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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAHULAM BENCH**

Original Application No. 29 of 2009

Wednesday, this the 25th day of February, 2009

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

B. Lakshmikutty Amma,
W/o. Late Chandrasekharan Nair,
EX. GDS BPM, Vettimukal P.O.,
Residing at: Chittekalattu House,
Vadakkenada, Ettumanur P.O.,
Kottayam.

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Applicant.

(By Advocate Mr. P.C. Sebastian)

v e r s u s

1. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram,
Pin : 695 033
2. The Postmaster General,
Central Region, Kochi : 682 018
3. The Senior Superintendent of Post Offices,
Kottayam Division, Kottayam : 686 001
4. The Union of India represented by its
Secretary, Ministry of Communications,
Department of Posts, New Delhi.

Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

(The Original Application having been heard on 25.02.09, this Tribunal on the same day delivered the following) :

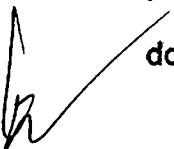
**O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

The issue is short and simple. The applicant, while functioning as GDSBPM, Vettimukal (under put off duty), was visited with a charge sheet vide Memo dated 31st January 2005. The same resulted in passing of Annexure A-1

Proceedings dated 17th August, 2006 whereby the Disciplinary authority (the Senior Superintendent of Post Offices, imposed penalty of censure. On 12th June 2007, the Post Master General had issued Annexure A-2 order stating that it was proposed to enhance the penalty to which the applicant had furnished her explanation, vide Annexure A-3 representation dated 22nd June 2007. The Post Master General, by Annexure A-4 order dated 14th September 2007 set aside the penalty of censure and substituted the same with the penalty of removal from service. This order was sought to be appealed against vide Annexure A-5 Appeal dated 31st October 2007. By the impugned order dated 14th November 2008, the respondents have stated that as per Rule 19(2) of the GDS (Conduct & Employment) Rules 2001 and also the D.G's instruction below that Rule, the revisionary power can be exercised once only in a disciplinary case of Gramin Dak Sevaks and once a case has been revised by the revisionary authority, no further application for revision can be entertained on any grounds. However, review is permissible under the Rules to the President of India.

2. The applicant has come up against the above order on the ground that provision does exist for appeal as the penalty of removal passed by the Post Master General has to be taken as the first penalty order (though enhanced one).

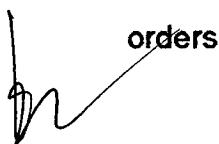
3. Counsel for the applicant submitted that the GDS has its own rules relating to disciplinary proceedings and they are by and large in tandem with the CCS (CC&A) Rules. The penalty being imposed coming within one of the penalties enumerated in Rule 9, and the same being appealable, the applicant does have the right of appeal.



4. Counsel for the respondents submitted that since this is the lone legal issue, no counter is needed and the Rules if properly interpreted would make it clear whether the respondents are right in their action.

5. Arguments were heard and the rules perused. Rule 9 talks of various penalties, that could be imposed by the Appointing authority. One of them is removal from employment. Rule 13 talks of appeal, which *inter alia* states, "**A Sevak may appeal against an order imposing on him any of the penalties specified in Rule 9 to the authority to which the authority imposing the penalty is immediately subordinate.**" It is the appellate authority who has to consider the appeal in accordance with the stipulations made in Rule 18 of the Rules. The appellate authority has the power to enhance the penalty imposed. Rule 19 is a Revision power of the authorities specified in Rule 19(1) which may be either on its own motion or otherwise. The revisionary authority has power to enhance the penalty awarded under these rules. Thus, penalty as contained in Rule 9 could be imposed by the Disciplinary Authority or Appellate Authority or the Revisionary authority. And, appeal could be preferred before that authority, to which the authority which passed the penalty order is subordinate. The respondents, while interpreting the Rules seem to have committed an error that since the stage of revision has already been reached, there is no scope for appeal and only Review is the lone ventilation available to the applicant.

6. An appeal is a substantive right vested with an employee and the same cannot be denied under the law. It is for this reason that while prescribing the orders which are appealable, the Rules do not specify penalties imposed by the



'appointing authority' but the term used is '*authority to which the authority imposing the penalty is immediately subordinate*'. It would be appropriate to refer to an observation of the Apex Court in the case of *Surjit Ghosh v. Chairman & Managing Director, United Commercial Bank, (1995) 2 SCC 474*, wherein the Apex Court has held as under:

5. However, it is not necessary to go into the merits of the said grievances since we are of the view that one of the objections taken by the appellant to the dismissal, viz., that the appellant was deprived of an opportunity to prefer an appeal provided under the Regulations, goes to the root of the dismissal order. The undisputed facts relating to the said grievance of the appellant are that the disciplinary action was taken against him by the Deputy General Manager. As the Regulations stood then, the disciplinary authority for officers in Grades E, D, C and B (excepting Divisional Managers in Grade B) was the Divisional Manager/AGM (Personnel) and the appeal against their order lay to the Deputy General Manager or any other officer of the same rank. Against the order of the Deputy General Manager, the review lay to the General Manager. It is not disputed that the appellant was an officer in Grade D. Hence in his case, as per the said Regulations, the disciplinary authority was either the Divisional Manager or the AGM (Personnel) and if the action was taken by either of them, he had an opportunity to appeal to the Deputy General Manager or any other officer of the same rank, and thereafter he had a further right of review to the General Manager. However, since the action against him was taken by the Deputy General Manager although the Divisional Manager and AGM (Personnel) were available for taking the action, the appellant was denied the right of an appeal and also the right of a review which lay only against the appellate order. The impugned order of dismissal passed by the Bank, therefore, suffers from an inherent defect.
6. The respondent-Bank in its submission contended that although it is true that the Deputy General Manager had acted as the disciplinary authority when he was in fact named under the Regulations as an appellate authority, no prejudice is caused to the appellant because the Deputy General Manager is higher in rank than the disciplinary authority, viz., the Divisional Manager/AGM (Personnel). According to the Bank, it should be held that when the order of punishment is passed by a higher authority, no appeal is available under the Regulations as it is not necessary to provide for the same. It was also contended that there is no right to appeal unless it is provided under the

Rules or Regulations. Although the argument looks attractive at first sight, its weakness lies in the fact that it tries to place the Rules/Regulations which provide no appeal on par with the Rules/Regulations where appeal is provided. It is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate authority should exercise the powers of the disciplinary authority. The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondent-Bank that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted.

7. *The result, therefore, is that the present order of dismissal suffers from an inherent defect and has to be set aside."*

7. Thus, when any of the penalty under Rule 9 is imposed by any authority, there shall be an appeal before an authority above that authority which passed the penalty order. The lone exception is the President as there is no authority higher than the President.

8. In view of the above, Annexure A-6 order dated 11-11-2008 is quashed

and set aside. The applicant may file a fresh appeal before the Chief Post Master General who shall, if the appeal is filed within four weeks from the date of communication of this order, consider the same and pass suitable orders within two months of the date of receipt of appeal. The O.A. is allowed to that extent.

9. Under the circumstances, there shall be no orders as to costs.

(Dated, the 25th February, 2009)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.