CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 253 OF 2005

Tuesday this the 5th day of December, 2006

CORAM :

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

K.P. Varghese,
Assistant Postmaster (Accounts),
Ernakulam Head Post Office. : Applicant

(By Advocate Mr. P.C. Sebastian)

Versus

1. The Senior Superintendent of Post Offices,
Ernakulam Division,
Kochi-682 011.

2. The Director of Postal Services,
Central Region,
Kochi-682 011.

3. The Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram.

4. Union of India represented by
Secretary,
Ministry of Communications,
Department of Posts,
Dak Bhavan, New Delhi. : Respondents

(By Advocate Mr Sunil Jose, ACGSC)

The application having been heard on 16.11.2006, the Tribunal on 5.12.2006 delivered the following :

O R D E R

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. The applicant Shri K.P.Varghese, Assistant Post Master (Accounts), (APM Accounts for short,) Ernakulam Head Post Office is aggrieved by the orders

passed by the respondents awarding the punishment of withholding of increment without cumulative effect.

2. The applicant entered service in the Department on 20.7.67. He obtained a few promotions, and has been working as APM Accounts with effect from 9.3.96. He was subjected to certain disciplinary proceedings and punishment awarded during the period 1988 to 1997. Because of these proceedings, he was not permitted to cross efficiency bar in July 1993. The respondents case is that details of such punishment were not entered duly in the service book at the instance of the applicant, who kept it under custody without authorisation. On the expiry of punishment as on 13.9.95, a memo was issued of No.B-1/4/EB/Dig. Dated 2.4.96 issued by the Senior Superintendent of Palghat. According to the applicant, the said memo is A-2. But what is produced as A-2 is some statement given by the applicant to the Assistant Superintendent of Post Offices, Vigilance. The punishment came subsequently, in the way of the biennial cadre review, scheme, whereby officials completing 26 years of service are considered for up gradation to HSG-II scheme twice a year, on the1st of January and July. According to the claim of the applicant, he was entitled to be placed in the said grade as early as 1.1.96. But he was served with a memo by the 1st respondent on 23.9.99 containing charges that he kept his service book under custody making several entries in violation of the existing orders, he absented himself unauthorisedly etc. The applicant submitted a detailed representation on 16.10.99 (A-3). Vide A-4 impugned proceedings dated 29.12.2000, he was given the punishment of withholding of next increment for three years without cumulative effect. Vide A-5 representation dated 12.2.2001, he preferred an appeal. Vide A-6 impugned proceedings dated 17.10.2001, the same was rejected and the punishment confirmed. The applicant filed a revision petition which again was turned down vide impugned proceedings (A-7) dated 8.8.2003 except to the extent of reducing the withholding of increment for a period of six

months without cumulative effect. Aggrieved by the impugned orders A-4, A-6 and A-7, the applicant has come before the Tribunal.

3. He seeks the reliefs of getting the impugned orders quashed. The following grounds are relied upon:

i) The punishment is arbitrary and violative of Constitution.

ii) The alleged incident took place more than a decade back.

Iii) The allegations are factually incorrect.

iv) There was a bias in the conduct of the disciplinary proceedings.

4. The application is resisted by the respondents. They point out that,

i) the presumption of the applicant that the case was closed was misplaced,

ii) the misdemeanor came to light when his case was about to be considered for BCR placement in 1996 and it was noticed that certain punishments awarded to him were not recorded in the service book,

Iii) there was no bias in the conduct of the disciplinary proceeding,

iv) there was no arbitrariness, as alleged by the applicant, he was heard, and opportunities were given to him before imposing the punishment under challenge and that

v) the subject matter was duly considered by the authorities concerned and the order cannot be termed as arbitrary.

5. Heard the counsel and perused the documents.

6. The first point to be decided is the question of delay. The Hon. Supreme Court in 1998 4 SCC 154 observed that it is not possible to lay down any pre-determined principles, applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Each case has to be examined on the facts and circumstances of the case. Vide his appeal petition (A-5) dated 12.2.2001, the applicant had mentioned that the charges related to the period from 1986 to 1996. When a Rule 14 enquiry was made, the time limit allowed by

the Department of Personnel was three months for issuing punishment order. The appellate authority did consider the issue of delay raised by the applicant and recorded that the delay in deciding the case was due to the case filed by the applicant in the C.A.T and hence it does not vitiate the proceedings. The copy of the revision petition is not available as part of the material papers and hence it is not possible to directly attest whether he did raise this issue of delay before the authority concerned. However, the revision order does make a mention about the arguments of the applicant in this regard. The revisional authority found that the delay was inescapable and in any case, it did not mitigate the gravity of the misdemeanor. Finally, the applicant has no case that he was unable to defend himself due to such delay.

7. The next point raised by the applicant is the nature of the allegations. This falls squarely within the domain of appreciation of evidence. Both the appellate authority the revisionary authority have passed detailed and speaking orders.

8. The next point alleged is one of bias. This again was projected both in the appeal and revision petition. Both the authorities have considered this aspect and recorded a speaking order rejecting the claim. It is seen that the appellate authority gave a personal hearing. The applicant had also not asked for Rule 16 (1)(b) enquiry.

9. The Hon. Apex Court has delineated the contours of the scope of judicial intervention by the Tribunal in disciplinary proceedings. Apart from being satisfied with the observance of procedures, the scope for judicial intervention by the Tribunal is restricted. It has been also laid down by the Principal Bench of this Tribunal in Kishan Singh v. Union of India and others in O.A.2021/2003 that the scope for judicial intervention/review in disciplinary proceedings is very limited, it cannot re appreciate the evidence: it has the power to re-examine the decision making process but not the decision itself. This has been made clear in

2006 AIR SCW 734 by the Hon'ble Apex Court that "judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority." Their lordships in the same judgment had referred to an earlier decision in 1995 (6) SCC 749 by extracting the following portion "judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the court." More specifically, the Hon'ble Apex Court has frowned upon re appreciation of evidence by C.A.T. as not permissible in 1998 SCC(L&S) 363. Besides, the proposition of the law is that the disciplinary authority is the sole judge of facts.

10. In sum, we find that, the alleged delay has not caused any prejudice to the applicant, the disciplinary authorities passed the impugned orders after due deliberation and discussion and such reasoned orders factored the questions of bias and factual aspects. In view of the law laid down by the Apex Court, we conclude that there is no scope for interfering with any of the impugned orders. Hence, the O.A is dismissed. No costs.

Dated, the 5th December, 2006.

GEORGE PARACKEN
JUDICIAL MEMBER

N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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