

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 11.7.90

PRESENT

HON'BLE SHRI N. V. KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 364/89

M. P. Lalitha

Applicant

vs.

1. Union of India represented by the
Secretary, Ministry of Finance
New Delhi

2. The Collector, Central Excise,
Cochin and

3. The Deputy Collector (P&E)
Central Excise, Cochin

Respondents

M/s. R. Rajasekharan Pillai &
K. T. Thomas

Counsel for the
applicant

Mr. K. Prabhakaran, ACGSC

Counsel for the
respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

Aggrieved by the order of the appellate authority
Annexure-D dated 12.4.89 confirming the penalty imposed
by the disciplinary authority, the applicant approached
this Tribunal under section 19 of the Administrative
Tribunals' Act with the following reliefs:

"A. Quash Annexure 'D' as illegal arbitrary and
unconstitutional and opposed to the facts
circumstances and nature of the charge
levelled.

B. Declare that Annexure 'B' is not in conformity
with the evidence and it is inconsistent with
the evidence.

C. Declare that the punishment awarded to the
applicant is in excess of the gravity of
offence."

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2. The applicant's case is that while working as UDC she was holding the charge of Cashier in Ernakulam-I Division during the period between May, 1981 to January 1982 and the Vigilance enquiry disclosed a failure of non-remittance of insurance premium deducted from the salary of eight officers of this Division during the months of November and December, 1981. But this had been remitted by her as per the advise of the then Vigilance Officer and on the assurance that the matter will be closed. Subsequently to her surprise, Annexure A charge memo was issued along with the following charges:

"Article-I: That Smt. M.P. Lalitha while functioning as Cashier in Ernakulam-I division during the period 7.5.81 to 22.1.82 had not remitted an amount of Rs. 593-20 towards the LIC premium due on 8 policies for the months of November, December, 1981 which were recovered from the salaries of the concerned individuals. Thus she failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a government servant by contravening rule 3(1)(i), (ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964.

Article-II: That the said Smt. M. P. Lalitha, while functioning as Cashier in Ernakulam I Dvn during the period 7.5.81 to 22.1.82 had temporarily misappropriated Government money to the tune of Rs. 593.20. She therefore, failed to maintain absolute integrity and acted in a manner unbecoming of a Government servant and thereby contravened Rule 3(i), (ii), (iii) of CCS (Conduct) Rules, 1964.

3. After the disciplinary enquiry the finding recorded in Annexure-B report is as follows:

" I do not fully agree with the findings of the PO to the extent of the amount of non-payment of LIC premium for 11/81 and 12/81 deducted from the salaries of 8 policies of officers and temporary misappropriation of the amount by the DO for the reasons mentioned below:"

" During the enquiry the DO has pointed out the mistake in the No. of policy in respect of S. No. 3 as shown in the recovery of schedule and as noted in Annexure-II. Similar discrepancy in the number of policy is also seen occurred in the case of S. No.1. This is only due to typographical error in the Policy No. shown in the recovery schedule issued by the LIC and the DO cannot take shelter of non-deductions of the amounts from the officers' pay bills for 11/81 and 12/81."

X X X

"In the absence of the relevant acquittance rolls it is difficult to establish whether the DO had recovered the remaining of Rs. 265.30 from the salaries of officers towards LIC policies for 11/81 and 12/81. In the absence of the relevant acquittance rolls Ext. P2 and P-5 cannot be taken as conclusive evidence to prove whether the DO had actually recovered the entire amount of Rs. 593.20 against 8 policies from the salaries of officers for 11/81 and 12/81."

X X X

"Therefore, charges I and II against Smt. M.P. Lalitha were proved beyond doubt to the extent of the amount as indicated above and also the imputation of misconduct and misbehaviour etc. contained in Annexure-II also have been proved beyond doubt to the extent of amount indicated above. In the absence of the relevant acquittance rolls and recovery schedule in respect of the remaining amount of Rs. 255.30 I give benefit of doubt to the DO."

4. The enquiry report shows that the applicant had made written request for production of all acquittance rolls relating to eighty policies in question. But they had not been summoned. However the enquiry officer had found the applicant guilty in respect of only a part of the amount. But even in respect of the part of the amount involved in the enquiry the officer did not find the applicant guilty of misappropriation of government money.

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5. The disciplinary authority imposed as per Annexure-C order a penalty of withholding of two increments of pay of the applicant for two years with cumulative effect. But his finding in the order is relevant. It is extracted below:

"It is expected of a responsible Government servant to keep an account of all transactions in cash whether or not somebody asked for or insisted for it. The circumstances narrated above suggest that there was something wrong with the system followed in Ernakulam-I Division which only got worsened with the negligence and carelessness of Smt. M. P. Lalitha. It also remains a fact that the allegation of non-remittance and temporary misappropriation practically stand established though not to the extent of the amount specified in the charge. Nevertheless, I find that she has held charge for about only 8 1/2 months. She has also remitted the amount involved, to LIC/refunded to individual, once the matter was brought to her notice. Taking into account the discrepancies pointed out by me in paras 7 to 9 above and her length of service as Cashier, I find that the irregularity committed by her was more due to negligence and carelessness than one intentionally done with the motive of misappropriating government money."

6. The applicant filed an appeal before the appellate authority which was rejected as per Annexure-D. She is challenging Annexure-D on various grounds.

7. The respondents have filed counter affidavit and contended that the application is liable to be dismissed and there is no ground for interference by this Tribunal.

8. We have heard the arguments of the learned counsel on both sides and considered the matter in detail. It has been brought to our notice that the enquiry authority has conducted the enquiry and found that there is no misappropriation of government money. The disciplinary authority came to the conclusion that there is something wrong with the system followed in the Ernakulam-I Division in which the

the applicant is working. But no action seems to have been taken by the respondents to find out what exactly the defect in the system and what remedial measure would be required to set right the matters in this Division. The further finding of the disciplinary authority is very important. He came to the conclusion that irregularity committed by the applicant is only due to negligence and carelessness and there is no intentional ^{her} act on the part of the delinquent employee so as to saddle / with the liability of misappropriation of government money. However, he has imposed a minor penalty of withholding of the increment for two years with cumulative effect which will have adverse effect throughout the career of the applicant.

9. The question to be considered by the appellate authority on the facts and circumstances of this case is whether the punishment can be sustained when there is a definite finding by both the enquiry authority and disciplinary authority that there is no intentional act of misappropriation of government money on the part of the delinquent officer.

10. In the appeal the applicant has raised various grounds but the appellate authority in the impugned order has not specifically dealt with the question as to whether there is evidence to sustain the charges and that there is any deliberate act of misappropriation of government money by the applicant. The order of the appellate authority is unsatisfactory. What has been

stated by the appellate authority is that the delinquent employee has not examined her witnesses and that she did not express her wish to be examined herself as a witness. Without considering whether all the acquittance rolls of eight officers required to be produced by the applicant, the appellate authority came to the conclusion that the the acquittance rolls produced in the enquiry proved that she is guilty of the charges. He has also not cared to examine whether in the light of the observations of the enquiry officer that records produced in the enquiry do not cover part of the amount involved in the charge, any additional evidence is required to sustain the charges and that in the findings of the disciplinary authority that there is only negligence and carelessness on the part of the applicant whether the punishment imposed in this case can be sustained.

According to us these are the relevant matters require to be considered in the facts and circumstances of this case especially when there is a finding by the disciplinary authority that there was no motive on the part of the applicant for committing misappropriation of government money. When the disciplinary authority has come to the definite finding that there is no intentional misappropriation or defalcation the applicant is entitled to the benefit of that findings. The appellate authority should have considered that aspects and found as to whether the applicant's action is sufficiently grave enough warranting a punishment which has already been imposed by the disciplinary authority in this case.

11. The appellate authority has also not examined the question whether on the facts and circumstances of this case the quantum of punishment which have already been imposed by the disciplinary authority is sustainable and could be upheld on the basis of the evidence and the findings of both the enquiry authority and disciplinary authority in this case. However, we are satisfied that the appellate authority has not carefully considered the relevant aspects in the disposal of the appeal in this case. Hence in the interest of justice we feel that the matter requires a fresh consideration of the appellate authority in the light of the available materials in this case and observation in this judgment.

12. Accordingly we set aside Annexure-D order and remit the matter to the appellate authority for a de novo consideration after giving notice to the applicant and giving personal hearing to the applicant.

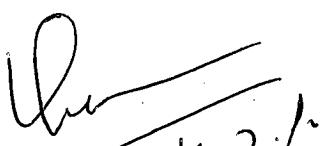
13. The Original Application is allowed in the manner indicated above.

14. There will be no order as to costs.



11.7.90

(N. Dharmadan)
Judicial Member
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(N. V. Krishnan)
Administrative Member
11.7.90

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