

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 355 of 2012

Wednesday, this the 12th day of December, 2012

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

M.S. Rajamohan Nair, aged 61 years, S/o. P.R. Sivasankara Pillai, (Retired Postal Assistant, Kottayam Head Office), Residing at Moolayil House, Peroor PO, Kottayam-686 637. **Applicant**

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by Secretary to the Government of India, Ministry of Communications, Department of Posts, New Delhi.
2. Postmaster General, Central Region, Department of Posts, Banerjee Road, Cochin-682 018.
3. The Senior Superintendent of Post Offices, Kottayam Postal Division, Kottayam.
4. The Union Public Service Commission, New Delhi through its Secretary. **Respondents**

[By Advocates – Mr. Sunil Jacob Jose, SCGSC (R1-3) & Mr. T.M. Nellimoottil, Nodal Counsel (R4)]

This application having been heard on 20.11.2012, the Tribunal on 12-12-12 delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member-

The applicant was charge sheeted on 23.7.2010 under Rule 14 of CCS (CCA) Rules, 1965 while working as RD Counter Assistant, Kottayam HO for his failure to verify specimen signatures resulting in fraudulent payment



of Rs. 4,500/- to Smt. M.K. Leelamony, MPKBY agent on 11.11.2005. In the inquiry he admitted the charge unconditionally. The inquiry officer held the charge as proved vide his report dated 7.9.2010. As he retired on 31.7.2010 as Postal Assistant from Kottayam Head Office, the Rule 14 inquiry became Rule 9 inquiry as per CCS (Pension) Rules, 1972. Due to the delay in finalizing the inquiry he approached this Tribunal in OA No. 129 of 2011. It was disposed of on 18.3.2011 with a direction to complete the proceedings in three months. The disciplinary authority dropped the charge against the applicant on 15.6.2011. The Director of Accounts (Postal) objected to it stating that the disciplinary authority has no power to drop the charge under Rule 9. OA No. 978 of 2011 filed by the applicant was disposed of on 3.2.2012 by directing the respondents to release 50% of gratuity on or before 15.3.2012 and the balance amount withheld would be subject to final orders to be passed by the President. In compliance 50% of gratuity was paid to the applicant on 14.3.2012. While so the Presidential order dated 16.3.2012 was received according to which 25% of the pension of the applicant is to be withheld for three years and his gratuity is to be forfeited. Aggrieved the applicant has filed this OA for the following reliefs:-

“(i) Call for the records leading to the issue of Annexure A7 and quash the same and direct the respondents to settle the entire retirement benefits as if the same has not been issued at all.

(ii) Direct the respondents to pay interest at the rate of 10% per annum on the applicants pension and all other retirement benefits to be calculated with effect from 1.8.2010 up to the date of full and final settlement of the same;

(iii) Award costs of and incidental to this application;




(iv) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case."

2. The applicant stated that Annexure A7 is arbitrary, discriminatory and violative of Articles 14 & 16 of the Constitution of India. There is no finding of grave mistake or grave negligence on the part of the applicant. The findings of the UPSC are without application of mind. The penalty of withholding of the entire gratuity is done with the sole motive to nullify the orders of this Tribunal besides being opposed to Annexure A6 order of this Tribunal according to which only half of the gratuity due is subject to the final orders to be passed by the President.

3. The respondents in their reply statement submitted that they are not in a position to implement the presidential order in toto as 50% of the gratuity has already been released on 14.3.2012 in compliance with the order of this Tribunal in OA No. 978 of 2011. The case is under process at Directorate and suitable decision will be taken for which time up to three months was sought.

4. We have heard the learned counsel for the parties and perused the records.

5. The authority which passed the impugned order at Annexure A7 by order and in the name of the President was bound by the order of this Tribunal dated 3.2.2012 in OA No. 978 of 2011. Only half of the gratuity due to the applicant was subject to the final orders to be passed by the President. The impugned order is not based on these relevant consideration.



6. On the very same date of the impugned order i.e. 16.3.2012 another order, by order and in the name of the President was issued in a similar case which is reproduced as under:-

"INSURED FOR RS. 200/-

No. C-14016/88/2011-VP
Government of India
Ministry of Communications & Information Technology
Department of Posts

Dak Bhavan, Sansad Marg,
New Delhi-110 116.

Dated : 16th March, 2012.

ORDER

Disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965 were initiated against Smt. K.M. Cicily, Ex-APM, Kottayam HO vide Memo No. F4/01/2009-2010 dated 17.02.2010 on the following charges:-

Article I :

That the said Smt. K.M. Cicily while functioning as Assistant Postmaster (RD), Kottayam HO during the period from 10.07.2007 to 31.05.2008 authorized payment of withdrawal (final closure) of Rs. 6383 on 15.05.2008 from Kottayam HO RD account No. 10090188 standing in the name of Shri Manuel Mani, without verifying the signature of the depositor as per the rules and procedures as prescribed in Rules-21 read with Rule 2(2)(i) and Rule 115(2)(b)(i) and (vii) read with Note 4.2(iii) below Rule 33(1) of POSB Manual Volume-1 Second Edition corrected up to 31.12.2006. This resulted in fraudulent withdrawal of the amount from the account.

Smt. K.M. Cicily, Assistant Postmaster Kottayam HO thus failed to maintain absolute integrity and due devotion to duty as envisaged in Rule 3(1)(i) and Rule 3(1)(ii) of CCS (Conduct) Rules, 1964.

Article-II

That the said Smt. K.M. Cicily while functioning as Assistant Postmaster (RD), Kottayam HO during the period from 10.07.2007 to 31.05.2008 authorised payment of withdrawal of Rs. 5000/- on



14.5.2008 from Kottayam HO RD account No. 10090190 standing in the name of Smt. Viji Ravi without verifying the signature of the depositor as per the rules and procedures as prescribed in Rules-21 read with Rule 2(2)(i) and Rule 113 read with Note 4.2(iii) below Rule 33(1) of POSB Manual Volume-1 Second Edition corrected up to 31.12.2006. This resulted in fraudulent withdrawal of the amount from the account.

Smt. K.M. Cicily, Assistant Postmaster Kottayam HO thus failed to maintain absolute integrity and due devotion to duty as envisaged in Rule 3(1)(i) and Rule 3(1)(ii) of CCS (Conduct) Rules, 1964.

Article III:

That the said Smt. K.M. Cicily while functioning as Assistant Postmaster (RD), Kottayam HO during the period from 10.07.2007 to 31.05.2008 authorised payment of withdrawal (final closure) of Rs. 10593/- on 14.5.2008 from Kottayam HO RD account No. 10090220 standing in the name of Smt. Smitha Mohan, without verifying the signature of the depositor as per the rules and procedures as prescribed in Rules-21 read with Rule 2(2)(i) and Rule 115(2)(b)(i) and (vii) read with Note 4.2(iii) below Rule 33(1) of POSB Manual Volume-1 Second Edition corrected up to 31.12.2006. This resulted in fraudulent withdrawal of the amount from the account.

Smt. K.M. Cicily, Assistant Postmaster Kottayam HO thus failed to maintain absolute integrity and due devotion to duty as envisaged in Rule 3(1)(i) and Rule 3(1)(ii) of CCS (Conduct) Rules, 1964.

2. Disciplinary proceedings were initiated by appointment of IO and PO vide Memos dated 27.04.2010 to conduct the inquiry. The CO admitted all the charges leveled against her unconditionally and without any reservation in writing. Therefore, the IO in his report dated 15.07.2010 held the articles of charges as proved. The disciplinary authority agreed with the findings of the IO.

3. The CO retired on superannuation on 28.02.2010 pending the Rule 14 case against her which was converted into Rule 9 of CCS (Pension) Rules, 1972.

4. The case was placed before the President. The President, after careful consideration of the facts and circumstances of the case came to the tentative conclusion that the CO has been instrumental for gross negligence and dereliction of duties on her part. She deserves punishment under the provisions of Rule 9 of the CCS (Pension) Rules, 1972 and sought the advice of Union Public Service Commission. The Commission have tendered their advice vide letter



No. F.3/277/2011-SI dated 28.02.2012 (copy enclosed). The Commission after taking into account all aspects of the case and evidence on records noted that since the charge of gross negligence against the CO constitute grave misconduct on her part, the ends of justice would be met in this case if the penalty of withholding of 10% of the monthly pension otherwise admissible for a period of one year is imposed on the CO, Smt. K.M. Cicily, retired APM. Her gratuity may be released if not required in any other case.

5. The President, after careful consideration of the advice of the Commission and facts and circumstances of the case has accepted the advice of the Commission and orders accordingly.

BY ORDER AND IN THE NAME OF THE PRESIDENT

Sd/-

(R.B. Chawla)
Director (MM & VP)

Smt. K.M. Cicily,
Ex-APM, Kottayam HO,
Kerala.

(Through the Postmaster General, Central Region, Kochi-682 018)"

7. Non-verification of the specimen signature is a gravamen of the charges based on which Smt. K.M. Cicily, Ex-APM, Kottayam HO and the applicant were imposed with the penalty orders dated 16.3.2012. Three counts of negligence of not verifying specimen signature causing fraudulent withdrawal of amounts of Rs. 6383, Rs. 5000/- and Rs. 10,593/- on the part of Smt. K.M. Cicily brought upon her a penalty of withholding of 10% of monthly pension for one year, whereas a single count of negligence of not verifying the specimen signature causing fraudulent withdrawal of Rs. 4500/- brought upon the applicant in this case the penalty of withholding of 25% of his monthly pension for a period of three years with total forfeiture of his

gratuity. Smt. K.M. Cicily had voluntarily paid Rs. 27,600/- into PO account against the loss & penal interest. In the instant case MPKBY who herself had fraudulently withdrawn an amount of Rs. 4500/- paid the whole amount to the post office. On careful consideration of the facts and circumstances of the case the President came to the tentative conclusion that Smt. K.M. Cicily has been instrumental for gross negligence and dereliction of duties on her part. After getting the advice of the UPSC the penalty of withholding of 10% monthly pension for a period of one year was imposed on her. In the case of the applicant, there is only one count of negligence causing fraudulent withdrawal of Rs. 4500/- which was paid back by the fraudster. After careful consideration of the facts and circumstances of the case the President came to the tentative conclusion that the applicant herein has been instrumental for gross negligence on his part. After getting the advice of the UPSC, 25% cut of monthly pension for a period of three years and total forfeiture of gratuity admissible was imposed on him. The advice of the UPSC is not binding on the President. There is an apparent discrimination against the applicant who was forced to approach this Tribunal three times. The grossness of negligence constituting grave misconduct on his part in the eyes of any reasonable person, is much less than the grossness of negligence constituting grave misconduct on the part of Smt. K.M. Cicily. The penalty imposed on her could be found by a reasonable person as proportionate to the gravity of the misconduct on her part. But the penalty imposed on the applicant herein is shockingly disproportionate to the gravity of misconduct on his part.

8. The statement of the applicant that his 38 years of service is



unblemished except for the minor irregularity in issue here is not disputed by the respondents. The charge memo was issued after a lapse of about 5 years. There was no monetary loss to the Department or to the depositor. The disciplinary authority had issued orders dropping the disciplinary proceedings against the applicant. The disciplinary authority could have given due consideration to the written statement of defence and finalize the case obviating the need for conversion of rule 14 proceedings to Rule 9 proceedings under CCS (Pension) Rules. The counsel for the respondents in OA No. 978 of 2011 had submitted as under:-

“The case was considered by the Post Master General and having found that the loss caused by the negligence of the official was only Rs. 4,500/- and that amount was credited by the agent owning responsibility of the fraud the disciplinary authority was ordered to drop the charges.”

9. The gravity of negligence on the part of the applicant herein was found to be so negligible as to drop the charges against him. There is nothing on record to show that neither the UPSC nor the President has taken these relevant factors into consideration while imposing shockingly disproportionate penalty on the applicant. The impugned penalty order at Annexure A7 is arbitrary and discriminatory. On the ground of non-application of mind to the relevant materials and arbitrariness and discrimination in awarding penalty the impugned order is liable to be interfered with by this Tribunal.

10. Ordinarily Tribunals are not expected to sit in appeal or interfere with the quantum of penalty. However, the facts that the applicant has retired and that he has approached this Tribunal three times, it is not in the interest of



justice to prolong the matter. Hence, the impugned order is set aside to the extent the penalty is in excess of withholding 10% of the monthly pension of the applicant for one year. The remaining gratuity should be disbursed to the applicant within one month of receipt of a copy of this order.

11. Accordingly, the Original application is partly allowed as above. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

C.P(C) 48 OF 2013 IN O.A. NO. 355 OF 2012

Wednesday, this the 10th day of April, 2013

CORAM:

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

M.S.Rajamohanan Nair
(Retired Postal Assistant
Kottayam Head Office)
Residing at Moolayil House
Peroor PO, Kottayam – 686 637

... Petitioner

(By Advocate Mr.TCG Swamy)

versus

1. Shri George Ninan
Postmaster General
Central Region
Department of Posts
Banerjee Road
Cochin – 682 018

2. Shri K.K.Devis
Senior Superintendent of Post Offices
Kottayam Postal Division
Kottayam – 86 001

... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The application having been heard on 10.04.2013, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

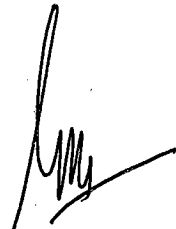
This C.P(C) is filed alleging non compliance of the order in OA 355/12. It is represented by the counsel for respondents that the order has since been challenged before the Hon'ble High Court in OP(CAT) 791/13 and the Hon'ble High Court has stayed the operation of the order. In the circumstances, CP(C) is **dismissed** subject to the right of the

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petitioner to file a separate CP(C) after disposal of the OP(CAT) by the Hon'ble High Court, if the grievance still survives.

Dated, the 10th April, 2013.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

VS