 2nd respondent by which the Appellate Authority upheld the penalty imposed by the Disciplinary Authority and Annexure A5 order dated 5.6.2000 of the 1st respondent refusing to interfere with the orders of the Disciplinary Authority and the Appellate Authority. The facts of the case are briefly stated as follows :-

2. The applicant was served with Annexure A1 memorandum of charges dated 3.1.1995 wherein it was alleged that he while working as L.D.C. in the office of the Deputy Director of Accounts (Postal), Trivandrum, on 8.9.1994, after distribution of the prizes for the Athapookalam competition at about 3.30 PM, was found engaging in a scuffle with Senior Accountants Shri K. George Mathen and Shri C.K. Kurien and physically attacking each other. The applicant denied the guilt and an enquiry was held in which 3 witnesses including Shri C.K. Kurien were examined. The Enquiry Officer found the applicant guilty. However he opined that the stamping by the applicant of Shri C.K. Kurien was in self defence when Shri Kurien had taken out a knife. The Disciplinary Authority while accepting the finding that the applicant is guilty, disagreed with the observation that the stamping by the applicant of Shri C.K. Kurien was in self defence. Taking a lenient view, the Disciplinary Authority imposed the penalty on the applicant which is impugned in this case. The applicant states that the Disciplinary Authority has not notified the intention to disagree with the observations of the Enquiry Authority, that the finding that the applicant is guilty is not based on any evidence and that therefore it is perverse.

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3. The respondents in the reply statement contend that the punishment was awarded to the applicant after his guilt was established in the enquiry held in accordance with rules and that therefore judicial intervention is not called for.

4. We have carefully gone through the pleadings and material placed on record and have heard Shri S.M. Prasanth, the learned counsel for the applicant and Shri T.A. Unnikrishnan, the learned counsel for the respondents.

5. Shri S.M. Prasanth, the learned counsel of the applicant at first argued that the Disciplinary Authority has erred in not notifying the intention to disagree with the observation of the Enquiry Authority, that the stamping by the applicant of Shri C.K. Kurien was in self defence, and therefore the finding and the penalty imposed cannot be sustained. We do not find much substance in this argument. The Disciplinary Authority has agreed with the finding that the applicant was guilty. Therefore there was no disagreement on the finding. The Disciplinary Authority on discussion of the evidence observed that the view of the Enquiry Authority that the applicant who acted in self defence was not fully right. We are of the view that for making such an observation no notice is required to be given as no prejudice is caused. The learned counsel of the applicant further argued that the finding of the Disciplinary Authority that the applicant is guilty is not established by evidence, and that on scrutiny of the evidence adduced before the enquiry, it would be evident that the applicant was attacked Shri C.K. Kurien. To buttress his argument, he invited our attention to the evidence of Shri S.R. Shyamkumar and Shri S.S. Lal, the 2 independent witnesses examined in the enquiry. Referring to the

statement given in the preliminary enquiry, that the applicant, George Mathen and Kurien were engaged in a scuffle, the AGS put a question :-

It is seen written in the first paragraph of Ext- C-2 that a scuffle occurred between Sathyarajan, George Mathen and Kurien. The truth was that Kurien was beating Sathyarajan and George Mathen and they were defending the attack?

To which this witness answered :- Yes.

AGS again put another question :-

In Paragraph 2 "While I saw Sathyarajan stamped Kurien. Did you really see stamping or that since his leg is upward you felt that he stamped with foot?

Ans: I felt that he was attempting to defend while Kurien took the knife.

On Re-examination when the AGS put a question :-

You have stated in Chief Examination that a scuffle occurred between Sathyarajan, George Mathen and Kurien; but in cross examination you have stated that Kurien was beating and Sathyarajan and George Mathen were defending it. Which is correct in this?

Ans: I felt they were defending.

Next witness Lal also has in cross examination answered :

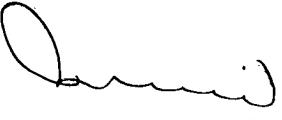
He did not see the applicant kicking or beating Mr. Kurien.

6. Therefore a cursory look at the evidence on record of the Enquiry itself would make it clear that no reasonable person would be able to reach a conclusion that the applicant either attacked Mr. Kurien or was wilfully engaged in a scuffle. The evidence prove that while the applicant was attacked, he only was trying to ward off the blows and defending himself from the attack.

7. Under the circumstances, we are of the considered view that the finding that the applicant is guilty is perverse and unsustainable. The penalty imposed also therefore cannot be sustained.

8. In the light of what is stated above, we allow this application and set aside the impugned orders with consequential benefits to the applicant. No costs.

Dated 4th March, 2003.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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