

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 13 OCT 1988

APPLICATION NO. 723 / 88(F)

W.P. NO. _____

Applicant(s)

Shri Thippeswamy
To

1. Shri Thippeswamy
C/o Shri M. Raghavendra Achar
Advocate
1074-1075, Banshankari I Stage
Sreenivasanagar II Phase
Bangalore - 560 050

2. Shri M. Raghavendra Achar
Advocate
1074-1075, Banshankari I Stage
Sreenivasanagar II Phase
Bangalore - 560 050

3. The Superintendent of Post Offices
Tumkur Division
Tumkur - 2

Respondent(s)

The Superintendent of Post Offices,
Tumkur Division, Tumkur & another

4. The Director of Postal Services (SK)
Office of the Post Master General
Bangalore - 560 001

5. Shri M.S. Padmarajesh
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~EXAM/EXTERIM/ORDER~~
passed by this Tribunal in the above said application(s) on 30-9-88.

*Received
K. M. R. A.
14-10-88*

Encl : As above

R. D. B.
SECTION OFFICER
~~EXAM/EXTERIM/ORDER~~
(JUDICIAL)

dc

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 30TH DAY OF SEPTEMBER, 1988.

PRESENT:

Hon'ble Mr.Justice K.S.Puttaswamy, .. Vice-Chairman.

And:

Hon'ble Mr.P.Srinivasan, .. Member(A).

APPLICATION NUMBER 723 OF 1988

Thippeswamy,
Ex.S.P.M., Palavalli,
Tiptur. .. Applicant.

(By Sri M.Raghavendra Achár, Advocate)

v.

1. Superintendent of Post Offices,
Tumkur Division, Tumkur.
2. The Director of Postal Services (SK)
O/o Post Master General,
Bangalore-1. .. Respondents.

(By Sri M.S.Padmarajaiah, SCGSC)

This application having come up for hearing this day, Hon'ble Member made the following:

O R D E R

In or about 1981 the applicant was working as Sub-Post Master at Palavalli Post Office, Tumkur District in Karnataka. On 30-9-1981 the Sub-Divisional Inspector, Madhugiri, visited Palavalli Post Office for inspection. He found that the actual cash balance in the Sub-Post Office was Rs.1,639-42 while, according to the accounts maintained in the office it should have been Rs.20,121-48, thus disclosing a shortage of Rs.18,482-06. The same evening the applicant repaid a sum of Rs.1,171-20 into Government account, still leaving a deficit of Rs.17,310-86. This amount is also stated to have been paid by him on 5-10-1981. Thereupon a detailed inspection of the cash account of the Sub-Post Office was undertaken for the period during which the applicant was working as Sub-Post Master that is from 17-4-1980 and 30-9-1981. This inspection revealed that



on a number of days beginning from 22-4-1981 and ending with 28-9-1981 the cash balances held in the Sub-Post Office were much higher than the authorised maximum balances that could be held.

2. When the Sub-Divisional Inspector found shortage of cash on 30-9-1981, as indicated above, he made a written complaint to the Police authorities on 2-10-1981, which was registered as a criminal case and tried before the Judicial Magistrate First Class, Pavagada. Meanwhile a memo was issued to the applicant on 3-6-1982 enclosing a number of charges into which it was proposed to conduct a departmental inquiry. We are here concerned only with the first article of charge, the substance of which was 'that on several dates from April, 1981 to 28-9-1981 the applicant retained cash balances in the account in excess of the maximum cash balance, without any liabilities to be paid out'. The departmental inquiry proceedings ended in an order of punishment passed by the Disciplinary Authority on 28-3-1983. The Disciplinary Authority imposed the punishment of reduction in rank on the applicant on the ground that the charge levelled against him was proved.

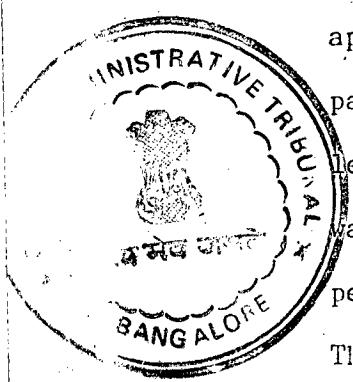
3. Meanwhile the criminal case filed against the applicant was being tried by the J.M.F.C. On 3-2-1987 the J.M.F.C. convicted the applicant of an offence punishable under Section 409 of the Indian Penal Code viz., criminal breach of trust in respect of Government property. On receiving the judgment of the JMFC, the Superintendent of Post Offices, Tumkur who was the Disciplinary Authority as well as the Appointing Authority in respect of the applicant passed an order on 25-5-1987 dismissing the applicant from service in pursuance of Rule 19(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 ('the Rules'). We understand that the applicant has filed an appeal against the judgment of the JMFC, which is pending in the Court of the Sessions Judge, Tumkur. The

Sessions Judge by an order dated 11-2-1987 suspended the sentence passed by the JMFC during the pendency of the appeal. The applicant also filed an appeal against the order of dismissal dated 25-5-1987 to the Director of Postal Services, Bangalore, who dismissed the said appeal by an order dated 14-1-1988. In this application, the applicant challenges the order of dismissal dated 25-5-1987 as well as the order in appeal dated 14-1-1988.

4. Sri M.Raghavendra Achar, learned counsel for the applicant contended in the first place that the applicant had once been punished as a result of departmental proceedings for the same offence by an order dated 28-3-1983, by which he was reduced in rank, he should not have been subjected to a second punishment for the same offence viz., dismissal from service, even though it may have been done after the applicant was convicted in a Court of law.

5. Sri M.S.Padmarajaiah, Senior Central Government Standing Counsel appearing for the respondents submitted that the offence for which the applicant was punished in departmental proceedings and the offence of which he was convicted by the criminal Court were different from each other and so the question of the applicant having been visited with two punishments for the same offence did not arise.

6. We have perused the order of the JMFC convicting the applicant as well as the order of the Disciplinary Authority passed on 28-3-1983 reducing the applicant in rank. The charge levelled against the applicant in the disciplinary proceedings was that he had retained cash in the office in excess of the permissible limits between April, 1981 and 28th September, 1981. The offence for which he was convicted by the criminal Court was that on 30-9-1981 the applicant failed to account for a large cash balance which should have been in the office on that day. In other words, while the disciplinary proceedings were concerned with retention of excess cash in the office



offence in the criminal case was that he had committed breach of trust by taking away a large amount of cash from the office. These two are clearly distinct offences and, therefore, it cannot be said that the dismissal of the applicant as a result of his conviction in the criminal case related to the offence for which he was earlier punished by reduction in rank by an order dated 28-3-1983. Therefore, the contention of Sri Achar on this ground has to be rejected.

7. Sri Achar then submitted, relying on the decisions of the Calcutta Bench of this Tribunal in AJIT KUMAR BANERJEE v. UNION OF INDIA AND OTHERS [1987 (1) ATR 258] and the Madras Bench of this Tribunal in A.N.RAMAKRISHNA NAIR v. DIVISIONAL ENGINEER, TELEGRAPHS, KOTTAYAM AND OTHERS [1987(3) ATC 868], that when the applicant had challenged his conviction by the criminal Court in an appeal, he should not be dismissed from service. The whole question of his guilt or otherwise in the criminal case was open once he filed the appeal and the Appellate Court suspended the operation of the sentence.

8. We are unable to accept this contention of Sri Achar. The decision in Ramakrishna Nair's case turned on the special provisions of Rule 10 relating to suspension, which have no application to punishments awarded under Rule 19 of the Rules. We are of the view that the decision in Ajit Kumar Banerjee's case rendered by the Calcutta Bench of this Tribunal has also no application to the facts of the present case. Therefore, Sri Achar's contention on this ground also stands rejected.

9. Next, Sri Achar urged that the Disciplinary Authority mechanically passed the order dismissing the applicant from service on the basis of his conviction in the criminal case without applying his mind and the Appellate Authority had also similarly dismissed the appeal without applying her mind.

10. We have perused the impugned order passed by the Disci-

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Disciplinary Authority dismissing the applicant from service.

This is what he writes:-

'Whereas it is considered that the conduct of the said Shri Thippeswamy, Postman, Tiptur H.O. (the then SPM, Palavalli) which has led to his conviction is such as to render his further retention in the public service undesirable and the gravity of the charge is such as to warrant the imposition of a major penalty.'.....the undersigned hereby dismiss the said Sri Thippeswamy, Postman, Tiptur H.O (the then SPM, Palavalli) from service with immediate effect.

These words clearly indicate that the Disciplinary Authority considered the nature of the offence of which the applicant stood convicted and felt that it was of such a grave nature as to deserve the punishment of dismissal. It is difficult therefore, to uphold the contention of Sri Achar that the order was passed without application of mind. It is not disputed that the applicant was given an opportunity of personal hearing on the quantum of penalty imposed and ^{his} ~~the~~ written explanation was duly considered by the Disciplinary Authority. We, therefore find nothing wrong or illegal in the order of the Disciplinary Authority.

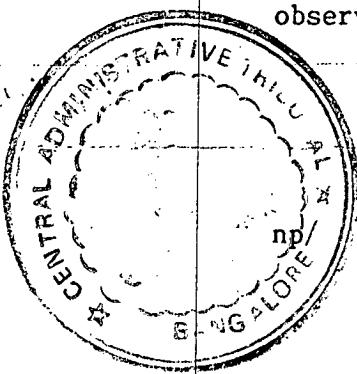
11. Before the Appellate Authority, the applicant submitted that the order of dismissal should be revoked in view of the appeal against his criminal conviction, which was pending before the Sessions Court. The Appellate Authority has remarked that the department was unaware of the order passed by the Sessions Court, but that in no way vitiates his order. Under Rule 19 of the Rules when a Government servant is convicted of a criminal charge, the Disciplinary Authority has to consider the circumstances of the case and make such orders thereon as he deems fit. The Disciplinary Authority as well as the Appellate Authority deemed it fit in this case to impose the punishment of dismissal from service on the applicant. Considering that the offence involved is defalcation of Government funds, we cannot say in this case that these authorities ^{acted} ~~arbitrarily~~ or in ~~illegal~~ manner. We have, therefore to reject this contention of Sri Achar to the quantum of penalty imposed by the Disciplinary



Authority and confirmed by the Appellate Authority.

12. Before parting with this application, we would like to make an observation. As mentioned earlier, the applicant's appeal against his conviction by the criminal Court is pending consideration before the Sessions Court. If he succeeds in appeal he would naturally be entitled to restoration in office and to all benefits flowing therefrom. Government themselves have issued instructions as to what is to be done in such situations and those instructions are printed at paragraph 8 at page 113 of Swamy's Compilation of Central Civil Services (Classification Control and Appeal) Rules, 1965, 15th edition. We are sure that if the applicant succeeds in his appeal in the Sessions Court the respondents will take ^{immediate} ~~immediat~~ action in terms of those instructions.

13. In the result, the application is dismissed with the observations made above. Parties to bear their own costs.



Sd/-

VICE-CHAIRMAN.

TRUE COPY

Sd/-

MEMBER(A)

R. H. 13/11/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE