

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 396/2006

THURSDAY THIS THE 26th DAY OF APRIL, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. KBS RAJAN, JUDICIAL MEMBER**

P. Remani Amma D/o Gourikutty Amma
employed as CDMSP, Kollam Civil Station,
Post Office, Kollam-12,
residing at Nadayil Kizhakkathil
Purathala Ward, Near Mulamkadakam Temple
Kollam-12

..Applicant

By Advocate Mr. V. Vimalan

Vs.

- 1 Union of India represented
by the Secretary, Ministry of Communications
New Delhi.
- 2 The Chief Postmaster General
Department of Posts, Kerala Circle
Thiruvananthapuram-695 033
- 3 Sub Divisional Inspector (Postal)
Department of Posts
Kottarakkara Sub Division
Kottarakkara, Kollam District

.. Respondents.

By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The prayer in this Application is to set aside Annexure A-1 inquiry report and Annexure A-3 and A-4 orders imposing removal of the applicant from service and to reinstate the applicant with back-

wages.

2 The facts are briefly stated as follows:- The applicant was working as EDSMP Kollam Civil Station Post office from 1997 onwards. While so she was issued with a charge memo. The article of charges framed against her are asunder:

(i) She refused to impress date stamp and name stamp on various lists on 7.8.2001 and 8.8.2001 as directed by SPM while functioning as GDSMP, Kollam Civil Station

(ii) She while functioning as GDSMP, Kollam Civil Station from 1/2001 to 8/2001 quarrelled with Smt. Lekshmi Joy Postal Assistant Kollam Civil Station and abused her in the office and in the presence of public and

(iii) She while functioning on 13.8.2001 and 14.8.2001 failed to give statement before I.P Kollam North Sub Division

3 Thereafter the applicant was placed under suspension in August, 2001 and reinstated in service from 16.1.2002. An enquiry was ordered on the charges. Based on the Annexure A-1 enquiry report the third respondent removed the applicant from service w.e.f. 28.10.2004 as per Annexure A-3 impugned order dated 28.10.2004. The applicant filed appeal against Annexure A-3 order before the SSP, Kollam who upheld the removal from service vide order dated 16.3.2005. Thereafter Revision Petition was filed by the applicant before the Chief Postmaster General, Thiruvananthapuram on 11.5.2005. The Revision Petition was also rejected without hearing the applicant by Annexure A-4 order dated 30.8.2005. The impugned orders have been assailed on the following grounds:

- (i) The inquiry report at Annexure A-1 is illegal since copies of the documents relied upon in support of the charges were not supplied to the applicant and a fair and reasonable opportunity was not given to her.
- (ii) No opportunity was given to cross examine the staff who gave statement as PW-1 and PW-2 and their statements have not been shown to the applicant.
- (iii) The Inquiring Authority suppressed the facts regarding PW-4 Shri P.V. Shaji Lal who had been working in the same post office as a temporary employee.
- (iv) The SDI who inquired into the matter on 14.8.2001 did not accept the statement of the applicant and stated that "her time was over" and placed the applicant under suspension without even conducting a preliminary enquiry.
- (v) Shri P.V. Sasidharan, SRO, Kollam who was assisting her in the enquiry proceedings omitted to include many of the facts mentioned by the applicant in the written brief as the applicant belongs to a poor family and studied only upto 10th standard, the written brief was not fully explained by Shri V. Sasidharan, the Government official assisting her in the inquiry to the applicant in Malayalam.

(vi) The 2nd respondent rejected the Revision Petition without personal hearing which is illegal and arbitrary.

4 The applicant also relied on the judgment of the Hon'ble Supreme Court in Chandramma Tewari Vs. Union of India (AIR 1988 SC 112) according to which in a matter of major punishment such as removal or dismissal, the delinquent official should be afforded reasonable opportunity as contemplated under Article 311 of the Constitution of India and the procedure at the inquiry level must be consistent with the principles of natural justice.

5 The following reliefs are sought:

- (i) call for and perused the records leading to Annexure A-1 enquiry report and Annexure A3 and A-4 orders.
- (ii) set aside Annexure A-3 and A-4 impugned orders
- (iv) Declare that the removal of applicant from service based on Annexure A-1 enquiry report is illegal and against natural justice.
- (iv) Reinstatement of the applicant with backwages with effect from 28.10.2004 the date of removal from service, and
- (v) grant such other reliefs which may be prayed for and which this Hon'ble Tribunal may deem fit and proper to grant in the facts and circumstances of the case.

6 In the reply statement the respondents have denied the averments of the applicant. They stated that while the applicant was working as Gramin Dak Sevak Mail Packer, Kollam Civil Station Post Officer refused to impress the date stamp and name stamp in the

various office documents like registered list and vouchers of the above Post Office which was her duty on 7.8.2001 and 8.8.2001. even though the counter Postal Assistant and the SPM of the Post Office asked her to do so. The refusal of the applicant to perform the above duty was recorded in the office Error Book under entry Number 53. The applicant continued with this misconduct on subsequent days also for which she quarreled with one Smt. Lakshmi Joy, Postal Assistant of the Post Office and abused her on 13.8.01. A departmental inquiry was made through the Inspector of Posts, Kollam North sub Division, Kundara, Kollam on the basis of the extract of error book received from the sub Postmaster and the representation dated 13.8.01 of Smt. Lakshmi Joy Postal Assistant. The applicant refused to give a statement despite repeated demand by the Inspector in the presence of other officials. Following the enquiry the applicant was put off duty by the Inspector who had disciplinary jurisdiction over the applicant. A full fledged inquiry was ordered during which the applicant was reinstated w.e.f. 31.1.2002. Inspector of Posts, Kottarakkara Sub Division was appointed as ADA by the competent authority and the inquiry was ordered under Rule 10 of the GDS (Conduct and Employment) Rules, 2001 Shri R. Venunathan Pillai, SP(OD) office of Superintendent of Posts Alappuzha was appointed as the Inquiring Authority who conducted the inquiry in which the applicant participated through out along with her Assisting Government servant. The Inquiring Authority held all the three charges as proved, copy of the report was given to the

applicant and she submitted her representation on the inquiry report on 30.9.2003. The ADA agreed with the findings in the inquiry report and imposed the punishment of removal of the applicant from service with immediate effect. The impugned punishment of removal from service was commensurate with the gravity of the offence. The Appellate and Disciplinary authorities upheld the punishment. The contention of the applicant that she was not supplied with copies of the documents she relied upon is without any merit. The sitting of the Inquiry authority on 28.3.2003 the Presenting Officer presented all the documents listed under Annexure A-3 charge memo and the applicant and assisting Government Servant who were present in the sitting inspected all the documents and photocopies of the same were also supplied to the applicant. The Inquiring Authority has recorded this fact in the daily order sheet relating to the said sitting which has been produced as Annexure R-1. Documents shown to the applicant included the representations of Smt. Lakshmi Joy which is at Sl. No. 9 of Annexure A-3 of the charge sheet. Therefore the contention that the copy of the representation has not been given to the applicant is not true.

7 With reference to the contention of the applicant that Shri P.V. Shajilal who was a temporary employee, it has been submitted that he was being engaged in the leave vacancies and therefore his status remained as an outsider only. For attending to the work of the applicant alone on these days he was paid Rs. 10/- and since it

was an additional work entrusted to him he had to be paid the extra money. Both PW-1 and PW-2 were cross examined by the applicant in the sitting held on 17.6.2002 which are evident from Annexures R1 and R-2.

8 Regarding the applicant's claim she had gone to the SDI on 14.8.2001 and offered to give the statement, it has been submitted that during the cross examination of PW-6 the SDI no question was put to him by the applicant or by her Assisting Government Servant that such a visit was made by the applicant. The applicant has also not made any request for personal hearing before the Appellate Authority or Revisional authorities.

9 In short the respondents have submitted that in the present case the inquiry was held following the prescribed procedure and no procedural irregularities were committed as alleged by the applicant.

10 Rejoinder has been filed by the applicant reiterating that Smt. Lakshmi Joy, Postal Assistant had made a false complaint and that she had a personal enmity with the applicant and the entire case was based on false information given by the Postal Assistant. The SPM was also supporting Smt. Lakshmi Joy who had also been given permission to leave office earlier as she was coming from Trivandrum and the said Smt. Joy had asked her to impress stamp on certain ordinary letters when the applicant was busy with her work

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as it was the arrival time of the Mail Van. The Error Book could not be proved as a witness as the SPM died during the enquiry. She has also denied the averments of the respondents that all the documents have been given to her as she was not given photocopies of the document by her Defence Assistant. The assisting Govt. official Shri Sasidharan who had retired from service in 2005 must have inspected the documents but he was not supplied with photocopies of the documents as at the time of filing of the O.A. when approached by the applicant he was not in a position to give photocopies of the documents in the enquiry proceedings. The applicant has further reiterated the submissions made in the O.A. that the enquiry was not conducted in a proper manner by giving proper hearing to her. She has further submitted that under Rule 11 of the CCS (CCA) Rules it is stated that removal from service and dismissal from service can be imposed only in cases where the charge of possession of assets disproportionate to known sources of income is established or the charge of acceptance of any gratification as a motive for doing any official act is established. Even if all the charges are held proved against the applicant her case will not attract major penalty of removal from service. Therefore the action of the respondents against the applicant is against Rule 11 of the CCS (CCA) Rules 1972.

11 Denying the allegations contained in the rejoinder the respondents filed additional reply statement. They have submitted

that all these contentions now raised by the applicant should have been given before the Inspector when he had visited the office for inquiry but the applicant refused to give a statement to the Inspector in this regard. The Inquiring authority has considered oral and documentary evidence adduced in the inquiry as a whole and even though the Sub Postmaster died before the departmental inquiry was over, the Inspector of Posts who had seen the Error Book entry on 13.8.01 and 14.8.01 identified the error book entry made by him on 9.8.01 and 10.8.01 and the genuineness of such document cannot be challenged. The punishment of removal was awarded under Rule 10 of Gramin Dak Sevak (Conduct & employment) Rules, 2001 and not as per the proviso in CCS (CCA) Rules. The quantum of punishment was decided considering all aspects and the punishment awarded is commensurate with the charges. The scope of judicial review is limited in such cases and the applicant is not entitled for any of the reliefs sought for in the O.A.

12 We have heard Shri Vimalan for the applicant and Shri TPM Ibrahim Khan, SCGSC appearing for the respondents

13 The learned counsel for the applicant laid stress on the absence of proper inquiry and the fact that the official who was assisting the applicant in the inquiry could not put forward all the facts properly and that the applicant being a person who has studied only upto 10th standard was not competent enough to

conduct the inquiry or go through the document. The personal and family conditions of the applicant were also highlighted and he pleaded that sympathetic consideration was required in her case.

14 The learned counsel for the respondents on the other hand reiterated the argument that there has been no procedural irregularity in the conduct of the inquiry and since all the charges are held proved and all documentary and oral evidences have been duly considered for arriving at the finding, the order of removal is justified and cannot be revoked.

15 Considering the submissions made we have called for the disciplinary proceedings file and carefully perused the documents. The applicant has mainly put forth the argument that she has not been given reasonable opportunity as contemplated under Article 311 of the Constitution of India and that the inquiry held by the Inquiring Authority was vitiated due to non-supply of documents relied upon and failure to give opportunity for cross examination of several crucial witnesses. The respondents have denied these allegations in their reply statement and have enclosed copies of relevant documents to show that the averments of the applicant are not correct (Annexures R-1, R-2, R-3 etc.) On perusal of the original record we find that the allegations of the applicant have no basis. The folder A to D produced before us relating to the inquiry which contains daily order sheets and the depositions of witnesses have

the signature of the applicant and the assisting Government servant in token of having received all the documents listed in Annexure A-3 of the chargesheet. They further prove that the applicant had inspected the documents in original also. We have seen the original statements of PW-1 and PW-2 which also show that the applicant had been given opportunity to cross examine both the witnesses and their depositions had been read over to the applicant and signed by the assisting Government official.

16 The contention of the applicant that the Error Book entries made by the SPM have not been proved during the inquiry as the SPM had expired before the inquiry was completed cannot also be sustained. Though it is true that the SPM had expired and could not therefore participate in the inquiry, the Inspector of Posts who had conducted the inquiry has seen the entries and verified them on 13.8.01 and 14.8.01 and confirmed by the Original Error Book (Ext. P13) has been examined and he has testified the genuineness of the same. The non-examination of the SPM at the inquiry cannot be said to have any bearing on the finding as the facts regarding refusal of the applicant to stamp the letters and vouchers as demanded by the superior officer which was part of her duties have also been corroborated by other witnesses in the inquiry. It is also seen from the records that the contention that the applicant went to the SDI's office on 14.8.2001 but the SDI who did not accept her statement is not corroborated by any other evidence and it is only the applicant's

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own statement that she has gone to SDI office on 14.8.2001. The statement of other witnesses only point to the fact that when the SDI visited the office on 13.8.2001 for inquiry she had flatly refused to give a statement. She has herself in her statement before the Inquiry Officer admitted this fact that she did not prefer to give statement before the SDI as she had not committed any misconduct. Thus we find that all her contentions regarding procedural irregularities in the inquiry are not borne out by the records. The inquiry has been conducted duly in accordance with the prescribed procedures and the applicant has been granted fair opportunity to defend her case.

17 The further contention of the applicant is that the Assisting Government official had not prepared the written brief properly and also not provided necessary assistance to the applicant in the inquiry as a result of which she could not put forth her case properly. If this contention is correct, nothing prevented the applicant from changing the assisting official and in any case from the recorded inquiry proceedings we find that the applicant had not raised this matter before the Inquiry Officer or even before the appellate or revisional authorities. These contentions in the OA are an afterthought and cannot be taken into account for holding that the inquiry was bad in law.

18 Similarly the other contentions of the applicant that she has no house or has financial difficulties, etc. cannot be taken to be factors

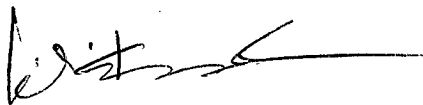
which should have influenced the findings in the inquiry or the orders of the disciplinary/appellate/revisional authorities.

19 Yet another contention of the applicant is that even if it is granted that she had committed some misconduct it was not grave enough to warrant punishment of removal from service and that the CCS (CCA) rules do not provide for major penalties in such cases. We have to make it clear that the punishment of removal was awarded to the applicant under Rule 9 of the GDS (Conduct & Employment) Rules and these are the rules applicable to the GDS and the CCS (CCA) Rules which are applicable to regular Government employees are not at all relevant to the case of the applicant. We would also like to observe in this connection that the charges against the applicant mainly relates to indisciplined behaviour and refusal to comply with the instructions of superior officers. That such acts of indiscipline in offices constitute grave misconduct has been recognised by the Apex Court in several judgments and the respondents cannot be faulted for taking a serious view of the matter. The applicant had been guilty of abusing her superior officer the Postal Assistant in the same office and also willfully disobeying the orders of the superiors and such behaviour cannot be viewed lightly. The contention of the applicant that she was not given personal hearing is also not tenable as she has not made any such request before the Appellate or revisional authorities.

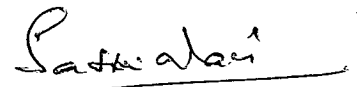
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20 On perusal of the complaints before us and the original records we are of the considered view that all the above mentioned allegations/averments are only an afterthought and are not legally tenable. There is no case for interference with the impugned order. The O.A. is accordingly dismissed. No costs.

Dated 26-4-2007.



DR. K.B.S. RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN