CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 368 of 2005

Monday this the 13th day of November, 2006

CORAM :

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

K.V. Kuttan,
Ex. Gramin Dak Sevak Mail Deliverer,
Pazhayarikando,.P.O.
Idukki Division,
Residing at Karippathottathil House,
Pazhayarikando,.P.O.
Idukki Colony. : Applicant

(By Advocate Mr. P.C. Sebastian)

Versus

1. The Superintendent of Post Offices,
Idukki Division,
Thodupuzha -685 584.

2. The Sub Divisional Inspector of Post Offices,
Kattappana Sub Division,
Kattappana-685 508.

3. Shri Jacob Mamman,
Assistant Superintendent of Post Offices,
(Inquiry Office,
O/o Superintendent of Post Offices,
Idukki Division,
Thodupuzha -685 584.

4. The Union of India
Represented by its Secretary,
Ministry of Communications,
Department of Posts, New Delhi.: Respondents

(By Advocate Mr. TPM Ibrahimkhan, SCGSC)

The application having been heard on 31.7.2006, the Tribunal on 13.11.2006 delivered the following :

ORDER

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. In this O.A., the applicant is aggrieved by the impugned orders by which, he has been removed from service.

2. The applicant entered service as Extra Departmental Mail Carrier 8.7.74. On transfer as Gramin Dak Sevak Mail Deliverer (GDSMD), he was working in Pazhayarikandom with effect from 30.2.96. He was put off duty, under Rule 12 of the GDS (Conduct & Service) Rules 2001, pending an enquiry under Rule 10 of the said rules. Vide A-3, he was served with a charge memo on 25.11.2002 by R-2. This contained two charges, both relating to non-delivery of money orders to the payees concerned. This was followed by A-4 order dated 21.1.2003, appointing R-3 as the Enquiry Officer. Vide A-5 corrigendum dated 10.2.2003, certain changes were made in the memo. After the preliminary enquiry and a few sittings, A-9 memo dated 31.3.2003 was issued by R-2, the operative portion of which reads as follows:

> "*.....The undersigned is hereby drop* (sic) *the proposed action against him, without prejudice to take any further disciplinary action against him.*"

Pursuant to the same, the enquiry authority informed him vide letter dated 4.4.2003 (A-10) that, in view of the orders contained in memo, further proceedings in the inquiry was canceled. On 2.5.2003, A-11 charge memo was issued by the R-2, containing the same charges as earlier. The applicant denied the charges. The enquiry followed and the enquiry officer submitted A-16 enquiry report (impugned order) on 30.4.2004. His finding was that article 1 was proved but article 2 could not be said to have been proved conclusively. Vide A-2 impugned order dated 8.7.2004, the R-2 imposed the penalty of removal from service with immediate effect. The applicant submitted his appeal petition (A-17) dated 22.7.2004. Rejecting the appeal, A-1 impugned order dated 7.10.2004, was passed by R-1. Aggrieved by A-1, A-2 and A-16, he has come before this Tribunal.

3. He seeks the following reliefs:

a) Call for the files leading to the issue of A-1, A-2 and A-16 and quash them.

b) Direct the respondents to reinstate applicant into service with

all consequential benefits following the quashing of impugned orders, including arrears of wages and other monetary benefits due to him for the period was illegally kept out of service.

4. The reliefs sought for by him rest on the following grounds:

i) The enquiry proceedings are vitiated by violation of statutory provisions, of principles of natural justice and of the applicant's constitutional rights.

ii) The earlier charge memo issued was withdrawn to be replaced by a fresh charge memo and these constitute violation of laid down procedures and double jeopardy.

Iii) The findings were perverse and conduct of the proceedings was faulty.

5. The respondents resist the application. According to them,

i) The Rule 10 enquiry held against the applicant was fully in conformity with the Constitution of India and other laid down rules.

ii) The enquiry authority has applied his mind fully on the evidence adduced before him.

Iii) The second respondent imposed the punishment after full appreciation of the evidence and ensuring that the punishment matched the gravity of the misconduct.

iv) Likewise, the appellate authority, too, considered the appeal properly.

v) As regards the issue of the second charge memo, the authority concerned reserved to itself the right of initiation of a subsequent proceeding.

vi) The applicant was given all due opportunities for defending his case.

6. Heard the parties and perused the documents including the judgment referred to by the applicant and the disciplinary proceedings file.

7. The first point to consider is whether the principles of natural justice and constitutional dictates have been strictly observed. Apart from making the averment to the contrary, the applicant has not been able to substantiate his point on the precise nature of non-observance of provisions of law, rules and constitution. We therefore find that in the conduct of the enquiry, there was no vitiation by violation of principles of natural justice.

8. Next point refers to violation of procedures. On this, the first point made by the applicant is as per the standing instructions, the proceedings under Rule 10 of GDS(Conduct Rules) should be in conformity with departmental disciplinary rules in spirit. The relevant portion of the (D.G., P&T letter No.151/4/77-Disc.II, dated the 16th January, 1980) referred to by him is reproduced as follows:

> *"While it may not be necessary to follow the provisions of Rule 14 of CCS(CCA) Rules, 1965, literally in the cases of ED Agents, it may be no occasion to challenge that the opportunities under Article 311(2) of the Constitution were not provided."*

Besides, the applicant contend that the second respondent was barred from initiating a fresh proceeding as was done in his case in the light of DG, P&T ruling in his letter No.114/324/78-Disc.II dated 5.7.1979 under Rule 133 of P&T Vol.III. The said ruling of the DG, P&T is reproduced as below:

> *"It is clarified that once the proceedings initiated under Rule 14 or Rule 16 of the CCS(CCA) Rules, 1965, are dropped, the disciplinary authorities would be debarred from initiating fresh proceedings against the delinquent officers unless thr reasons for cancellation of the original charge sheet or for dropping the proceedings are appropriately mentioned and* (emphasis supplied) *it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in the circumstances of the case. It is, therefore, important that when the intention is to issue a subsequent*

fresh charge sheet, the order cancelling the original one or dropping the proceedings should be carefully worded so as to mention the reasons for such an action and indicating the intention of issuing a subsequent charge sheet appropriate to the nature of charges the same was based on."

Rule 133 of P&T Vol.III., reads as follows:

"133. *Once disciplinary proceedings are initiated against an official, the proceedings cannot be closed without sending an intimation to that effect to the accused official."*

It must be said at the outset that it is not known as to why the applicant relies upon Rule 133 as all the dictates of the above rule have been fully complied with in his case in that the intimation contemplated herein has already been sent to him vide A-9 and A-10. Besides, the applicant himself has not agitated the issue of double jeopardy before the appropriate authorities including the appellate authority.

9. However, he has relied upon certain covering cases. The earliest one was the judgment in O.A.894/1993 (Uttam Somaji v. Union of India and others, 2/98 Swamys News 42 (Mumbai) date of judgment 21.4.1997). There, the point was the issue of a second charge sheet after unconditional withdrawal of the earlier one without assigning any reasons. The Railways were the respondents. Relying upon an earlier case, O.A.695 of 1992, K Ramankutty v. Union of India decided by the Bombay Bench on 16.7.1993, it was observed in this O.A i.e. 894/1993, that the first charge sheet having been dropped unconditionally, the issue of the second charge sheet would not be sustainable.

10. Another judgment quoted was from O.A.2176/1998, Amar Chand and others v. Joint Commissioner of Police and others, New Delhi. There again, the first charge sheet had been withdrawn without giving any clear or appropriate reasons and there was no mention about "without any prejudice " clause. Based on these two lapses, it was held that such an action was unsustainable in law.

11. Next case was the one decided in O.A.493/2002 in the Jaipur Bench of this Tribunal on 12.12.2003. The respondents were the Ministry of Railways. Among other things, the need for following the Railway Board circular on the issue of mentioning the reasons for dropping the earlier charges with retention of right to issue a fresh charge sheet was endorsed.

12. The position can be summed up by saying that different departments have prescribed the rule that when a charge sheet is dropped, the condition precedente for following it with the issue of a fresh charge sheet would be to furnish reasons for dropping the first charge sheet and to indicate the intention of issuing a fresh charge sheet. The fact that applicant belongs to a different employment environment other than the one which enjoys the protection of CCS (CCA) Rules should not come in the way of his seeking such protection. The first will be on the grounds of equity and the second reason would be the DG, P&T letter quoted above. Thus we find that the essential features of issue of second charge sheet are missing in this case.

13. On the remaining question of appreciation of evidence, the law has been well laid out by the Apex Court, deprecating any judicial intervention by the Tribunals. This has been made clear in *2006 AIR SCW 734* by the Hon'ble Apex Court that "judicial review is not akin to adjudication on merit by reappreciating 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. The proposition of the law is that the disciplinary authority is the sole

judge of facts. The scope of judicial review is limited and the Tribunal cannot sit as an appellate authority over the findings of the enquiring authority.

14. This has been reiterated by the Hon. Apex Court in State Bank of India and others v. Ramesh Dinkar Punde [(2006) 7 SCC 212] in the following lines:

> *"6. Before we proceed further, we may observe at this stage that it is unfortunate that the High Court has acted as an Appellate Authority despite the consistent view taken by this Court that the High Court and the Tribunal while exercising the judicial review do not act as an Appellate Authority:*
> *"Its jurisdiction is circumscribed and confined to correct errors fo law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an Appellate Authority"(see Govt.A.P. v. Mohd. Nasrullah Khan, SCC p.379. Para 11).*

Under these circumstances, we find that it is inappropriate on the part of this Tribunal to indulge in an exercise of evaluation of evidence.

15. As regards the conduct of the disciplinary proceedings, challenged in the Grond D, that the applicant did not have opportunity of cross examination and of being heard, a perusal of the disciplinary proceedings file submitted by the respondents shows that the departmental witnesses were all cross examined by the applicant and his own deposition was also available in the said file. Hence, we find that there is no basis for the applicant's contention that, he was given no opportunity to cross examine the witnesses nor to present his own side.

16. In conclusion, we find that there was no vitiation of the disciplinary proceedings on grounds of violation of natural justice, the procedural requirements relating to issue of a second charge memo were not observed, it is not proper on our part to go into the evaluation of evidence and that the

applicant had adequate opportunities of cross examination and presentation of his case.

17. As a result of non-observance of the procedural requirements relating to issue of a second charge memo, we order that the impugned orders be quashed and status quo ante restored resulting in the reinstatement of the applicant into service with all consequential benefits following the nullification of the impugned orders as directed above. Such restoration shall be done immediately, not later in any case, than two weeks from the date of receipt of a copy of this order. No costs

Dated, the 13th November, 2006.

N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

Dr. K.B.S.RAJAN
JUDICIAL MEMBER

trs