# CENTRAL ADMINISTRATIVE TRIBUNAL
# ERNAKULAM BENCH

## ORIGINAL APPLICATION NO. 370 OF 2007

Dated the 5th December, 2008

CORAM:-

HON'BLE Mr. GEORGE PARACKEN, MEMBER (JUDICIAL)
HON'BLE Dr. K.S.SUGATHAN, MEMBER (ADMINISTRATIVE)

KJ Sebastian,
S/o Joseph,
Post Man, Thodupuzha HPO,
Residing at Kannakulath House,
Elappally PO, Moolamattom.

.. Applicant

[By Advocate: Mr. PA Kumaran and Mr MR Hariraj )

-Versus-

1. Union of India,
Represented by the Secretary to the
Govt. of India, Department of Posts,
New Delhi.

2. Chief Post Master General, Kerala Circle,
Trivandrum.

3. The Director of Postal Services,
Office of the Post Master General,
Central Region, Kochi-682 018.

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

...Respondents

[By Advocates: Ms K Girija, ACGSC]

The application having been heard on 7th November, 2008 the Tribunal delivered the following -

## ORDER

***(Hon'ble Dr.KS Sugathan, AM)***

The applicant in this OA is working as a Postman at Thodupuzha HPO under the respondents. While working as a Postman at Moolamattam he was charge sheeted for not delivering a letter and making a false remark that the door of the house was locked and also for rude behaviour towards the addressee. The charge memo was issued under Rule 16 of the CCS (CCA) Rules vide Memorandum dated 25.4.2005. The applicant denied the charges and submitted his reply to the charge memo vide letter dated 16.5.2005. The Disciplinary authority thereafter imposed the minor penalty of withholding of one increment for a period of two years without cumulative effect by order dated 30.5.2005 (A/1). The applicant appealed against the penalty, but the appeal was rejected by respondent No.3 by order dated 3.10.2005 (A/2). The applicant also filed a revision petition which was rejected by respondent No.4 by order dated 2.4.2007 (A/3). The applicant has challenged the penalty and sought the following relief:

> *i] Quash Annexure-A1, A2 & A3 and to direct the respondents to restore all benefits refused to the applicant due to the said order with all monetary benefits consequent to such restoration,*
>
> *ii] Grant such other reliefs as may be prayed for and the court may deem fit to grant, and*
>
> *iii] Grant the costs of this Original Application."*

[2] It is contended by the applicant that in all cases where a minor penalty is to be imposed under Rule 16 (1) (b) holding of an enquiry under Rule 14 is mandatory if in the opinion of the disciplinary authority such an enquiry is necessary. The disciplinary authority must apply its mind to the disputed facts, the possibility of proving the charge etc. before forming an opinion whether an enquiry is necessary. This does not appear to have been done. The disciplinary authority appears to have proceeded on the assumption that for a minor penalty no enquiry is necessary. Thus there is a violation of rules. There is no reason to suspect the applicant's stand that

the house was locked. The letter was delivered on the next working day (7.3.2005). No prejudice was caused to the addressee as the examination which was the subject matter of the letter was held on 16.3.2005. The respondents have relied on the statement of the SPM and that of the complainant, which were not supplied to the applicant. There is thus violation of the principles of natural justice. If an enquiry under Rule 14 was conducted the applicant could have produced evidence to prove that the house was locked. He could also have cross examined the SPM, the addressee and other witnesses. The Appellate Authority has not properly considered the appeal as required under rule 27 of CCS CCA Rules. The Revision Authority has also not given proper consideration to the revision application. The penalty imposed is grossly disproportionate to the gravity of the misconduct.

[3] The respondents have contested the prayer in the OA. It is stated in the reply statement that the penalty has been imposed after following the rules. The applicant caused undue delay in delivering the letter. Such conduct is not acceptable in Departments having public dealings. In his reply to the charge memo the applicant did not demand that an enquiry should be held. He did not seek permission to inspect the documents. The applicant had shown gross negligence and dereliction of duties. The penalty is not excessive. The disciplinary authority was fully convinced that the applicant made a false endorsement on the cover that the house was locked. In his statement before the SDI Thodupuzha who conducted the preliminary enquiry the applicant had admitted that the letter was with him when the addressee called on the Post Office at 10 AM. The disciplinary authority was convinced that the addressee and her aged and unemployed parents were available at the house during the day time on 5.3.2005. The respondents have also relied on the judgments of the apex Court in **Bank of India v. D. Suryanarayana, JT 1994 (4) SC 489 and B.C.Chaturvedi vs. Union of India 1996 (6) SCC.**

[4] We have heard the learned counsel for the applicant P.A.Kumaran for M.R.Hariraj and learned counsel for respondents Smt. Girija. We have also carefully perused the records.

[5] Following the judgments of the Hon'ble Supreme Court in the matter *of BC Chaturvedi -v- Union of India [(1995) 6 SCC 749] as well as High Court of Bombay -v- Shasikant Patil,[(2000) 1 SCC 416]* the grounds for judicial review in disciplinary proceedings has to be limited to the examination of (a) whether there has been a violation of the principles of natural justice,(b) whether there is any violation of any statutory reglations/rules, (c) whether the decision is vitiated by considerations extraneous to the evidence and merits of the case, and (d) whether the conclusions are ex facie arbitrary or capricious that no reasonable person could have arrived at such a conclusion.

[6] Keeping the above dictum laid down by the apex Court we have considered the facts and pleadings of this case. The main contention of the applicant is that the respondents should have conducted an enquiry under Rule 14 before imposing the minor penalty. The applicant has drawn our attention to Rule 16 (1) (b) of CCS (CCA) Rules which provides for such an enquiry if the disciplinary authority is of the opinion that it is necessary. To examine this contention further we may look the provisions contained in Rule 16:

> *"16. Procedure for imposing minor penalties-*
> *(i) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a Government servant any of the penalties specified in Clause (i) to (iv) of Rule 11 shall be made except after-*
> *(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the r proposal;*

*(b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary;*

*(c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under Clause (b) into consideration;*
*(d) recording a finding on each imputation of misconduct or misbehaviour; and*
*(e) consulting the Commission where such consultation is necessary."*

[7] It is clear from the above extract that even for imposing a minor penalty, an enquiry shall be conducted in every case in which the Disciplinary Authority is of the opinion that such an enquiry is necessary. The Disciplinary Authority has not considered it necessary to hold an enquiry under Rule 14. We have called for the original records for perusal. It is seen from the records that on receipt of the complaint from the addressee the respondent himself directed the SDI Thodupzha on 10.3.2005 to enquire into it. The preliminary enquiry report was submitted by the SDI on 21.3.2005. The SDI had recorded the statements of the addressee i.e. the complainant, the applicant as well as the SPM. The charge memo dated 25.4.2005 contained the details of the lapse as borne out by the preliminary enquiry. The charge memo states that when the letter was returned undelivered, the SPM questioned the applicant about the non-delivery and that in response the applicant in a very irresponsible way endorsed the remark "locked" on the article. Though the applicant denied the charge he did not specifically ask for an enquiry under Rule 14. All that he stated in his reply was that he should be given natural justice.

[8] During the course of the argument the counsel for the applicant relied on two citations, viz. **OK Bhardwaj-v- Union of India , 2002 SCC (L&S) 188 and Kunhikannan Nambiar v. Govt of Kerala, 2002 (1) KLT 420.**

In *OK Bhardwaj-v-Union of India* (supra) the Hon'ble Supreme Court held thus:

> "2. The High Court has recorded its opinion on two questions: (i) that the punishment imposing stoppage of three increments with cumulative effect is not a major penalty but a minor penalty; (ii) in the case of minor penalties, *"it is not necessary to give opportunity to the employee to give explanation and it is also not necessary to hear him before awarding the penalty"*: a detailed departmental enquiry is also not contemplating in a case in which minor penalty is to be awarded.
> 3. While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. ***Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with.***" **(emphasis added)**

In *Kunhikannan Nambiar v. Govt of Kerala,* (supra) the Hon'ble High Court has held that -

> "Under R.16 of the KCS (CC&A) Rules, a formal enquiry is not a must. The procedure prescribed under R.15 for imposing major penalty contemplates a formal enquiry necessitating the examination of witnesses and production of documents with opportunity to the accused employee to cross examine witnesses and adducing his own evidence. But this does not mean that a minor penalty can be inflicted on the accused employee irrespective of the nature of the allegations and the evidence required to prove those allegations. *There may arise, in minor penalty proceedings also, the necessity to adduce evidence; without such evidence the charges cannot be held to have been established against the employee. The need to adduce evidence arises in the peculiar facts and circumstances of the case, the nature of the allegations levelled against the delinquent employee and the defence pleaded in his written statement.* It cannot be said as an absolute true in all cases, where a minor penalty alone is proposed to be imposed on the delinquent employee, that the ordeal of an enquiry can be done away with. It is true that the penalty to be imposed is a relevant factor but equally important is the nature of the allegations as also the facts to be established to substantiate the charges. When charges are founded on complicated

> facts or those involving serious allegations, it will be arbitrary to find the employee guilty, without holding an enquiry. A meaningful application of the principles of natural justice and the doctrine of reasonable opportunity to the accused employee come into play on such occasions."

The aforesaid two citations extracted have laid down an important principle concerning natural justice in departmental proceedings, viz. where the charges are factual and denied by the delinquent employee, an enquiry is called for. In the present case,the charges against the applicant are factual, namely, non delivery of a letter and false recording of remarks "door locked". The respondents conducted preliminary enquiry and collected evidence which goes to support the veracity of the charges. However, the applicant did not get an opportunity to adduce evidence and cross examine the witnesses since no enquiry under Rule 14 of the CCS (CCA) Rules was held. All that the applicant is presently asking is to hold an enquiry under Rule 14 of the CCS(CCA) Rules, so as to meet the requirement of natural justice.

[9] We have also perused the citations relied on by the Respondents, viz. Bank of India -v- D. Suryanarayana, JT 1994 (4) SC 489 and BC Chaturvedi-v- Union of India , (1996) 6 SCC 749.

The respondents have extracted the following observations from Bank of India -v- D. Suryanarayana (supra):

> *"Strict rules of evidence are not applicable to departmental inquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer."*

The aforesaid observations are not relevant to the issue under consideration herein. The issue is not about the standard of proof required in the departmental enquiry. It is about not holding an enquiry in connection with the charges levelled against the employee, which is factual.

From *BC Chaturvedi-v- Union of India*, (supra), the respondents have extracted the following observations:

> *"..the disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on the evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal."*

The aforesaid extract is also not relevant in this case at this stage, because the issue is not about the adequacy or the reliability of evidence. But it is about non-conducting of enquiry to comply with the principles of natural justice.

[10] We fully agree with the observations of the Appellate Authority and the Revisional Authority that the charge against the applicant is quite serious warranting exemplary action, if the charge is proved. But before holding the charge as proved, the respondents should have conducted an enquiry under Rule 14 because the charge is completely factual, based on an incident. It is not based purely on official documents. The Appellate Authority has mentioned in his order that no enquiry under Rule 14 of the CCS (CCA) Rules was held against the appellant because the proceedings against him were under Rule 16 of the CCS (CCA) Rules. Even though the Rule does not make it mandatory to hold an enquiry under Rule 14 of CCS (CCA) Rules, the principles of natural justice as enunciated by the Hon'ble Supreme Court in the judgments relied on by the applicant, clearly indicate that this is a fit case where the respondents should have held an enquiry to comply with the principals of natural justice. We are, therefore, of the considered view that this matter requires to be remanded back to the Disciplinary authority to conduct an oral enquiry under Rule 14 of the CCS (CCA) Rules.

[11] For the reasons stated above, the OA is partly allowed. The penalty orders at Annexures A1, A2 and A3 are quashed and set aside. The matter is remanded to the Disciplinary Authority, i.e. the Respondent No.4, to conduct oral enquiry under Rule 14 of CCS (CCA) Rules and to take appropriate consequential action.

(Dr. KS Sugathan)
Member (Administrative)

(George Paracken)
Member (Judicial)

stn