CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No.276 of 2005

Friday this the 8th day of December, 2006

CORAM :

HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

E.P.Mahesh
Postal Assistant
Valancheri - 676 552
Residing at : Kapoonniveettil
Near High School
Valancheri : Applicant

(By Advocate Mr. K.S.Bahuleyan)

Versus

1. Superintendent of Post Offices
Tirur Division, Tirur - 676 104

2. The Postmaster General
Northern Region
Calicut - 673 014

3.. Union of India represented by Secretary
Ministry of Communications,
New Delhi : Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The application having been heard on 10.11.2006, the Tribunal on 08.12.2006 delivered the following :

O R D E R

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by the order of recovery from pay the amount lost to the Department due to negligence.

2. The applicant has been working as Postal Assistant, Valancherry with effect from 15.5.2001. Though not part of service conditions as claimed by the applicant he had been working as Treasurer for short period intermittently.

While working so, a burglary took place in the said Post Office resulting in the loss of cash amounting to Rs.3,15,980/- out of the closing balance of Rs.3,16,584.50 According to the applicant, the cash chest containing the cash and valuables were closed and locked jointly by him as a Treasurer and the Sub Post Master. The safe room in which the cash chest had been kept had been similarly secured by a double-lock arrangement jointly. Consequent to such burglary, R-1 issued a show cause notice dated 6.8.2004(A-1). The allegation therein was that the applicant failed to remit the available maximum cash to the bank. The applicant submitted his reply dated 18.8.2004 (A-2). Despite the said representation, a memo of charges was issued to him vide A-3 document dated 7.2.2005 under Rule 16 of the CCS(CCA) Rules. The applicant submitted A-4 reply dated 18.2.2005 denying all charges. The said process ended with the issue of impugned A-8 document dated 21.3.2005, ordering the recovery of Rs.54,000/- from his pay in 36 instalments commencing from the pay of March, 2005. He did not file any appeal. Aggrieved by the impugned order, he has filed this O.A.

3. He seeks mainly the relief of quashing of the impugned A-8 order. The grounds adduced by him are a mixture of facts relating to the incident and procedures under violation. The latter are the following:

i) Rule 30 of P&T, FHB Vol.II does not mention anything regarding the duties responsibilities of the Treasurer.

ii) Though the Sub Post Master was jointly responsible, he was let off with a relatively minor punishment.

4. Respondents oppose the application. The main points of such opposition are the following:

(i) The appointment of the applicant as a Treasurer was in accordance with rules. In any case, there was no protest from

the applicant at the time of such appointment.

(ii) There was a failure on the part of the applicant in remitting maximum available cash.

(iii) No appeal was filed by the applicant against the penalty advice.

Other points of opposition related to rebuttal of factual details.

5. Heard the parties and perused the documents. On the point of exhaustion of remedies, the applicant referred to the decision in 1991(3) SLJ (CAT) 278.

6. As mentioned above, a substantial portion of the claims made by the applicant and the counter claims thereto relates to the appreciation of facts. This, we feel is entirely the domain of the authorities concerned-disciplinary authority, appellate authority and the revisionary authority as envisaged in the CCS(CCA) Rules, 1965. The prohibition to function as an appellate authority in disciplinary cases has been laid down by the Apex Court in a plethora of cases. Accordingly, no re appreciation of evidence is permissible in a proceedings like this. In 2006 AIR SCW 734, it was observed that "*judicial review is not akin to adjudication on merit by re appreciating 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. Unless there are compelling reasons, the Tribunals should not venture into appreciation and evaluation of facts. The question arises whether such compelling reasons exist in this case.

7. On this issue, it is seen that the original application very clearly claims that no alternative efficacious remedy available in answer to the question on details of remedy exhausted. At best, this is a tangential reply to the question mentioned. It is not for the applicant to decide a priori that the appeal and revision exercise are not efficacious alternative remedies. On the first day of the hearing itself, the O.A was admitted, after hearing the parties. It is not known whether respondents specifically raised the pleas of availability of alternative remedies like appeal and revision. In the case cited above by the counsel for applicant, a preliminary objection was raised that the application was not maintainable for nonexhaustion of appeal provided under the extant rules. This objection was specifically considered and over ruled by a considered order It is doubtful whether the present case can claim the benefit of the order in the cited case because no specific discussion is found in the orders relating to admission on the question of alternative remedies. The first time when a specific written reference is made in the reply statement about non-filing of the appeal. To this, there is no rebuttal made by the applicant in the rejoinder. This point is again covered in the reply statement in reply to grounds (F) and (G). of the O.A. The only rebuttal in the rejoinder is a repetition of the applicant stating that there was no efficacious remedy available to him other than approaching the Tribunal. In view of the admission by the applicant that he failed to exhaust all the remedies available, and that he (unjustifiably) considered such remedies as non-efficacious, this Tribunal finds it very reluctant to step in the shoes of an appellate authority. It is true that the law laid down by the Hon. Apex Court referred to above covers cases where the Tribunal would have before it, the orders of the appellate authorities. But we would think it proper and justifiable that the ratio of the above pronouncements apply equally vigorously in this case also.

8.. Now, the question arises about the time frame for filing appeals under Rule 25 of the CCS(CCA) Rules I it is provided as follows:

> "25. *Period of limitation of appeals.*
>
> *No appeal preferred under this part shall be entertained unless such appeal is preferred within a period of forty five days from the date on which a copy of the order appealed against is delivered to the appellant:*
>
> *Provided that the Appellate Authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time."*

Now, the question that arises is about the time factor for preferring appeals.

9. It is true that the period of appeal is already over in the present case. If this Tribunal finds it improper to function as an appellate authority by examining the claims and counter claims of the facts of the case, the applicant who has approached this Tribunal should not suffer for want of a higher forum than the disciplinary authority for redressal of his grievances. Orders passed by this Tribunal should enable him to avail himself of access to such authorities.

10. It is worthwhile mentioning in this regard that this Tribunal had occasion to deal with an identical case in O.A.721/2002. There again, a Postal Assistant was ordered to remit the loss the Government sustained on account of a burglary because of negligence on the part of the applicant in not remitting the excess cash. The signal difference of that applicant from the present one is that the former had exhausted both the remedies of appeal and revision.

11. Hence, in the interests of justice we order that the applicant shall file his appeal against the impugned order within 30 days from the date of receipt of a copy of this order before the appropriate authorities . Such authorities shall hear the said appeal, in relaxation of the provisions contained in the Rule 25 quoted above and dispose of the same duly within such time frame as prescribed under the rules, regulations and instructions, if any in this regard. Till the disposal of the appeal, no further recoveries from his pay shall be made.

12. The Original Application is disposed of as above. No costs.

Dated, the 8th December, 2006

N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

Dr..K.B.S.RAJAN
JUDICIAL MEMBER

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