

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.401/2001.

Friday this the 8th day of February 2002.

CORAM:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

C.R.Venkitachalam,
Postal Assistant, (Under suspension)
residing at Brindavan, Perinkulam P.O.,
Palakkad District. Applicant

(By Advocate Shri M.R.Rajendran Nair)

Vs.

1. Union of India represented by the Secretary to Government of India, Ministry of Communications, Department of Posts, New Delhi.
2. The Member (P), Postal Services Board, O/o the DG of Posts, Dak Bhavan, New Delhi.
3. The Director of Postal Services, Northern Region, Calicut.
4. The Senior Superintendent of Post Offices, Palakkad Division, Palakkad.
5. K.K.Jayashankar, Sub Divisional Inspector, (Postal), Enquiry Authority, Palakkad North Sub Division, Palakkad. Respondents

(By Advocate Shri K.Kesavankutty, ACGSC (R.1-4))

The application having been heard on 8th February 2002 the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant, a Postal Assistant was proceeded against under Rule 14 of the CCS(CCA) Rules for certain misconducts. After an enquiry, by order dated 22.2.2000 (A2), the disciplinary authority finding the applicant guilty imposed on him a penalty of dismissal from service with immediate effect. The applicant challenged the order before the appellate

authority. Finding that the denial of access to the documents required by the applicant during the enquiry amounted to denial of reasonable opportunity to defend in violation of the principles of natural justice, which would vitiate the proceedings, the appellate authority remitted the matter to the disciplinary authority for a de novo enquiry from the stage of appointment of the enquiry officer without going into the merits of other contentions in the appeal. Aggrieved by the order of the appellate authority directing a de novo enquiry, the applicant filed O.A. 47/2001 challenging the said order. The contention of the applicant, that the appellate authority had no jurisdiction to remit the matter for a de novo enquiry, was turned down by the Tribunal and the application was rejected. Aggrieved by the rejection of the application, the applicant approached the Hon'ble High Court of Kerala by filing O.P.No.3490/01. The O.P. was disposed of taking note of the fact that a Revision Petition was pending and directing the Revisional Authority to pass appropriate orders on the revision petition within two months and directing that the enquiry proceedings would be kept in abeyance till the Revisional Authority decided the matter. The Revisional authority has considered the applicant's revision petition and passed A-1 order rejecting the revision petition finding no ground for interference. Therefore, the applicant has now filed this application impugning the appellate order A-3 as also the revisional order A-1. It is alleged in the application that the impugned order A-3 is unsustainable as the same has not been passed in accordance with law and the revisional order (A1) is challenged on the ground that it lacks application of mind.

2. We have gone through the application, the annexures appended thereto as also the reply statement filed by the respondents and have heard Shri Hariraj appearing for the applicant and Shri K.KesavanKutty, Standing counsel for the respondents. The only point stressed by the learned counsel of the applicant against the impugned orders is that the appellate authority under the provisions of Rule 27 of CCS(CCA) Rules is enjoined to consider three aspects; (i) whether the enquiry has been held in accordance with the rules; (ii) whether the findings are warranted by evidence and (iii) whether the penalty awarded is adequate or unduly harsh and that since the appellate authority has considered only the first aspect and left the other two aspects totally out of consideration, the impugned order A-3 is unsustainable and for the same reason the revisional order A-1 is also not sustainable. In support of the contention, learned counsel of the applicant invited our attention to RP Bhatt Vs. Union of India reported in AIR 1986 SC 1040. We have gone through the decision. The facts are entirely different. In the case under citation, the appellate authority without going into the question whether an enquiry was held in accordance with the rules, or whether the violation of the rules of natural justice has resulted in denial of reasonable opportunity to defend and whether the finding recorded was warranted by evidence, considered the question of adequacy of penalty. The Apex Court found that the appellate order is unsustainable in law. Only if it was found that the enquiry was held in accordance with rules, giving the delinquent employee reasonable opportunity to defend himself and that the finding of guilt was warranted by the evidence the

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question of adequacy or excessive nature / need ^{of penalty} be considered. It was in that view the Apex Court held that the appellate authority was bound to consider all these relevant aspects under the rules. In this case, the appellate authority considered the question whether the enquiry has been held in accordance with the rules and whether violation of Rules has resulted in prejudice to the applicant. Noting that the applicant was not given access to certain documents which the applicant required for his defence, the appellate authority found that ~~this~~ denial of opportunity has resulted in prejudice to the applicant and ^{that} therefore, exercising the powers under Rule 27 of CCS(CCA), the appellate authority remitted the matter back to the disciplinary authority for a de novo enquiry from the stage of appointment of the enquiry officer. We find that the appellate authority has done the right thing. Having found that the enquiry was vitiated for nonobservance of natural justice, there is no point in considering the remaining aspects for no finding in a vitiated proceedings would have legal validity.

3. Therefore, we find no merit in the argument of the learned counsel of the applicant that the appellate order is bad for nonconsideration of the question whether the finding is supported by evidence and whether the penalty is adequate or excessive. We do not find anything wrong with the revisional



order also calling for interference.

4. In the result the O.A. is dismissed without any order as to costs.

Dated the 8th February, 2002.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures:

1. A-1 : True copy of order File No.C-17013/166/2000-VP dated 17-4-2001 issued by the 2nd respondent.
2. A-2 : True copy of Memo No.F1/4/98-99 dated 22-2-2000 issued by the 4th respondent.
3. A-3 : True copy of the Memo No.STA/30-13/2000 dated 24.7.2000 issued by the 3rd respondent.
4. A-4 : True copy of the revision petition dated 16-9-2000 submitted by the applicant to the 2nd respondent.
5. A-5 : True copy of the final order dated 11.1.2001 in OA 47/2001 on the file of this Hon'ble Tribunal.
6. A-6 : True copy of the judgment dated 9.3.2001 in OP 3490/01 of the Hon'ble High Court of Kerala.

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