

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 410/91 199
T. A. No.

DATE OF DECISION 16.1.1992

K.K.Lakshmikutty Amma Applicant (s)

Mr. K.K.Babu Advocate for the Applicant (s)

Versus

Supdt. of Post Offices, Thodupuzha & another Respondent (s)

Mr. George Joseph Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V.Krishnan, Member (Administrative)

The Hon'ble Mr. Shri A.V.Haridasan, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

N.V.Krishnan, AM

The applicant, an Extra Departmental Branch Post Master, was removed from service by an order dated 30.10.87 in disciplinary proceedings on the following two charges, which were held to be proved:

- "i) On 18.2.1984 she has accepted a money order for Rs 100/-
- ii) On 14.7.1984 also she has accepted a money order for Rs.100/- and has accounted the same only on 17.7.1984."

Her appeal was dismissed on 30.6.1989.

2. She then approached this^ Tribunal in OA 758/89 which was disposed of on 29.6.1990 (Annexure-A2). The application was allowed and the following directions were given:

" Accordingly, we quash the impugned order at Annexure-A3 and remit the matter to the appellate authority, the second respondent, for a denovo consideration of the appeal in the light of the contentions urged by the applicant and the observations in this judgement. We hope that the appellate authority, would take a sympathetic consideration regarding the penalty having regard to the facts as the applicant is aged 56 years having few years to retire and has 23 years of past clean service records. The appellate authority shall dispose of the appeal within a period of three months from the date of receipt of a copy of the judgement after giving an opportunity of being heard to the applicant."

3. On remand the Appellate Authority considered the matter denovo and passed the following order on 13.9.1990:

" On a fresh consideration of her appeal as per the directions of the CAT on the appeal. I order that on purely compassionate ground Smt.K.K.Lakshmikutty Amma may be taken back to service as Branch Postmaster, if she cannot be accommodated at her original place of posting, she may be accommodated in the nearest possible vacancy available. She is also reinstated on the condition that she makes no claim for pay and allowances for the period from the date of her removal to the date of her re-instatement."

The applicant has been given a posting by the Annexure-A3 order dated 4.10.1990. In other words, ^{she} the period from 20.10.87 on which she was removed till about Oct. '90 :: when she is reinstated, no wages shall be paid to her.

4. It is this direction that is challenged in this application, on the main ground that when the applicant has been exonerated there was no case for denying her wages for the period she was out of duty. Applicant relies on the decision in ~~math~~ TA K 79/87 for the plea that back wages should be paid to her.

5. The respondents have denied that any relief is due. They contend that the Appellate Authority took a

sym
hypothetic view of the case in ~~reference~~ to the Annexure-A2 judgement and reinstated the applicant with back wages. This is not a case of a clean and absolute exoneration. It was purely an exercise of judgement on compassionate ground. Reliance is placed on OA K 550/88 for the contention that in such circumstances back wages cannot be claimed.

6. We have carefully considered the matter. The disciplinary proceedings were under the Post & Telegraphs Extra Departmental Agents (Conduct & Service) Rules, 1964. Those rules provides only three punishments i) recovery of losses ii) removal iii) dismissal. In the disciplinary proceedings the applicant was found guilty and hence she was removed from service and this was upheld in appeal.

7. In OA 758/89 the Tribunal did not quash the proceedings *absolutely* which would have been the case if it was found that the charges were not proved at all. The very fact that the Tribunal only remanded

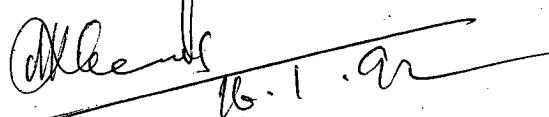
the case to the Appellate Authority for a denovo consideration and also expressed the hope that the appellate authority would take a sympathetic view regarding ^{honourably} penalty makes it clear that the Tribunal had not ~~exonerated~~ exonerated the applicant. In fact, it could not do so having regard to the observation in para 9 of the judgement ^{u/b} that the applicant had admitted, irregularity, which is the basis of the charges and expressed regret for the same, though after giving a satisfactory explanation .

8. In the circumstances, while the Appellate Authority was obviously satisfied that the charges were proved, it considered all the necessary circumstances as directed by the Tribunal, viz the earlier record and the explanation for the ^u ~~commission~~ of the irregularity. The minimum punishment it could impose under law was removal from service . This was the issue in regard to which the Tribunal expressed the hope that the Appellate Authority ^{u & u} ~~would be~~ considered sympathetically. This is exactly what that authority has done. It directed to reinstate the applicant, though it could still have maintained the disciplinary authority's, It felt that in the circumstances, the interest of justice would be met if the applicant was not paid back wages for the period from the date of the earlier removal till her reinstatement now.

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9. We do not want to go into the merits of the case except to remark that the applicant did not, admittedly, credit the amounts of the money orders, which were, no doubt, received late, on the immediately next working day. Undoubtedly, this amounts to an irregularity. The Appellate Authority has decided not to impose the minimum punishment of removal from service and has decided to reinstate her. This does not amount to exoneration. If, therefore, he imposed a condition that back wages will not be paid, it is a discretion well exercised for good and sufficient reasons. We do not find that the appellate order calls for any interference.

10. The application is, therefore, dismissed.


A.V. Haridasan
Member (Judicial)


N.V. Krishnan
Member (Administrative)