

**Central Administrative Tribunal
Ernakulam Bench**

OA 307/2013

.....Keday....., this the 24th day of June, 2016

CORAM

HON'BLE MR.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs. P.GOPINATH, ADMINISTRATIVE MEMBER

P. Surendran,
S/o Purushothaman Nair
Ex Accountant Changanassery
Head Post Office. Changanassery
Residing at "Gourisankaram",
Kodungoor, Vazhoor, 686 504.

Applicant

(By Advocate: Mr.R.Sreeraj)

Versus

- 1) Union of India represented by
the Chief Postmaster General,
Department of Posts, Kerala Circle,
Thlruvananthapuram~695 033.
- 2) The Postmaster General.
Department of Posts, Kerala Circle, Central
Region, Emakulam-682 018.
- 3) The Superintendent of Post Offices,
Department of Posts, Keraia Circle,
Changanassery Division,
Changanassery-686 101.

Respondents

(By Advocate: Mrs.Mini R.Menon, ACGSC)

The Original Application having been heard on 15th June, 2016, the
Tribunal delivered the following order on 24.06.2016.

ORDER

By N.K.Balakrishnan, Judicial Member

Applicant seeks quashment of Annexure A1 to A3 orders and for his reinstatement in service with consequential benefits.

2. The case of the applicant is stated thus:-

While the applicant was working as Accountant in Changanasserry Head Post Office, he was proceeded against under Rule 14 of the CCS (CCA) Rules 1965. It was alleged that when the applicant was working as Accountant, Kanjirappally Head Office, he produced 3 sanction memos dated 19/5/2008 amounting to Rs.23610 purported to have been issued by Sri M.Y.Yohannan, Superintendent of Post Offices, Changanasserry Division and got the orders of Post Master, Kanjirappally, prepared money receipts, took payment of the amount from the Treasurer of Kanjirappally HO under the guise of paying it to the payee Dr.K.S.Babu, Civil Surgeon and the applicant showed the money receipts to make it appear that the amount was paid to the payee on 27/5/2008 without actually getting the signature of the payee and also without effecting payment to that payee. It is also alleged that while he was working as Accountant, Kanjirappally during the period from 1.3.2004 to 9.8.2008 he fraudulently applied for and obtained GPF final withdrawals. He classified those GPF final withdrawals under the head "Arrears of Pay and Allowances" in other bills in order to mislead the Director of Postal Accounts. There is yet another charge that the applicant while working as Accountant, Kanjirappally HO falsified the records relating to his leave accounts maintained in the service book and replaced the old pages with

fresh pages to make it appear that he had 66 days of earned leave at his credit and 25 days of Half Pay Leave as on 14.10.2006 and 17.10.2006 respectively. It is stated that in July 2006 he had credited 15 days of earned leave in the leave account and showed the balance as 66 whereas the applicant had no earned leave/HPL at his credit on that day. A memo of charge was issued to the applicant. Mr. A. Raveendranath, Senior Superintendent of Post Offices, Thrissur was appointed as Inquiry Authority. Mr.B.Sajeevan, Assistant Superintendent of Post Offices was appointed as Presenting Officer. A10 appeal was submitted to the Appellate Authority. Since the appeal was dismissed, Annexure A11 revision petition was filed. Annexure A1 is the order passed by the Revisionary Authority modifying the penalty imposed on the applicant to that of compulsory retirement. Still aggrieved by the same, the applicant has approached this Tribunal.

3. The applicant contends that there is no evidence to hold the applicant guilty of the charges levelled against him. Unless there is some evidence to prove the charges on the basis of material on records, the finding of guilt and the action taken by the disciplinary authority cannot be sustained. Grave mistake was committed by the disciplinary authority in conducting the inquiry. The appellate authority failed to consider the appeal preferred by the applicant in the manner envisaged as per Rule 27 of the CCS (CCA) Rules. Though the first respondent modified the penalty, there was no due consideration of the contentions raised by the applicant. The applicant contends that the penalty imposed on him should be set aside in toto.

4. The respondents resisted the petition contending that disciplinary proceeding was initiated against the applicant for grave charges as mentioned earlier. Inquiry was conducted in accordance with the rules and in due compliance of the principles of natural justice. There was no denial of opportunity to the applicant to defend his case. Since the applicant was found guilty of a grave charge, the order of removal was passed by the disciplinary authority vide Annexure A2. However, the Revisionary authority showed leniency in the matter modifying the penalty to that of compulsory retirement. There is absolutely no reason to interfere in the revision order passed by the revisionary authority.

5. We have heard the learned counsel appearing for both sides. We have also gone through the pleadings and documents produced by the parties. The point for consideration is whether Annexure A2 order passed by the disciplinary authority suffers from the vice of illegality and whether the orders passed by the appellate authority and revisionary authority are liable to be set aside as prayed for by the applicant.

6. It is vehemently argued by the learned counsel for the applicant that the evidence appearing against the applicant was not considered in the true perspective and thus the authorities fell into a grave error in accepting the evidence and holding the applicant guilty of the charges levelled against him. It is stated that there is no legal evidence to hold that the applicant committed any of the offences charged against him. This contention has been strongly resisted by the learned counsel for the respondents. There is a detailed consideration of the entire evidence adduced in the matter, particularly with

respect to the falsification of records and misappropriation of the amount. When it is proved that the applicant was in charge of the affairs, he cannot wriggle out of the liability. In fact, the applicant has admitted his guilt and tendered apology and sought leniency in the matter of penalty. (See the last but 4th paragraph). It was stated that the applicant has tendered unconditional apology for the petty irregularity, if any, "natured" against him (It is not properly worded). It is pointed out that the applicant had also submitted for consideration the fact that he used to encounter psychic problems and so he did not have a clear picture on the issues. It was stated that he was suffering from bipolar disorder. It was stated that some other official working in the department knowing the applicant's problems (psychic problems) might have hoodwinked him. Though such a contention was raised, the Appellate Authority could not find anything to hold that the submission so made is correct. The charges levelled against the applicant were proved in the inquiry. Those charges were found to be very serious. Hence the Appellate Authority did not intervene in the matter of penalty imposed on the applicant. There was no procedural illegality or irregularity in the conduct of the inquiry. Judicial review is concerned primarily with the decision making process and not the decision itself (Vide Supreme Court's decision in **Pandiyan Roadways Corporation Vs. N.Balakrishnan** (2007 (9) SCC 755). and **UPSRTC Vs. Suresh Chand Sharma** (2010) 6 SCC 555. The copy of the inquiry report was furnished to the applicant. He was asked to show cause against the penalty proposed to be imposed on him. He submitted his written representation. That was also considered by the disciplinary authority. It was only after detailed

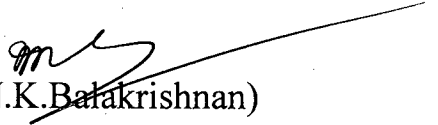
consideration of the entire material available before the DA, the final order was passed finding that the charges levelled against the applicant could be proved and accordingly order of removal was passed against the applicant. Sound reasons are seen stated by the inquiry officer to arrive at the conclusion of guilt against the applicant. There was a re-appreciation of the material by the disciplinary authority and also by the appellate authority. What more, the revisionary authority has also considered in detail the entire matter. This Tribunal cannot have a re-appreciation of the entire evidence to see whether a different conclusion is possible. That does not fall within the realm of consideration of this Tribunal. There was no denial of natural justice nor was there any procedure irregularity. As such there is absolutely no ground to interfere with the finding of guilt entered against the applicant.

7. Now the only other point for consideration is whether the penalty imposed on the applicant which stood modified by Annexure A1 order is outrageously disproportionate so as to invoke the jurisdiction by this Tribunal. Considering the grave nature of the offence committed by the applicant, the penalty imposed on him was found to be just and proper by the appellate authority. But however, in view of the submission made by the applicant that he was having some problems, a sympathetic view was taken by the revisionary authority modifying the penalty to that of compulsory retirement. Though it was contended by the applicant that the penalty imposed is shockingly disproportionate, we are unable to agree with the contention so raised. If the matter is remanded to authority concerned for re-consideration, it will only be to the disadvantage of the applicant since

maximum leniency was shown in the matter of penalty imposed on the applicant. As such, we find no reason to interfere with the same invoking the limited jurisdiction. We find no merit in the OA. Hence it is dismissed.



(P. Gopinath)
Administrative Member


(N.K. Balakrishnan)
Judicial member

aa.