

HYDERABAD DISTRICT
HIGH COURT - HYDERABAD
W.P.No. 1097.

ORDER OF DATE REC'D.

Ruled by
Smt. A. Vijayantini & Smt. S. Vedavathi
Counsel for the Petitioners.

FORM NO. 21
(See Rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD

OA/ TA / RA / CP / MA / PT 21.8 of 1995

.... M. Lakshminarayulu Applicants (s)

Versus

The Director of Postal Services, ... Respondent (s)
Hyd & Awar

INDEX SHEET

Serial No.	Description of Documents	Page
Docket Orders		
Reply statement	—	1-3
Interim Orders	—	42-47
Rejoinder	—	—
Orders in MA (s)	—	48-51
Orders in (Final Orders)	25-7-97	52-68

aff 13/3/97
Certified that the file is complete
in all respects.

Signature of
Dealing Hand
(In Record Section)

Signature of S.O.

+ OA 217/95
OA 218/95

(2)

(2)

DATE	OFFICE NOTE	ORDERS
2.7.96	Respondents served. No representation. For memo and RS call on 20.8.96.	<u>20.2.95</u> Admit Expedite. Post it before and Court alongwith OA 217/95. Refr.
<u>6/5/97</u>		none for the applicant. List it for orders on 5th June '97. Re HBSJP M(J)
		HRN m(A)
		<u>25-6-97</u> Heard Mrs. S. Roma- Krishna Rao for the Applicants in both the OAs and Mr. N.V. Raghav Reddy for the Respondents in both the OAs. Judgment reserved. The learned Counsel for the Respondents should produc the inquiry proceedings to
<i>Handed over 21/2</i>		HBSJP M(J) HRN m(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. NO.:

218

OF 1995

M. Lalchmais

Applicant(s)

VERSUS

Director of Postal Services, Hud & anlt

Respondent(s)

Date	Office Note	Orders
15/2/95		<p>Par a 15/2/95,- <u>Arre</u> (20) <u>Bus</u> <u>MA</u> <u>15/2/95</u></p> <p>MA 1014/94 in OASL 3085/94 DT. 15-2-95</p> <p>It was considered <i>inter alia</i> for the applicant that the matter requires re-consideration in view of the acquittal of the applicant by the learned Magistrate in case No. 114/98 on the file of 13th MM, Railways, Secunderabad. The date of the order of acquittal is 16-9-93. This OA was filed on 21-11-94. In these circumstances, we feel that it is just and proper to condone the delay as prayed for. Register the OA if otherwise in order and list it on 17-2-95. The MA is ordered accordingly.</p> <p style="text-align: right;">8</p> <p style="text-align: right;">H. VARADARAJU VC</p> <p style="text-align: left;">STAN PC(A)</p>
15-2-95		

3
OA 217/95 and OA 218/95

Date Office note ORDER

25-7-97

Both OA8 are dismissed.
order copy is in OA 217/95.
No costs.

HBS/SP

M(J)

HRRN

M(A)

av17

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.

ORIGINAL, APPLICATION NO. 218 OF 1995

Shri M. Lakshmaiah APPLICANT (S)

VERSUS

Dir. of Postal Service;

Ad. Regn., Hyderabad & another

RESPONDENT (S)

The Application has been submitted to the Tribunal by
Sri S. Ramakrishna Rao Advocate
under section 19 of the Administrative Tribunal Act, 1985 and
the same has been scrutinised with reference to the points
mentioned in the check list in the light of the provisions
contained in the Administrative Tribunal (Procedure) Rules, 1987.

The Application is in order and may be listed for
admission on _____

Scrutiny Asstt.

172/54

Deputy Registrar (Judl.)

11. Have legible copies of the annexure duly attested been filed. *Y*
12. Has the Index of documents been filed and pagination done properly. *Y*
13. Has the applicant exhausted all available remedies. *Y*
14. Has the declaration as required by item No.7 of form I been made. *Y*
15. Have required number of envelops (file size) bearing full address of the respondents been filed. *Y*
16. (a) Whether the relief sought for, arise out of single cause of action. *Y*
(b) Whether any interim relief is prayed for. *Y*
17. In case an MA for condonation of delay in filed, is it supported by an affidavit of the applicant.
18. Whether this case can be heard by single Bench. *NO*
19. Any other point.
20. Result of the Scrutiny with initial of the scrutiny clerk. *May be filed*

5/2/99
~~Section Officer~~

Deputy Registrar.

Registrar.

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.

Dairy No. 3492

Report in the Scrutiny of Application.

Presented by ... Shk Rao Date of Presentation 21/11/94

Applicant(s) M. Lakshminaray

Respondent(s) D.P.S. And Eng. Dept & another

Nature of grievance.... Domestic

No. of applicants..... one No. of Respondents..... 2

CLASSIFICATION.

Subject. Domestic (No)

Department. Post Office (No)

1. Is the application in the proper form, (Three complete sets in paper books form in two compilations) Y
2. Whether name, description and address of all the parties been furnished in the cause title. Y
3. (a) Has the application been duly signed, and verified. Y
(b) Have the copies been duly signed. Y
(c) Have sufficient number of copies of the application been filed. Y
4. Whether all the necessary parties are impleaded. Y
5. Whether English translation of documents in a language other than English or Hindi been filed. Y
6. Is the application in time, (See Section 21) Y
7. Has the Vakaltnama/Memo of Appearance/ authorisation been filed. Y
8. Is the application maintainable. (U/s 2, 14, 18, or U.R. 8 etc) Y
9. Is the application accompanied IPO/DD, for Rs.50/- Y
10. Has the impugned orders Original/duly attested legible copy been filed. Y

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

I N D E X S H E E T

O.A.No.

218

OF 1995

CAUSE TITLE

M. Lakshmis

VERSUS

Director of Postal Services, Hyderabad

Sl.No.	Description of documents.	Page No.
1.	Original Application	16510
2.	Material Papers	11635
3.	Vakalat	1
4.	Objection sheet	—
5.	Spare copies 2(Two)	
6.	Covers 2. A	

7. Reply statement filed by Mr. N.V.
Rao on 29.11.1995.

8. Letter order filed by S. Ravulendra
Reddy on 27.11.1995.

Dismissed
4

Reg:- To set aside the dismissal order of 22.8.88
and direct the Respondents to reinstate the
Applicant who had been acquitted by the
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: HYDERABAD
Court No: 217

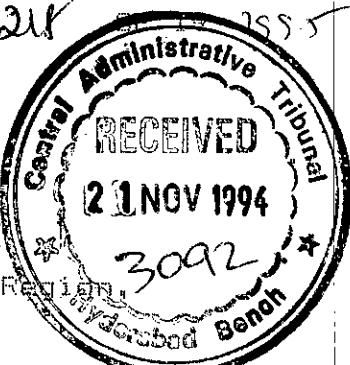
Bench Case

BETWEEN:

M. Lakshmaiah

A N D

Director of Postal Services,
Postmaster General, Hyderabad Region
Hyderabad and others.



APPLICANT

Postal

RESPONDENTS

CHRONOLOGICAL STATEMENT OF EVENTS

Sl.No.	Date:	E	V	E	N	T	S
1.	1984						
		The Ist Respondent made a complaint to the Police and the crime branch registered a case No. 74/84 against the applicant.					
2.	2.4.1986			The Splo. Inspector General of Police, (P&G) Crime, Hyderabad reported that the has been referred as undetectable.			
3.	26.2.1987			The Ist Respondent issued charge sheet stating that disciplinary action would be taken against the applicant in common proceedings.			
4.	29.6.1988			The Inquiry Officer submitted His report holding that the charges not proved.			
5.	22.8.1988			The IIInd Respondent issued dismissal orders to the applicant.			
6.	9.9.1988			The applicant submitted an appeal to the Ist Respondent.			
7.	31.8.1989			While the Criminal case against the applicant was pending the Ist Respondent disposed the appeal of the applicant rejecting the same.			
8.	16.6.1993			The Hon'ble XIIIth M.M.Court for Railways, Secunderabad in CC/114/88 acquitting the applicant.			
9.	28.6.1993			The applicant submitted an appeal to Ist Respondent to review the appellate order.			
10.	22.12.1993			The applicant got a legal notice issued to Ist Respondent to dispose the appeal.			
11.	21.9.1994			The Hon'ble Tribunal in O.A.No:217/94 permitted the applicant to file a fresh O.A., duly filing condonation delay petition.			

Hence this application before the Hon'ble

Tribunal.

Hyderabad.
10.11.1994.

R. N. R. Deo
COUNSEL FOR THE APPLICANT.

contd...

APPLICATION FILED UNDER SECTION 19 OF ADMINISTRATIVE
TRIBUNALS ACT, 1985.
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCHAT: HYDERABAD

BETWEEN:
M.Lakshmiyah

O.A. NO: 218 OF 1994

APPLICANT

A N D

Director of Postal Services, Hyderabad

Region, Hyderabad and another...

RESPONDENTS

I N D E X

S.No:	Documents relied upon:	Ann.No:	Page No.
1.	APPLICATION	—	1 to 10
2.	Memo No: RDH/ST/21-3/36/88 dated 31.8.89 of 1st Respondent	I	11 to 12
3.	Memo No: K5/1/84-85 dt. 26.2.1987 of 1Ind Respondent.	II	13 to
4.	<u>Memo of Charges</u> <u>Inquiry Report of I.O.</u>	III	14 to 19
5.	Memo No: K5/1/84-85 dt. 22.8.1988 of 1Ind Respondent.	IV	20 to 24
6.	Lr.No: C/554/C8/84 dt. 2.4.1986 of Spl. Inspector General of police, Crimes, Hyderabad.	V	25 to 28
7.	<u>Appeal of the applicant dated</u> <u>9.9.1993 to 1st Respondent.</u>	VI	29 to 46
8.	<u>Appeal of the applicant dated</u> <u>28.6.1993 to the 1st Respondent.</u>	VII	29 to 31
9.	Legal Notice dated 22.12.1993 issued to the 1st Respondent	VIII	32
10.	Copy of Judgement of CAT dated 21.9.1994 in O.A.No:217/94	IX	33 to 36

HYDERABAD:

17.11.1994

COUNSEL FOR THE APPLICANT.

M. Lakshmiyah

SIGNATURE OF THE APPLICANT

FOR USE IN TRIBUNAL'S OFFICE:

Date of Receipt:
Registration No.Signature:
for Registrar.

contd...

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT: HYDERABAD
O.A. No. 218 of 1995

BETWEEN:
M. LAXMAIAH S/o Chilkaiyah,
aged about 42 years, Ex-Mailman,
Railway Mail Service, Z Division,
HYDERABAD.. APPLICANT

A N D

1. Director of Postal Services,
HYDERABAD Region, HYDERABAD.
2. Superintendent of Railway Mail Service,
Z Division, HYDERABAD. RESPONDENTS

DETAILS OF THE APPLICANT:

Address for service of summons/ notices on the applicant: SANKA RAMA KRISHNA RAO
ADVOCATE, 1-1-230/9,
Andhra Bank Lane,
Chikkadpally, HYDERABAD.20.

1. Particulars of the order against which the application is made:

"This application is against the impugned Order No:RDH/ST/21-3/36/88 Dated 31.8.1989 of the Director of Postal Services, Hyderabad Region, Hyderabad rejecting the appeal of the applicant and confirming the dismissal order passed by the Superintendent of Railway Mail Service, Z Division, Hyderabad dated 22.8.1988 without waiting for the outcome of the Criminal case pending before the Hon'ble XIIIth Metropolitan Magistrate for Railways, Secunderabad."

2. JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal u/s.14(1)(b)(ii) of the Administrative Tribunals Act, 1985.

3. LIMITATION:

The applicant further declares that the application is within the limitation period prescribed in Section 21(1)(a) of the Administrative Tribunals Act, 1985.

contd...

M. Laxmaiah

4. FACTS OF THE CASE:

(1) It is respectfully submitted that the applicant was working as Mailman in Railway Mail Service, Z Division, Hyderabad during the year 1984. On 7.4.1984 he was on duty in Section Z 29 In and Out, that is from Hyderabad to Guntakal and back. He was discharging his duties with utmost sincerity and devotion.

(2) While so, the applicant was issued with charge Memo under Rule 14 of CCS (CCA) Rules, 1965 vide IInd Respondent's Memo No:K5/1/84-85 dated 26.2.1987 (Annexure II page 13). It was ordered that the disciplinary action against the applicant will be taken in common proceedings. Accordingly, enquiry was held and the I.O. held the charges as "not proved". But the IInd Respondent vide his Order NO:K5/1/84-85 dated 22.8.1988 disagreed with the findings of I.O. and dismissed the applicant from service.

(3) It is submitted that before issuing the charge Memo the IInd Respondent made a complaint to the police and the crime branch registered a case under Cr.No:74/84 u/s.420 and 409 IPC. After investigation, the police reported vide C.No:554/CB/84 dated 2.4.1986 that the case has been referred as undetected.

(4) It is further submitted that in spite of this report a charge Memo was issued to the applicant. An inquiry was held and the I.O. held the charges as not proved. (Annexure III page 1). Without communicating any disagreement and providing opportunity to represent against such a decision, the applicant was dismissed from service vide IInd Respondent's Memo No:K/1/84-85 dated 22.8.1988 (Annexure IV page 20 to 24) and the Police was again requested to reopen the case and start fresh investigation and prosecution.

contd...



(5) It is further submitted that under pressure from the Respondents, the Police reopened the case and filed charge sheet before the XIIIth Metropolitan Magistrate for Railway, Secunderabad under CC/114/88 and the applicant was tried in the court and finally acquitted vide orders dated 16.6.1993.

(6) It is further submitted that the applicant submitted an appeal against the order of dismissal on 9.9.1988 (~~Annexure 2 page~~). While the criminal case against the applicant was pending the 1st Respondent vide his Memo No:RDH/ST/21-3/35/88 dated 31.8.1989 (Annexure I page //) disposed the appeal rejecting the same.

(7) It is further submitted that as per rule 81 of P & T Manual Vol.III the disciplinary authority was bound to keep the proceedings pending once a charge sheet was filed in a court of law and even if the disciplinary authority acted erroneously the appellate authority was bound to keep the appeal pending till finalization of the case in the court of law. But the Respondents failed to follow this rule and by the time, the applicant was acquitted by the court of law he was forced to accept "fait accompli", as having been dismissed from service and as having his appeal rejected.

(8) It is further submitted that on being acquitted the applicant submitted an appeal to the 1st Respondent on 28.6.1993 (~~Annexure VI Page 1~~ ^{29/6/93}) pleading that he was already being prosecuted at the time of dismissal of the case and that under rule 81 of P & T Manual Vol. III the departmental action was to be kept in abeyance pending disposal of the criminal case and that any appeal submitted, while the case is in progress in the court of law should be kept pending and as such the appellate order issued in violation of rule 81 of P & T Manual Vol.III may be reviewed. There was no response to this appeal and so on 22.12.1993 a legal

contd...

M. Laxmanay

notice was issued to the 1st Respondent to give a reply to the appeal within 15 days. But no reply was given. Aggrieved against the inaction on the part of the 1st Respondent, the applicant had filed an application in O.A. NO:214/94 before the Hon'ble Tribunal. The said O.A. was disposed with the directions that "when there is no power of review in regard to the appellate authority, the only remedy that is open to the applicant in such a case is either to file a revision against the order dated 31.8.1989 in the appeal or to move this Tribunal under Section 17 of A.T. Act by filing a petition praying for condoning the delay. Hence this OA is dismissed. But this order of dismissal does not debar the applicant if so advised, to file a proceeding in the appropriate forum in view of his acquittal in the CC No:114/88 if the incident mentioned in the said CC and the relevant departmental enquiry is one and the same."

Hence this application before the Hon'ble Tribunal seeking redressal of their grievance to set aside the punishment imposed on the applicant.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

(1) It is respectfully submitted that the charge against the applicant in the departmental charge sheet was that he was found in possession of certain articles while on duty in section Z-29 Dn. on 7.4.1984. The report made to the Police also deals with the same allegation. It was held by the Hon'ble CAT Madras 1993 (23) ATC 131 that when a report is made to the Police about the commission of offense, the departmental proceedings if any, initiated should be kept pending till framing of charge sheet in the court of law and if the charge sheet is covering the same offense or identical offense the departmental proceedings should be kept pending till finalization of the case. This was vio-

contd...

M. Lazarus

lated by the Respondents.

(2) It is further submitted that vide Rule 81 of P & T Manual Vol.III it is prescribed that appeal submitted should be kept pending if the case is under inquiry by a court of law. This rule also was violated by the Respondents.

(3) It is further submitted that the dismissal order is vitiated for not supplying the I.O. Report and asking the applicant to submit his representation. The order was under challenge and it was held by the Hon'ble CAT Allahabad vide 1993 (23) ATC 161 that if the order is already under challenge, the cut off date of 29.11.1990 does not apply. For this legal infirmity alone, the dismissal order is vitiated.

(4) It is further submitted that in the case of the applicant, the I.O. held the charge as not proved. Yet, the disciplinary authority disagreed with the I.O. He did not give any notice showing reasons for disagreement. It was held by the Hon'ble CAT Jabalpur vide 1986 (2) ATR 577 and 1987 (3) ATC 854 that whenever the disciplinary authority disagrees with the I.O. and wants to impose a penalty a notice should be given to the Govt. servant and his representation taken into consideration. This was not done by the Respondents.

(5) It is further submitted that the procedure followed in issuing the punishment order is violative of rules. Rule 14 and Rule 16 of CCS (CCA) Rules, deal with the procedure to be followed. But the punishment order is under rule 15. The omission of rule 15 in the case of common proceedings goes to show that punishment should be individual and not common. When more than one official is involved in commission of an offense the contribution will not be equal. Extenuating circumstances in each case has to be considered before awarding the punishment and the circumstances differ from man to man. Further the rules do not

contd...

M. Lazarus

provide for joint appeal and so there cannot be a joint punishment. The common proceedings are ordered for a limited purpose of interlocking one's evidence in both the cases and rule 18 does not specifically permit the disciplinary authority to issue a common punishment order. The applicant is a victim of a common punishment order which is not stipulated under rules.

(6) It is further submitted that the punishment order is further vitiated for:

- (a) though he disagreed with the I.O., the disciplinary authority did not state so in the order;
- (b) the applicant's fitness to remain in service has not been discussed;
- (c) the disciplinary authority has not applied his mind to the quantum of punishment.

(7) It is further submitted that the procedure adopted by the disciplinary authority in disagreeing with the I.O. is not sustainable. He was silent on the observations of the I.O. that the prosecution document, the daily report is not authenticated as the outsider who was allegedly allowed to travel in the mail van was not asked to sign the same. The three witnesses produced by the prosecution were those belonging to the raiding party and the I.O. rejected the "raiding" for want of independent witnesses. The Disciplinary authority was more conscious about the status of these three witnesses, viz., One a Postal Inspector, another a Police Inspector, third a Sub-Inspector of Police. He took them as independent witnesses purely on the ground of their official status. He betrayed his prejudice by stating that they are disinterested in the case. It pricks Judicial consciousness to accept that a raiding party is disinterested in the case. It is a fact that they were not really disinterested. They are stated to have prepared a panchanama when two unconcerned people

contd...

Mr. Hasnay

were reportedly present. But these two persons were not examined during the rule 14 inquiry.

(8) It is further submitted that the Panchanama was stated to have been conducted at Tandur and Sarvasri Shahbuddin and R. Sivaraj were the panchas. The panchanama produced during the inquiry did not bear the signature of Sri Shahbuddin. He was not summoned or produced as the witness. He is stated to be a resident of Bashirabad selling fruits in Vikarabad Railway Station and it was not explained as to what made him to appear as Pancha at Tandur. Sri Sivraj is stated to be a responsible Railway Official. He too was not summoned or produced as witness. His signature in the Panchanama has not been identified. Regarding Sri Shahabuddin, it is felt that the very person is fictitious. The Panchanama was conducted at Tandur, the raiding party entered the train at sedam but as per the version of three members of the raiding party they entered the train at Tandur. Sri Sivaraj is the TTE and there was one outsider Sri Subhash Balatkar when he entered the mail van. But Sri Subhash Balatkar was not fined by the TTE which shows that no outsider was present in the compartment. It also shows that the TTE did not enter the mail van even up to Hyderabad and the Panchanama, was a concocted one. Statement of this person was not recorded either by the raiding party or the police. Thus this person is also fictitious. The Panchanama was not got signed either by the mail agent or the applicant which shows that the Panchanama was also concocted. The so called articles found by the raiding party were not seized under acquittance. It is humbly submitted that the raiding party did not enter at Sedam or Tandur or even at Hyderabad Railway Station and the Panchanama produced during the inquiry is also bogus. No Panchanama was conducted either at Tandur or Sedam and the applicant, his co-accused or even the outsider was asked to sign

contd...

M. Laxmanai

the same.

(9) It is further submitted that there is no documentary evidence to produce that an outsider was found traveling in the Mail van. The raiding party only brought an outsider speciously for Panchanama. They falsely deposed during the rule 14 inquiry that they entrained at Tandur. The raiding party did not find anything with the applicant or his co-accused and did not record any statement or conduct Panchanama. The panchanama was not taken as valid by the I.O. The allegation against the applicant was that he was in possession of articles in an unauthorized way. All the parcel bag in the van were checked and they were found intact. None of the articles referred to in the charge sheet did not pertain to any parcel or parcel bag conveyed in the van.

(10) It is further submitted that possession of certain articles which the applicant stoutly deny, itself can never warrant dismissal unless it is proved that the articles were abstracted from the parcels. Mere suspension cannot take the place of evidence as observed by the Hon'ble Supreme Court vide AIR 1964 SC 364.

(11) It is further submitted that the applicant was prosecuted for possession of some articles unauthorisedly while on duty and the Hon'ble XIII Metropolitan Magistrate in his judgment dated 16.6.1993 acquitted him holding inter alia that the complainant being the investigator, it was not as per law. He further held that " the very search is not as per law s section 140 of Cr.P.C. was not followed. This judicial observation would show that the raiding party could not legally establish the legality of the raid and the consequent action.

contd...

M. Laxminaray

6. DETAILS OF THE REMEDIES EXHAUSTED:

The applicant declares that he has availed of all the remedies available to him under the relevant service rules.

Aggrieved against the dismissal order No:K5/1/84-85, dated 22.8.1988 of the IInd Respondent, the applicant submitted an appeal to the second respondent on 9.9.1988. While the criminal case against the applicant was pending the Ist Respondent vide his Memo No:RDH/ST/21-3/85/88 dated 31.8.1989 disposed the appeal rejecting the same. On being acquitted the applicant submitted appeal to the Ist Respondent on 28.6.1993. As there was no response to the appeal, a legal notice was issued on 22.12.1993 but there was no response from the Ist Respondent. As there was no action on the part of Ist Respondent, a O.A No:214/94 was filed and the Hon'ble Tribunal while disposing the same had given liberty to file a fresh O.A. duly praying for condonation of delay as the matter was pending before the Criminal Court till 16.6.1993. Hence this application before the Hon'ble Tribunal.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT:

The applicant further declares that he had not previously filed any application, writ petition, or suit regarding the matter in respect of which this application has been made before any other court or any other authority or any other Bench of the Tribunal nor any such application, Writ Petition or suit is pending before any of them.

8. RELIEF(S) SOUGHT:

In view of the facts mentioned in para (4) above the applicant prays for the following relief(s):

It is respectfully prayed that the Hon'ble Tribunal may be pleased to set aside the punishment imposed by the IInd Respondent vide his punishment order dated 22.8.1988 as confirmed

contd...

M. Lazarus

by the impugned Memo dated 31.8.1989 of the 1st Respondent rejecting the appeal of the applicant, as arbitrary, and in violation of Articles 14 and 16 of Constitution and be pleased to direct the Respondents to reinstate the applicant who had been acquitted by the Criminal Court, with all the consequential benefits and be pleased to pass such other and further order or orders as the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

9. INTERIM ORDERS IF ANY PRAYED FOR:

Pending final decision on the application the applicant seeks the following interim relief:

N I L

10. IN THE EVENT OF APPLICATION BEING SENT BY POST etc.:

NOT APPLICABLE:

11. PARTICULARS OF THE BANK DRAFT/POSTAL ORDER filed in respect of the application fee:

1. P.O. No. 806927089

2. Date: 12-11-94

3. Fee: Rs.50/-

4. Name of the office of issue:

5. Name of the office payable at: G.P.O. HYD 1650/- A

P.O. REC'D. D. REMOVED

12. LIST OF ENCLOSURES:

S1.No. Details of the documents

Annexure

AS PER INDEX

V E R I F I C A T I O N

I, M.Lakshmiah S/o Chilkaiah, aged about 42 years, Ex-Mailman, Railway Mail Service, 2 Division, Hyderabad do hereby verify that the contents of paras 1 to 4 and 6 to 12 are true to my personal knowledge and para 5 believed to be true on legal advice and that I have not suppressed any material facts.

Hyderabad.

Date: 17.11.1994.

M. Lakshmiah
SIGNATURE OF THE APPLICANT.

M. Lakshmiah
COUNSEL FOR THE APPLICANT.

contd...

ANNEXURE I
GOVERNMENT OF INDIA
DEPARTMENT OF POSTS

ANJU
16

Office of the Director of Postal Services, A.P. Northern Region,
Hyderabad-500 001.

Memo. No. RDH/ST/21-3/36/88.

Dated: 31-8-1989.

Read the following:-

- (1) Memo. No. K.5-1/84-85, dated 22.8.88 of SRM, 'Z' Dn, Hyderabad.
- (2) Appeal, dated 9.9.88 of Sri M. Lakshmaiah, Ex-Mailman, SRO, Z-Division.
- (3) Other connected records.

This is an appeal, dated 9.9.88 from Sri M. Lakshmaiah, Ex-Mailman, SRO, RMS 'Z' Division, Hyderabad against the orders of the Supdt., RMS, 'Z' Division, Hyderabad—vide his Memo. No. K.5/1/84-85, dated 22.8.88, imposing the penalty of 'dismissal' on Sri M. Lakshmaiah consequent to the proceedings under Rule-14 of CCS (CCA) Rules, 1965. This appeal arose out of the common disciplinary proceedings issued by the Disciplinary Authority covering both Sri K. Eswaraiah, Mailguard and Sri M. Lakshmaiah, Mailman (hereinafter called as "the appellant") on similar charges common to both the officials.

2. The charges against the appellant are as under (vide Supdt., RMS 'Z' Dn Memo. dated 26.2.87):

Charge-I : That the said Sri K. Eswaraiah while working as Mailguard of Z-29/1 Out/In Section, dated 6/7-4-84 in collusion with Sri M. Lakshmaiah, Mailman of the Set allowed Sri Subhash Bhalekar, S/o Manikrao, Ex-R.H. Attendant, Guntakal to travel unauthorisedly in the RMS Van of Rayalaseema Express (Z-29/In, dated 7-4-84) violating the provisions contained in Rule-653(1) of P&T Manual Volume-II.

Charge-II : That during the aforesaid period and while functioning in the aforesaid section, the said (1) Sri K. Eswaraiah (2) Sri M. Lakshmaiah and (3) Sri Subhash Bhalekar possessed some new clothes, cassettes, cooling glasses, ball-pens, pencils, etc., most of which are of foreign make in their personal bags. S/Sri K. Eswaraiah, Mailguard and M. Lakshmaiah, Mailman unauthorisedly possessed some articles in their hand bags in violation of the provisions of Rule-23 of P&T Manual Volume-VII.

And, thus, (1) Sri K. Eswaraiah, Mailguard and (2) Sri M. Lakshmaiah, Mailman have failed to maintain devotion to duty and also acted in a manner unbecoming of Govt. servants and violated the provisions of Rules 3(l)(ii) and (iii) of CCS (Conduct) Rules, 1964.

1...2/

12 (7)

3. This appeal of Sri M. Lakshmaiah, Mailman--the appellant is identical and the facts of the case are also identical with those of the case against Sri K. Eswaraiah, Mailguard whose appeal, dated 9-9-88 has been disposed of---vide proceedings under Memo. No. RDH/ST/21-3/35/88, dated 31-8-89. I find no new points in this appeal which merit special attention. I have carefully gone through all the connected records and I see no reason to deviate from my observations in the appellate proceedings issued in respect of Sri K. Eswaraiah, the co-accused in the case.

I, therefore, reject the appeal of Sri M. Lakshmaiah against the penalty of "dismissal" imposed by the Disciplinary Authority---vide his Memo. No. K.5/1/84-85, dated 22.8.88.

D. Kailasa Prasad
 (D. KAILASA PRASAD)
 Director of Postal Services,
 A.P. Northern Region,
 Hyderabad-500 001.

To
 Sri M. Lakshmaiah,
 Ex-Mailman,
 SRO, RMS 'Z' Division, through SRM 'Z' Dm, Hyderabad.

TC

TC

ANNEXURE. II

ORDER

Whereas the Government Servants specified below are jointly concerned in a Disciplinary case.

- 1) Sri.K.Eswaraiah.Mailguard, SRD, RMS 'Z'Dn, Kazipet
- 2) Sri.M.Laxmaiah.Mailman, SRD 'Z'Dn, Nirmal

Now, therefore, in exercise of the powers, conferred by Sub Rules(1) and (2) of Rule,18, Central Civil Services (C.C.S), Rules,1965 the undersigned hereby directs:-

- 1) that Disciplinary action against the above said two Govt. Servants shall be taken in a common proceeding;
- 2) that the Superintendent, RMS 'Z' Division, Hyd'bad shall function as the Disc. authority for the purpose of the common proceedings and shall be competent to impose all the penaltics specified in Rule 11 of CCS(CCA)Rules, 1965 and;
- 3) that the procedure prescribed in Rules 14 & 15 shall be followed in the said proceedings.

(E. S. R. MURTHI)
SUPERINTENDENT, RMS 'Z' Dn. Hyd. 1.

Copy to:-

1 Sri.K.Eswaraiah.Mailguard.SRO 'Z 'Dn,Kazipet-506003
2 Sri.M.Laxmaiah.Mailman.SRO.RMS 'Z 'Dn,Nirmal

Supdt. RMS 'Z' Dn. Hyd. 1.

14

DEPARTMENT OF POSTS:INDIA
 OFFICE OF THE SUPERINTENDENT, RMS 'Z' DIVISION, HYDERABAD-500 001
 MO. NO. K5/1/84-85 DATED AT HYDERABAD-500 001 THE 26.2.1987

MEMORANDUM

1) The undersigned proposes to hold an inquiry against S/Sri.K.Eswaraiah, Mailguard, SRO, RMS 'Z' Dn, Kazipet and M.Laxmaiah, MM SRO 'Z' Dn, Nirmal under Rule-14 of Central Civil Services (Classification Control and Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the enquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of the articles is enclosed (Annexure II). A list of documents by which and a list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed (Annexure III & IV).

2) S/Sri.K.Eswaraiah and M.Laxmaiah are directed to submit within 10 days of the receipt of this memorandum, a written statement of their defence and also to state whether they desire to be heard in person.

3) They are informed that an inquiry will be held in r/o those articles of charge as are not admitted. They should therefore specifically admit or deny each article of charge.

4) S/Sri.K.Eswaraiah and M.Laxmaiah are further informed that if they do not submit their written statement of defence on or before the date specified in para-2 above or do not appear in person before the enquiry authority or otherwise fail or failing to comply with the provisions of Rule-14 of CCS(CCA) Rules, 1965, or the orders/directions issued in pursuance of the said Rule, the enquiry authority may hold the enquiry against them ex parte.

5) Attention of S/Sri.K.Eswaraiah & M.Laxmaiah is invited to Rule-20 of the CCS(Conduct) Rules, 1964 under which no Govt. Servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in r/o the matters pertaining to service under the Govt. If any representation is received on his behalf from another person in r/o any matter dealt with in these proceedings, it will be presumed that S/Sri.K.Eswaraiah and M.Laxmaiah are aware of such a representation and that it has been made at their instance and action will be taken against them for violation of Rule-20 of the CCS(Conduct) Rules, 1964.

6) The receipt of this memorandum may kindly be acknowledged.

E.S.R.MURTHI

SUPDT, RMS 'Z' Dn, HYD'BAD-500 001

To

1. S/Sri.K.Eswaraiah, Mailguard, SRO 'Z' Dn, Kazipet-506003
2. M.Laxmaiah, Mailman, SRO, RMS 'Z' Dn, Nirmal.

E.S.R.MURTHI
Supdt, RMS 'Z' Dn, Hyd. 1.

T.C. 10

15
20

15

ANNEXURE-I

Statement of articles of charge framed against S/Sri.K.Eswaraiah
Mailguard, SR01Z'Dn.Kazipet and M.Laxmaiah, Mailman, SR01Z'Dn.Nirmal

ARTICLE-I

That the said Sri.K.Eswaraiah while working as Mail
Guard of Z-29/1 Out/IN section dt.6/7-4-1984 in collusion with
Sri.M.Laxmaiah, Mailman of the set allowed Sri.Subhsh Balatkar
S/B.Manikrao, Ex-RH, Attendant Guntakal to travel unauthorisedly
in the RMS van of Rayalaseema Express(Z-29 IN dt.7.4.84), viola-
ting the provisions contained in Rule 653(1) of P&T MAN.VOL.II

ARTICLE-II

That during the aforesaid period and while func-
tioning in the aforesaid section, the said (1) Sri.K.Eswaraiah
2) M.Laxmaiah and 3) Subash Balakkar possessed some new clothes
cassettes, cooling glass, ball pen, pencils etc., most of which are
of Foreign make in their personal bags. S/Sri.K.Eswaraiah, MG
and M.Laxmaiah MM unauthorisedly possessed some articles in their
hand bags in violation of the provisions contained in Rule-23
of P&T MAN.VOL.VII.

And thus, 1) Sri.K.Eswaraiah, Mailguard and 2) M.
Laxmaiah Mailman have failed to maintain devotion to duty and
also acted in a manner unbecoming of Govt. Servants and violated
the provisions of Rule 3(1)(ii) & 3(1) (iii) of CCS(Conduct)
Rules, 1964.

E.S.R.Murthy
(E.S.R.MURTHY)
SUPDT.RMS1Z'Dn.Hyd'bad-500001

TC:K

(16) 21

ANNEXURE-II

Statement of imputations of misconduct or misbehaviour in support of the articles of charge framed against S/Sri.K.Eswaraiah.Mailguard and M.Laxmaiah.MM.

ARTICLE I

S/Sri.K.Eswaraiah and M.Laxmaiah were arranged to work with Z-29 Out/IN section dt.6/7.4.1984. When Sri.H.Nagarajan I.I., %PMG.A.P.Circle.Hyd'bad along with S/Sri.Mir Taher Ali Nasri Inspector.CB.CID.Hyd-#, Rahimudin.S.I., CB.CID., and along with two other witnesses, S/Sri.R.Shivaraju.TTE and Shaburdin entered the RMS compartment of Rayalaseema Express, working by Train.No. 30 UP in which Z-29 IN section dt.7.4.84 functionned, by sunrise at Tandur RS on the early morning of 8.4.84, one person by name Sri.Subhash Balatkar, Ex.PT.Rest House Attendant of Guntakal was found travelling in the Mail Van along with S/Sri.K.Eswaraiah and M.Laxmaiah. The above said Sri.Subhash was also found travelling in the mail van without ticket. As per Rule.No.653(1) of P&T MAN.VOL.II no outsider should be allowed to travel in the mail van. Hence, Sri.K.Eswaraiah.MM and Sri.M.Laxmaiah.MM have failed to comply with the provisions contained in Rule.No. 653(1) of P&T MAN.VOL.II, by allowing Sri.Subhash.Balatkar to travel in the Mail van unauthorisedly.

ARTICLE-II

When the above said Inspecting officers checked the personal bags of S/Sri.K.Eswaraiah.MM, M.Laxmaiah.MM who worked with Z-29 IN dt.7.4.84 and that of Sri.Subhash.Balatkar who travelled in the above said section unauthorisedly, the officers found new clothes, cassettes, cooling glass, ball pen etc., most of which are Foreign make, in the personal bags of S/Sri.K.Eswaraiah, M.Laxmaiah and Sri.Subhash.Balatkar. The Details of articles found in the personal bags of the above three persons are given below:-

SRI.K.ESWARAIAH.MAILGUARD

1. Cooling Glass partly black and white with inscription over side glass as 'PORSCHE DESIGN(X)' with a black plastic container with Zip and name Ferarri written on it.

2. One red colour ball pen with multicoloured refills
3. One Nailcutter Korea '777' with a knife and opener.

SRI.M.LAXMAIAH.VAN ATTENDENT

1. One ash colour full pant without any marking
2. One black and brown stripes full pant with a label 'Carpa'
3. One new white Polyester full sleeves shirt having label of 'Appex wear' Termisised fabric '39.
4. One new navy blue/white chocolate colour striped full sleeves shirt having label 'Lastrada' 5/14-14 see reverse 141
5. One biscuit colour striped full sleeves shirt having label fit-well tailor near Highcourt.Hyd
6. One light green colour half-sleeve shirt with blue buttons
7. One Black Wig with markings taviron(R) made in Korea.

① 100% Vinyon Specially created for wig in Japan
② Made in Korea

3) SUBASH Bhatikar S/O. Manik Rao:-

1. Two MAXELL cassettes LN-90 & 16A Alkhateeb stars Nigh Hotel Kumarb. Shareli Tehlia Jeddah written in Urdu on one cassette & on another cassette Z-21 Muquddar Ka Sikkandar in Urdu and another words same as above.
2. One pink and white dotted striped saree having black border with white dots.
- 3) One polyester cream colour Zari lines disco saree having border of chocolate colour and flowers of chocolate colour
4. One red colour cotton saree with black border and dots
- 5) One american georgette saree with blue and chocolate colour border and flowers
6. One new office colour full pant, with label cotler terycot made in India/Waist 29"
7. One new jeans blue colour full pant having a leather label Buerlow 'original jeans made to last" with a picture of Buffalo
8. One cream colour carduro pant piece made in Japan Rajhabar style Kesalax-keuels brand deluxe 100% polyester-pique suiting wash & wear-one MA 300-50" X 25 yards. Made in Japan.
9. One navy blue polyester shirt piece with white linings picture of flower amitabah batthan star. Indian Star
10. One half sleeve polyester chocolate colour bush shirt having a label of Apex wear 35 Span X span with one pocket on left-side 100
11. One white thin brown striped fullsleeve shirt having label of Apex wear 39-EM texurised fabrics
12. One set of chocolate colour baba suit smallsize with mark of pickture hat and ball sports 10/15 26
13. One set of cream colour baba shirt small size with mark of hat and ball sports 24
14. One red colour baba suit, smallsize with hat and ball sports having a label FLYWHEEL HONGKONG 22
15. One cream chocolate colour striped baba suit small size with a label flywheel made in Hongkong with a picture of calf
16. One black sketch pen 'Grihta'
- 17) Two camlin pencils and
- 18) Two nataraj Pencils.

:: 3 ::

As per Rule.23 of P&T MAN.VOL.VII, the personal bags of the officials while on duty in the mail van should contain only roll of bedding not exceeding 1 metre by 1.2 metre in girth. Hence, S/Sri.K.Eswaraiah and M.Laxmaiah by possessing the above said articles in their personal bags have violated the provisions contained in Rule-No.23 of P&T MAN.VOL.VII. Sri.K.Eswaraiah Mailguard has also admitted in his DR of Z-29/I dt.6/7.4.84 regarding the possession of the above said articles in the personal bags, with his dated signature on 8.4.84. A Panchanama was also conducted by Sri.Mir Taher Ali Nasir Inspector.CB.CID.Hyd'bad, of all the above articles seized by the Police, in the RMS compartment of Rayalaseema Express (Tirupathi-Hyd'bad) on 8.4.84, (wherein S/Sri.K.Eswaraiah and M.Laxmaiah MG affixed their signatures, in token of having admitted it to be correct) *Slct* *Deleted*

Hence, S/Sri.K.Eswaraiah MG and M.Laxmaiah MM have failed to maintain devotion to duty by allowing Sri. Subhash Dalatkar to travel in the Mail Van of Z-29 IN dt. 7.4.84 unauthorisedly without Rly.ticket Violating the provisions contained in Rule 3(1) (ii) of CCS(Conduct)Rules.1964 S/Sri.K.Eswaraiah and M.Laxmaiah MM have also acted in a manner unbecoming of a Govt.Servant by possessing unaccountable articles in their personal bags, while on duty in the Mail van, contravening the provisions contained in Rule 3(1) (iii) of CCS(Conduct)Rules.1964.

B.B.R.D. - 20
(E.S.P. MURTHI)
SUPDT.RMS-Z'IN.Hyd'bad.1.

T. K.

24

13

ANNEXURE.III

List of documents and materials by which the articles of charge framed against 1) Sri.K.Eswaraiah, Mailguard, SRD 'Z'Dn, Kazipet and 2) M.Laxmaiah, Mailman, SRD 'Z'Dn, Nirmal are proposed to be sustained.

- 1) DR of Z-29 Out/IN dt. 5/7-4-1984 *RQ-1*
- 2) Panchanama conducted by Mir Taher Ali Nasiri Inspector of Police CB.CID, Hyd'bad in RMS compartment No.65n2/30 Rayalaseema Express. (Tirupathi to Hyd'bad) on 8.4.1984 at 06.15 AM commenced at Tandur, RS. *RQ-2*

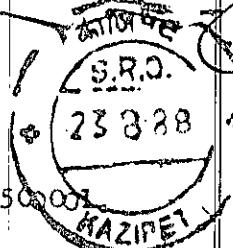
SSRD ~ 6
(E.S.R.Murthi)
Supdt.RMS 'Z'Dn, Hyd'bad.1.

ANNEXURE.IV

List of witness by whom the articles of charge framed against 1) Sri.K.Eswaraiah, Mailguard, SRD 'Z'Dn, Kazipet and 2) M.Laxmaiah, Mailman, SRD 'Z'Dn, Nirmal are proposed to be sustained.

- 1) Sri.K.Appa Rao, *HRD, RMS 'Z'Dn, Hyd'bad.1.*
- 2) Sri.H.Nagarajan.I.I, *Postmaster General, A.P.Circle, Hyd.1.*
- 3) Sri.Mir Taher Ali Nasiri, Inspector, CB.CID, Hyd'bad.4.
- 4) Sri.Rahemuddin, S.I.CB.CID.

SSQH ~ 6
(E.S.R.Murthi)
Supdt.RMS 'Z'Dn, Hyd'bad.1.



DEPARTMENT OF POSTS INDIA
Office of the Superintendent R.M.S. "2" Division, Hyderabad 500001

Memo No. K5/1/85-85 dated at Hyderabad 500001 dated the 22-3-1988

PROCEEDINGS

Read the following:

1. This office memo of charges under Rule 14 of CCS (CCA) Rules, 1965 vide No. K5/1/84-85 dated 26-2-87 issued to S/Sri K.Eswaraiah, Mail Guard, S.R.O "Z" Division, Kazipet and M.Laxmaiah, M.M., S.R.O. 'Z' Divn. Nirmal in common proceedings.
2. (i) Statement of defence dated 10-3-87 from Sri K.Eswaraiah Mailguard to the memo of charges.
(ii) Statement of defence dated 10-3-87 from Sri M.Laxmaiah, Mailman to the Memo of charges.
3. This office memo No. K5/1/84-85 dated 1-5-87 appointing Sri K.Murali Rao, Dy. Supdt. Hyderabad city division, Hyderabad as Inquiry Officer.
4. This office Memo No. K5/1/84-85 dated 1-5-87 appointing Sri T.A.S.Sitarama Murthy, aSRM Kazipet RMS as presenting officer.
5. This office Memo No. K5/1/84-85 dated 27-7-1987 issued to Sri K.Eswaraiah, M.G and M.Laxmaiah M.M. in which corrigendum to Memo of charges is issued.
6. Inquiry report dated 29-6-88 of Sri K.Murali Rao, Dy. Supdt. of P.Os, Hyderabad city Division, Hyderabad and Inquiry officer.
7. Other connected records.

In this office Memo No. K5/1/84-85 dated 26-2-87 S/Sri K.Eswaraiah Mail Guard and M.Laxmaiah, Mailman were informed that it was proposed to hold an Inquiry against them under Rule 14 of CCS(CCA) Rules, 1965 in common proceedings based on the following:

- 1) Statement of articles of charges.
ii) Statement of imputations of misconduct and misbehaviour.
iii) List of documents by which the articles of charge are proposed to be sustained.
iv) List of witnesses by whom the articles of charge are proposed to be sustained.
2. S/Sri K.Eswaraiah, Mailguard and M.Laxmaiah Mailman were directed to submit within 10 days of the receipt of the memo, written statements of their defence and to state whether they desire to be heard in person. They were also informed that an Inquiry would be held only in respect of those articles of charge which were not admitted and that they should, therefore, specifically admit or deny the charges. They were further informed in the said memo that if they failed to submit their statements of defence within the specified period or did not appear in person before the Inquiry Authority, otherwise failed or refused to comply with the provisions or Rule 14 of CCS(CCA) Rules, 1965 or the orders/directions issued in pursuance of the said rules, the Inquiry Authority would hold the Inquiry against them ex parte.

contd., 2.

3. The articles of charge, the imputations of misconduct and misbehaviour, the list of documents and the list of witnesses are as follows:

I. Statement of articles of charge framed against S/Sri K.Eswaraiah Mailguard, SRO 'Z' Kazipet and M.Laxmaiah Mailman, SRO ZD1vn. Nirmal

ARTICLE-I.

That the said Sri K.Eswaraiah while working as Mail Guard of Z-29/1 Out/IN section dt.4/7-4-1984 in collusion with Sri M.Laxmaiah Mailman of the set allowed Sri Sushash Balatkar S/o Manik Rao, Ex-RH Attendant Guntakal to travel unauthorisedly in the RMS van of Rayalaseema Express (Z-29 IN dt.7.4.84) violating the provisions contained in Rule 653(1) of P&T Manual Vol.II.

ARTICLE-II

That during the afore-said period and while functioning in the afore said section, the said (i) Sri K.Eswaraiah, 2) M.Laxmaiah and 3) Subash Balatkar possessed some new clothes cassettes, cooling glass, ball pen, pencils etc., most of which are of Foreign make in their personal bags. S/Sri K.Eswaraiah, M.G and M.Laxmaiah M.M. unauthorisedly possessed some articles in their hand bags in violation of the provisions contained in Rule 23 of P&T Man.Vol.II.

and thus, i) Sri K.Eswaraiah, Mailguard and 2) M.Laxmaiah Mailman have failed to maintain devotion to duty and also acted in a manner unbecoming of Govt. Servants and violated the provisions of Rule 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules. 1964.

II. Statement of imputations of misconduct or misbehaviour in support of the articles of charge framed against S/Sri K.Eswaraiah, Mailguard and M.Laxmaiah M.M.

ARTICLE-I.

S/Sri K.Eswaraiah and M.Laxmaiah were arranged to work with Z-29 Out/IN section dt.4/7-4-1984, when Sri H.Nagarajan I.I., O/o K.M.G A.P.Circle, Hyderabad along with S/Sri Mir Taher Ali Nasir, Inspector CB.CIV Hyderabad, Rahimuddin S.I., CB.CIV., and along with two other witnesses, S/Sri R.Shivaraju. TEE and Shabuddin entered the RMS compartment of Rayalaseema Express, working by train No.30 UP in which Z-29 IN section dt.7.4.84 functioned, by surprise at Tandur RS on the early morning of 8.4.84, one person by name Sri Sushash Balatkar, Ex-PT.Rest House attendant of Guntakal was found travelling in the Mail van along with S/Sri K.Eswaraiah and M.Laxmaiah. The above said Sri Sushash Balatkar was found travelling in the mail van without ticket. As per rule No.653(1) of P&T Man.Vol.II no outsider should be allowed to travel in the mail van. Hence, Sri K. Eswaraiah, MG and Sri M.Laxmaiah, M.M have failed to comply with the provisions contained in Rule No.653(1) of P&T Man.Vol.II, by allowing Sri Sushash Balatkar to travel in the Mail van unauthorisedly.

ARTICLE-II

When the above said Inspecting Officers checked the personal bags of S/Sri K.Eswaraiah, MG, M.Laxmaiah M.M who worked with Z-29 IN dt.7.4.84 and that of Sri Sushash Balatkar who travelled in the above said section unauthorisedly, the officers found new clothes, cassettes, cooling glass, ball pen etc., most of which are of Foreign make, in the personal bags of S/Sri K.Eswaraiah, M.Laxmaiah and Sri Sushash Balatkar. The Details of articles found in the personal bags of the above three persons are given below:-

contd..3.

Sri K. Eswaraiah, Mailguard.

1. Cooling glass partly black and white with inscription over side glass as 'PORSCHE DESIGN (A)' with a black plastic container with Zip and name Merari written on it.
2. One red colour ball pen with multicoloured refills
3. One nailcutter Korea '777' with a knife and opener.

SRI H. LAXMIAH VAN ATTENDANT

1. One ash colour full pant without any marking
2. One black and brown stripes full pant with a label 'Capra'
3. One new white polyester full sleeves shirt having label of 'Appex Wear' termisised fabric '39'.
4. One new navy blue white chocolate colour striped full sleeves shirt having label 'Lastraba' 5/14-14 see reverse 100% antromy long machine wash cold line dry.
5. One biscuit colour striped full sleeves shirt having label fit-well tailor near Highcourt, Hyd.
6. One light green colour half-sleeve shirt.
7. One black Wig with markings taviron(R) made in Korea.

3) SUB-SH BAILIKAL S/o Manik Rao:-

1. Two MAXELL cassettes LN-90 A-16A Alkhateeb Sharoo Nigh Hotel Kumarb. Shareli Tehlia Jeddah written in Urdu on one cassette and on another cassette Z-21 Muquddar Ka Sikkandar in Urdu and another words said as above.
2. One pink and white dotted striped saree having black border with white dots
3. One polyester cream colour Zari lines disco saree having border with orange chocolate colour and flowers of chocolate colour.
4. One red colour cotton saree with black border and dots.
5. One american georgette saree with blue and chocolate colour border and flowers.
6. One new office colour full pant, with label cotler terycot made in India/waist 28".
7. One new jeans blue colour full pant having a leather label bero "Original jeans made to last" with a picture of biffalow.
8. One cream colour carduro pant piece made in Japan Rajabazar style Kusalik-kewels brand deluxe 100% Polyester-picque suiting wash & wear one MA 300-58" x 25Yards. Made in Japan.
9. One navy blue polyester shirt piece with white linings picture of flower amitabh bachar star. Indian star.
10. One half sleeve polyester chocolate colour bush shirt having a label of Appex Wear-35 Span x span with one pocket on left side.
11. One white thin brown striped fullsleeve shirt having label of Appex Wear 39-Q1 texurised fabrics
12. One set of chocolate colour baba suit small size with mark of picture hat and ball sports
13. One set of cream colour baba suit small size with mark of hat and ball sports.
14. One red colour baba suit small size with bat and ball sports having a label FLYwheel HONGKONG.
15. One cream chocolate colour striped baba suit small size with a label FLYwheel made in Hongkong with a picture of calf.
16. One black sketch pen 'Grinta'.
17. Two camlin pencils and
18. Two natraj pencils.

As per rule 23 of P&T Man. Vol.VII, the personal bags of the officials while on duty in the mail van should contain only roll or bedding not exceeding 1 metre by 1.2 metre in girth. Hence, S/Sri K. Eswaraiah and Sri. Laxmaiah by possessing the above said articles in their

contd...4.

personal bags have violated the provisions contained in Rule No.23 of P&T Man. Vol.VII. Sri K.Eswaraiah Mail guard has also admitted in his D.R. of Z-29/1 dt. 6/7.4.84 regarding the possession of the above said articles in their personal bags, with his dated signature on 8.4.84 a panchanama was also conducted by Sri Mir Taher Ali Nasri, Inspector O.B.CID Hyderabad, of all the above articles seized by the police, in the RMS compartment of Rayalaseema Express (Tirupathi-Hyderabad) on 8.4.84, wherein S/Sri K.Eswaraiah and M.Laxmaiah MG affixed their signatures, in token of having admitted it to be correct.

Hence, S/Sri K.Eswaraiah, MG and M.Laxmaiah, MG have failed to maintain devotion to duty by allowing Sri Sudhakar Balatkar to travel in the Mail van of Z-29 IN dt. 7.4.84 unauthorisedly without Railway ticket violating the provisions contained in Rule 3(1)(ii) of CCS(Conduct) Rules, 1964 S/Sri K.Eswaraiah and M.Laxmaiah M.M have also acted in a manner unbecoming of a Govt. servant by possessing unaccountable articles in their personal bags, while on duty in the mail van, contravening the provisions contained in Rule 3(1)(iii) of CCS(Conduct) Rules. 1964.

III. List of documents and materials by which the articles of charge framed against S/Sri K.Eswaraiah Mailguard, SRO Z Divn, Kazipet and 2) M.Laxmaiah, Mailman SRO Z Divn. Nirmal are proposed to be sustained.

1)

D.R. of Z-29 Out/IN dated 5/7/4-1984.

2)

Panchanama conducted by Mir Taher Ali Nasri Inspector of Police CB CID Hyderabad in RMS compartment No.6502 30 Rayalaseema Express (Tirupathi to Hyderabad) on 8.4.84 1984 at 06.15 AM commenced at Tandur RS.

3.

IV. List of witness by whom the articles of charge framed against 1) Sri K.Eswaraiah Mailguard SRO Z Divn. Kazipet and 2) M.Laxmaiah Mailman SRO Z Divn. Nirmal are proposed to be sustained.

1)

Sri K.Appardo, H.R.O. RMS Z Divn. Hyderabad.

2)

Sri H.Nagarajan I.I. O/o Postmaster General, A.P.Circles, Hyd-1.

3.

Sri Mir Taher Ali Nasri, Inspector, CB CID Hyderabad-4.

4.

Sri Raheemuddin S.I. GS CID.

4.

S/Sri K.Eswaraiah, MG and M.Laxmaiah M.M. submitted their statements of defence on 10.3.1987 denying the charges. Thereupon, Sri P.Murali Rao, Dy.S.P.Os. Hyderabad city division, Hyderabad and the Inquiry Officer in the case conducted the Inquiry from 18.5.87 and completed the same on 16.2.1988. He submitted his report on 29.6.1988.

5.

Sri P.Murali Rao, Dy.S.P.Os, Hyderabad city division, Hyderabad and the Inquiry Officer in the case conducted the Inquiry from 18.5.87 and completed the same on 16.2.1988. He submitted his report on 29.6.1988.

6.

The I.O. in his findings stated that although oral evidence was produced through the witnesses viz. S/Sri Nagarajan, Mir Taher Ali Nasri and Rahimuddin that the said evidence was not corroborated by the version of disinterested and independent witness. He further stated that he did not place any evidence on the veracity of the evidence as it had not been corroborating and that the documents produced in support of the two charges do not bear any proof to implicate the two Govt. servants in the two charges as no other evidence from any independent witness was produced. The I.O. finally concluded that the charges 1 and 2 were not proved.

contd..5.

7.

7. I have carefully gone through the findings on the I.O. The I.O. agreed that oral evidence was available, but argued that it was not corroborated by the version of a disinterested independent witness. The argument of the I.O. is not correct. The witnesses in the case were S/Sri H. Nagarajan, I.I.O/o P.M.G. Andhra, Mir Tahir Ali Nasri Inspector CB CID and Rahmuddin S.I. CB CID. It is not correct to say that the above witnesses are not independent. It is also not correct to say that they are not disinterested. There is no reason, whatsoever, that to believe that the above said witnesses are interested to foist a case against the charged officials. The I.O. further argued that the two documents produced in support of the two charges do not bear any proof to implicate the two charged officials as no other evidence from any independent witness was produced. This argument is also not acceptable on the same grounds mentioned above.

8. The I.O. accepted that there is clear evidence, but he terms the witnesses as not independent and disinterested and on that plea opines that the charges are not proved. The plea putforward by the I.O. for coming to such opinion is untenable, unfounded and hence unacceptable. The I.O. did not mention in any points on the basis of which he came to the conclusion that the two witnesses were not independent and disinterested.

9. There is even according to the version of the I.O. ample evidence to establish the charges. I am fully convinced that that the three witnesses are quite independent, unbiased and disinterested. It is inconceivable, rather preposterous, that these three officers would have any reason to foist a false case against the charged officials who were in no way connected with these officers. The oral and documentary evidence adduced during the course of Inquiry clearly establishes the two charges against the charged officials. I therefore conclude that the two articles of charge are proved beyond doubt.

O R D E R

I, R.Kameswara Rao, Superintendent, R.M.S. "Z" Division, Hyderabad, hereby order that S/Sri K.Eswaraih, Mail Guard and H.Lammaiah Mailman be dismissed from service with immediate effect.

(R.Kameswara Rao)
Superintendent, R.M.S.
"Z" Division, Hyderabad.

a copy of this memo is issued to:-

1. Sri H.Eswaraih, Mail Guard through S.R.O. Z Division, Kazipet
2. Sri H.Lammaiah Mailman through S.R.O. "Z" Division, Nancherial.

together with a copy of I.O's report -
The S.R.Os should deliver the Memos to the officials under acqaintance and forward the receipts to the Divl. office. They will also forward the relieving charge report of the officials to Divl. office.

3. I.R.M. Z-2nd sub-div. Kazipet 506003.
4. H.R.O. A/Cs, R.M.S. Z Divn. Hyderabad 500001 for information and necessary action. He will please acknowledge the receipt.

(R.Kameswara Rao)
Superintendent R.M.S.
"Z" Division, Hyderabad 500001.

T.C

against the above accused person, moreover the ~~articles~~ recovered from them could not be identified or claimed by any body though a wide circulation about the recovered property was given by the Postal authorities by way of issuing circular to all the concerned on 19-4-84, and there is no hope of getting any claimants for the above properties.

Considering the circumstances of this case the material available against the accused persons it is a fit case for departmental action against them. The above case has been referred as undetectable by this Branch. You are therefore requested to take departmental action against the concerned.

Yours faithfully,

~~To Spl. Insp. Genl. of Police,
Crimes, Hyderabad.~~

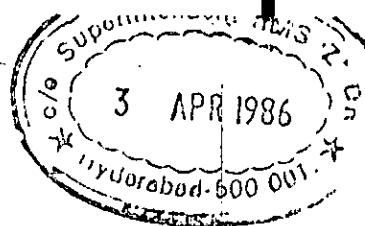
Copy to the Director of Postal Services, Andhra Pradesh, Northern Region, Hyderabad-1 with reference to D.O. No. Inv/ D-Misc/84-85, dt. 31-1-86.

T.M.

*With thanks,
S.P.I.C.
D.O. 1/86
W.P. 17/20/86*

*27/2/86
B.M. General Post*

ANNEXURE V
POLICE DEPARTMENT



FROM

To

Sri K. A. Narayanaswamy, Ph.D., IPS.,
Spl. Inspr. Genl. of Police (PaC)
holding Addl. Charge of
Spl. Inspr. Genl. of Police,
Crimes, Hyderabad.

The Superintendent,
Railway Mail Service 'Z'
Division,
Hyderabad-1

C.No. 554/C8/84, dt. 2-4-86.

Sir,

Sub:- Alleged abstraction of contents by the staff
of Z-29 - Report - Reg.

Ref:- 1. Cr. No. 74/84 U/s 420 and 409 IPC of RPS Hyd.
2. Your Lr. No. 15/1/84, 85, dt. 27-12-85.

....

During the course of investigation in Cr. No. 74/84 U/s 420 & 409 IPC of R.P.S., Hyderabad the postal authorities were requested to furnish the information about the persons, who have booked parcels to another party which were being transported in the mail van concerned with the above case. Accordingly Postal authorities have circulated the information to all concerned calling for the information including any complaint received by them from the parties in this regard, but so far no claimant has come forth claiming the above seized properties to be in own except one Ed. Yousuf v/o. Sibligunj, Hyderabad. Ed. Yousuf had stated that his co-sister Hikosin bkh. Mollay who is at Jeddah has sent some parcel to him. He has also stated that on 10-4-84 he received intimation from Bahadurpura Post Office that some parcel has come in his name, and on 12-4-84 he went to Bahadurpura Post Office and took delivery of parcel RP No. 2739, dt. 4.4.84 which was containing one printed cotton saree, one cassette tape (LH) 90 Alkhatel Stereo of 'Shol' as against (2) sarees (1) Jocket (3) Cassette and (4) Spectacles. He complained about missing of other articles to Post Master Bahadurpura, from which he took open delivery of the above parcel and noted down its contents. Post Master retained the Postal writer with him. Ed. Yousuf also confirmed from his brother of Jeddah that he has sent all the items noted on the parcels, but he received only one saree and one cassette which he is holding with and will be produced whenever asked for. Except the above complaint there is no other complaint received so far in this case nor there is any hope of getting any more claimant. With regard to the claim of the Yousuf as above, he is not in a position to tell anything more than what he stated.

In view of the above facts, there is no clinching evidence

PTC

Neat Copy of this letter placed below
i.e. next page -

:: 2 ::

so far in this case nor there is any hope of getting any more claim. With regard to the claim of the Yousuf as above, he is not in a position to tell anything more than what he stated.

In view of the above facts, there is no clinching evidence against the above accused persons, moreover the articles recovered from them could not be identified or claimed by any body though a wide circulation about the recovered property was given by the Postal authorities by way of issuing circular to all the concerned on 19.4.84, and there is no hope of getting any claims for the above properties.

Considering the circumstances of this case, the material available against the accused persons it is a fit case for departmental action against them. The above case has been referred as undetectable by this Branch. You are, therefore, requested to take departmental action against the concerned.

Yours faithfully,

Sd/-

for Spl. Inspector General of Police,
Crimes, Hyderabad.

Copy to the Director of Postal Services, Andhra Pradesh,
Northern Region, Hyderabad-1 with reference to D.O.
No: Inv/1-Disc./84-85 dt. 31.1.86.

/True Copy/

ADVOCTE.

Betts Copy of AN-V

27

POLICE DEPARTMENT

32

From:

Sri K. A. Narayana Swamy, Ph.D.I.P.S.,
Spl. Inspector General of Police (P&C)
Holding Addl. Charge of
Spl. Inspector General of Police,
Crimes, Hyderabad.

To:

The Superintendent,
Railway Mail Service, 'Z'
Division, Hyderabad.

C.No: 654/CB/28 dated 2.4.1986.

Sir,

Sub: Alleged obstruction of contents by the staff
of Z-29 - Report - Reg.

Ref: 1. Cr. No. 74/84 u/s. 420 and 409 IPC of RPS Hyd.
2. Your Ltr. No: RPS/1/84-85 dt. 27.12.1985.

During the course of investigation in Cr. No: 74/84 u/s. 420 & 409 IPC of R.P.S., Hyderabad the postal authorities were requested to furnish the information about the persons, who have booked parcels to another party which were being transported in the mail Van concerned with the above case. Accordingly Postal authorities have circulated the information to all concerned calling for the information including any complaint received by them from the parties in this regard, but so far no claimant has come forth claiming the above seized properties to be his own except one Md. Yousuf S/o Sabligunj, Hyderabad. Mohd. Yousuf has stated that his co-sister Mr. Mohsin Mohd. Molly who is at Jeddah has sent some parcel to him. He has also stated that on 10-4-84 he received intimation from Bahadurpur Post Office that some parcel has come in his name, and on 12.4.84 he went to Bahadurpur Post Office and took delivery of parcel No: 2739 dt. 4.4.84 which was containing one printed cotton saree, one cassette Max (LN) 30 Alkhalif Stereo of 'Shole' as against (2) Sarees (1) Jocket (3) Cassettes and (4) Spectacles. He complained about missing of other articles to Postmaster Bahadurpur, from which he took open delivery of the above parcel and noted down its contents. Post Master retained the Postal wrapper with him. Md. Yousuf also confirmed from his brother of Jeddah that he has sent all the items noted on the parcels, but he received only one saree and one cassette which he is holding with and will be produced whenever asked for. Except the above complaint there is no other complaint received so far in this case nor there is any hope of getting any more

Dt. 28-06-1993.

From:

M. LAXMINAIAH
 Mail Man
 Nehru Nagar
 H. No. 3-8-56
 Ramanthapur,
 R.R. DISTRICT: 13

To

The Director of Postal Services,
 Q/o the Post Master General,
 Hyderabad Region,
 H Y D E R A B A D.

Respected Sir,

Sub:- Appeal against the order of dismissal issued by the SDM 'Z' Da., vide No. K5/1/84-85, dt. 22-08-1988.

Ref:- 1) My appeal Dt. 9-9-1988.
 2) DPS ARNR No. RDB/ST/21-3/35/88 Dt. 31-8-89.

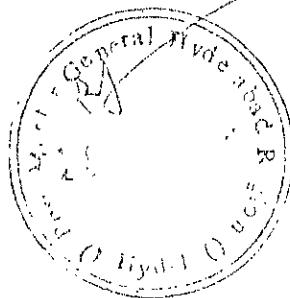
I had submitted an appeal against the order of dismissal on 9.9.88. This was rejected by the then DPS on 31-8-89.

I was already being prosecuted at the time of my dismissal. A case was filed in the XIII Metropolitan Magistrate for Railways under No. CC 114/88. This case continued till 16.6.1993 on which date the Honourable Magistrate acquitted me.

Under rule 81 of P&T Manual Vol. III an appeal against a punishment should not be disposed until the criminal case is over, if the charge for which the punishment has been awarded is identical to the subject matter of prosecution. In my case the subject matter for prosecution was possession of certain articles while on duty in Section 'Z' 29 out in on 6/7/8/84. Out of the two charge in the departmental charge sheet on was also the same. Therefore the appeal was disposed when prosecution was in progress for the same offence and rule 81 of P&T Manual Vol. XII has been violated. As the disposal was irregular I did not submit any petition.

I would also invite your kind attention to case law 1993 23 Act 131 wherein clear instructions are laid down that when the departmental action and criminal proceedings are initiated for the same offence, departmental proceedings are to be stayed until charges are framed in the court of law and if the law charges so framed are identical, departmental action is to be stayed till the criminal case is over.

Contd... 2.



In the light of rule 81 and the observation of the Court, the premature disposal of the appeal needs to be reversed and the appeal treated as pending as on date and disposed now. I request you to initiate action in this regard.

I also request you that as the appeal is against a major penalty, I may kindly be given a personal hearing along with my AGS, and as provided under rules.

I also request you to consider the following additional points as part of my appeal in view of my acquittal. I am enclosing a copy of the acquittal order herewith.

1) Under rule 82 of P&T Manual Vol.III, it is not permissible to hold enquiry into such charges which are already examined and decided by a court of law.

2) Vide case law Sri Gurunath Preran vs State of Orissa 1979 47 CLT 332, the departmental authority cannot reappreciate evidence on record (after criminal proceedings) Disciplinary authority cannot take a view contrary to judicial view on the same charges on reappraisal of the same evidence without anything more.

3) The charge was of possession of certain articles while on duty in the running section. The evidence was (a) Raid by PW1 and 2 (Barvasri Taher Ali, Police Inspector and H.Nagarajan ASP and (b) Panchanama in both the proceedings. The judicial view about this evidence is as follows :-

Page 13 (line 2 and 3) of the Judgement :- Punch witnesses not examined.

Page 16 (bottom 3 lines) "It is not possible to believe the version of PWI & II regarding arrest of A1 to 3 (myself) and seizure of articles MGS 1 to 31 from their possession".

Page 20 "unless their possessing the articles are established beyond doubt".

Page 22 line 6 and 7 - "The very search is not in accordance with law".

Contd..3.

A RAMAKRISHNA RAO

B.A., LL.B., P.G.D. C.R.S.

ATE

PHONE: 663036
1-1-230/9, 1-10-29/ASHOK NAGAR,
Chikkadapally, HYDERABAD-500 020.
Hyderabad-500 020

By Regd. Post Ack. Due

Date 22-12-1993

To

The Director of Postal Services,
c/o the Postmaster General,
Hyderabad Region,
Hyderabad-500 001.Under instructions from my client K. Ishwariah, formerly mail
Guard RMS 'Z' Division, Hyderabad, I hereby give you the following
notice.

M. Lakshmaia

1. My client was falsely implicated in a criminal case that he was in possession of certain articles while on duty in 'Z' 29 cut on 6.7.1934 between Guntakal and Hyderabad. He was tried by the XIII Metropolitan Magistrate for Railways, Hyderabad under CC 114/33 and was honourably acquitted on 16/6/93.
2. While the criminal case was pending my client was departmentally proceeded against under Rule 14 CCS (CCA) Rules and was arbitrarily dismissed from service. He preferred an appeal which was also rejected.
3. As per Rule 31 of P and T Manual Vol. III an appeal against a punishment should not be disposed while the criminal case for the same offence is pending. Therefore the rejection of the appeal is against the departmental rules and is liable to be reopened after the acquittal of my client.
4. My client submitted a representation to you to reopen and review the appeal case on his acquittal. This application was dated 23.6.1993. Though it is about 6 months since the representation was submitted, there is no response from you.
5. Your silence on the issue would force him to seek legal remedy for your violating the provisions of Rule 31 of P and T Manual Vol. III at heavy cost.

You are therefore called upon to dispose the representation of my client and give him a reply within 15 days failing which my client would be constrained to approach the appropriate legal forum seeking redressal of his grievances making you liable for the costs and consequences thereof.

Yours faithfully,

Advocate

TC.

34

34

JUDGEMENT

AS PER HON'BLE JUSTICE SHRI V. NESLADRI RAO,
VICE-CHAIRMAN I

Heard Shri S. Ramakrishna Rao, learned
counsel for the applicant and also Shri K. Bhaskar
Rao, learned standing counsel for the Respondents.

2. The applicant was dismissed from service
by order dated 22-8-88. On 31-8-89 the appeal
of the applicant was rejected. On the basis of the same
incident for which departmental enquiry was held
which resulted in his dismissal by order dated
22-8-88, C.C. 114/88 filed on the file of XIII
Metropolitan Magistrate for Railways, Secunderabad.
The applicant was acquitted by the order dated
16-6-93 in the above C.C. Thereupon, the applicant
filed appeal dated 28-6-93 against the order
dated 22-8-88 by which the applicant was dismissed
from service. The said appeal which was filed
on 28-6-93 is said to be not considered. This
OA was filed praying for direction to Respondent 2
to consider the said appeal dated 28-6-93 and to
dispose the same. The appeal against the order
of dismissal dated 22-8-88 was dismissed by
order dated 31-8-88. When the said appeal was
already disposed of, the applicant has no right
to prefer again another appeal against the order
dated 22-8-88.

3. Rule 29 of CCS (CCA) Rules does not confer the
power of review on the appellate authority.

Rule 29(A) of CCS CCA rules lays down that the
President has the power of review. There is no
provision in CCS CCA rules conferring the power
of review upon any authority other than the President.

X

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A. 214/94.

Dt. of Decision : 21-9-94.

Mr. M. Lakshmaiah

.. Applicant.

1. Superintendent of Railway Mail
Service, 'Z' Division, Hyderabad.2. Director of Postal Services,
Hyderabad Region, Hyderabad.

.. Respondents.

Counsel for the Applicant : Mr. S. Ramakrishna Rao

Counsel for the Respondents : Mr. K. Bhaskar Rao, Addl. CGSC.

OO RAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

..2

To

1. The Superintendent of Railway Mail Service,
'Z' Division, Hyderabad.
2. The Director of Postal Services,
Hyderabad Region, Hyderabad.
3. One copy to Mr.S.Ramakrishna Rao, Advocate, CAT.Hyd.
4. One copy to Mr.K.Bhasker Rao, Addl.CGSC.CAT.Hyd.
5. One copy to Library, CAT Hyd.

pvm

Case No. Q.A 246/96
Date - Judge 21/2/96
Case No. 6 (10 day)
10 day
and (10)

It is well settled that any authority or court or Tribunal which is having any inherent power cannot exercise the power of review unless it is conferred. There is no inherent jurisdiction in regard to the appellate authority created under CCS CCA rules. As such, even the appeal dated 28-6-93 cannot be treated as review.

4. The contention of the applicant is that the appeal should not even be disposed of when the CC was pending in regard to the same incident and as the appeal was disposed of during the pendency of the CC and as the applicant was acquitted in the said C.C, the appeal requires re-consideration. In view of the above, the review in regard to the appellate authority, the only remedy that is open to the applicant in such a case is either to file a revision against the order dated 31-8-89 in the appeal or to move this Tribunal under Section 19 of A.T Act by filing a petition praying for condoning the delay.

5. Hence this OA is dismissed. But this order of dismissal does not deprive the applicant if so advised, to file a proceeding in the appropriate forum in view of the acquittance in C.C 114/88 if the incident mentioned in the said C.C and the relevant departmental enquiry is one and the same. No costs.

CERTIFIED TO BE TRUE COPY
.....
 Date..... 29/5/94
 Court Officer
 Central Administrative Tribunal
 Hyderabad Bench
 Hyderabad

T.C

42 11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: ADDITIONAL BENCH

AT HYDERABAD

O.A. No. 568 of 1995

Between:

M. Laxmaiah

... Applicant

And

Director of Postal Services,
Hyderabad Region, Hyderabad and
another.

... Respondents

REPLY STATEMENT

I, V.S. Krishna Murthy S/o V. Satyam aged about 56 years occ: Govt. Service r/o Hyderabad dom hereby solemnly and sincerely affirm and state as follows:

1. I am an Assistant Director in the Office of the Postmaster-General, Hyd. Region as such am well acquainted with the facts of the case. I am authorised ~~to give this reply, statement on behalf of~~ herein.

2. I have read the original application filed by the above named applicant and I deny the several material allegations made therein except those that are specifically admitted herein.

3. In reply to paras 1 to 3 : Needs no comments.

4. In reply to para 4 ; It is submitted that Sri M. Laxmaiah the applicant was working as a mail guard in RMS Z Dn., Hyderabad. On the night of 6/7.4.84, he was on duty in Z-29/OUT/IN section along with one Sri K. Eswaraiah Mailman. A search party consisting of a Investing Inspector of the department, an Inspector CB CID, Hyderabad and a Sub-Inspector CB CID, Hyderabad along with two witnesses entered into the RMS Compartment of Z-29 IN section on 7.4.84 at Tandur Railway station. They found one person Sri Subash Bala Thakar travelling unauthorisedly in the RMS compartment. On checking the personal belongings of Sri K. Eswaraiah, Sri M. Laxmaiah the two departmental officials available and that of the person travelling unauthorisedly they found new clothes, cassettes, cooling glasses, Ball pens items & most of which were foreign make.

ATTESTOR

DEPONENT

सहायक निदेशक डॉक सेवा
Assistant Director of Postal Services,
पोस्टमास्टर जनरल का कार्यालय
O/o. The Postmaster-General,
हैदराबाद रोड, Hyderabad Region,
हैदराबाद/HYDERABAD-500 001.

सहायक निदेशक डॉक सेवा
Assistant Director of Postal Services,
पोस्टमास्टर जनरल का कार्यालय
O/o. The Postmaster-General,
हैदराबाद रोड, Hyderabad Region,
हैदराबाद/HYDERABAD-500 001.

Sri K.Eswaraiah and Sri Laxmaiah, were proceeded against by R-2 under Rule 14 of the CCS(CCA) Rules, 1965, vide memo No.K5/1/84-85 dated 26.2.1987 (Annexure II (pages 18 to 22) to OA). A departmental enquiry was held. The enquiry officer in his report dated 29.6.88 held the charges not proved (Annexure III to OA) R-2, disagreed with the enquiry officer, held the charges as proved, on the basis of the evidence let in the enquiry and imposed the penalty of dismissal from service on the applicant (Annexure IV to OA). His appeal dated 9.9.88 was rejected by the appellate authority on 31.8.89 (Annexure I to OA).

It is further submitted that the inspector of Police, CID Hyderabad filed a charge sheet in the court of the XIII M.M. for Railways, Secunderabad against the two departmental officials and the outsiders, for committing theft of the articles found in their possession, from out of the registered parcels entrusted to them in the course of official transmission. The Hon'ble Magistrate held all the three accused not guilty of Sec.52 of Indian Post Office Act., because of the failure of the prosecution to prove the charge. However, the Hon'ble Magistrate gave the liberty to the department to take departmental action against the two officials for possessing the articles unauthorisedly.

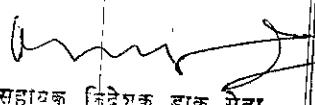
It is further submitted that the applicant on 28.6.93 submitted a representation to R-1, praying to set aside the punishment imposed by R-2, in view of the judgement of the Hon'ble Magistrate in the criminal case. He filed OA 217/94 in the Hon'ble Tribunal praying for a direction to R1 to consider and disposed his representation dated 28.6.93. This Hon'ble Tribunal while dismissing the OA on 21.9.94 gave the liberty of filing a proceeding in the appropriate forum in view of his acquittal in CC 114/88, if the incident mentioned in the said CC and the relevant departmental enquiry is one and the same. In pursuance of these directions this OA is filed in this Hon'ble Tribunal.

5. In reply to para 5(1): It is submitted that the applicant was charge sheeted departmentally for

ATTESTOR

DEPONENT


सहायक निदेशक डाक सेवा
Assistant Director of Postal Services,
पोस्टमार्क्स जनरल का कायलिय
O/o. The Postmaster-General,
हैदराबाद बोर्ड Hyderabad Region,
हैदराबाद, HYDERABAD-500 001.


सहायक निदेशक डाक सेवा
Assistant Director of Postal Services,
पोस्टमार्क्स जनरल का कायलिय
O/o. The Postmaster-General,
हैदराबाद बोर्ड Hyderabad Region,
हैदराबाद, HYDERABAD-500 001.

(i) allowing an outsider to travel unauthorisedly in the RMS Van.

(ii) for possessing some articles most of which were of foreign make in his hand bag unauthorisedly.

In the criminal case initiated by the police he was charged for committing theft of the articles in his possession, from out of the registered parcels entrusted to him in the course of official transactions. Thus the departmental allegations were quite different from those in the criminal case. The departmental enquiry was commenced on 18.5.87 and was concluded on 16.2.88. The applicant took part in the enquiry through out. At no stage of the enquiry or thereafter he did ask for keeping the enquiry proceedings pending till the finalisation of the criminal case. There is no provision in the Rules to keep departmental enquiry pending, till the finalisation of the criminal case.

(2) It is submitted that Rule-81 of P&T Manual Vol. VIII was deleted w.e.f. 16.1.89. R-1, the appellate authority decided the appeal on 31.8.89. Thus there was no violation of any rule by the appellate authority in deciding the appeal (Annexure-I).

(3) It is submitted that the disciplinary proceedings was finalised by R-2 on 22.8.88. At that time there was no provision to supply I.O. report to the concerned Govt. servant.

Copy of OM No.11012/13/85-Estt(A) dtd 26.6.89, wherein it was decided to supply a copy of I.O report was received by R-1 on 27.9.89 (Annexure-II). By that time R-1 disposed of the appeal of the applicant on 31.8.89. The applicant did not exhaust the channel of submitting a petition on the order of the appellate authority to the competent authority. It is clearly stated in the said OM "that the instructions issued will operate prospectively and will apply in cases where the disciplinary authority is yet to pass orders" (para 4). Subsequently the Hon'ble Supreme Court in the case of Union of India and Md.Ramzan Khan has decided the cut off date for supply of the I.O Report to the Govt. servant as 20.11.90. The ground of appeal is, therefore, not tenable.

ATTESTOR

DEPONENT

सहायक निदेशक डाक सेवा
Assistant Director of Postal Services,
पोस्टमैन जनरल एवं व्यापालिय
O/o T. Postmaster-General,
हैदराबाद अंच. Hyderabad Region,
हैदराबाद/HYDERABAD-500 061.

सहायक निदेशक डाक सेवा
Assistant Director of Postal Services,
पोस्टमैन जनरल एवं व्यापालिय
O/o T. Postmaster-General,
हैदराबाद अंच. Hyderabad Region,
हैदराबाद/HYDERABAD-500 061.

(4) It is submitted that at the time of finalisation of the disciplinary proceedings there was no provision to supply a copy of IO report or to communicate disagreement on IO report by the disciplinary authority. The disciplinary proceedings has issued in confirmity with the rules in force then.

(5) It is submitted that there was no violation of rules or prescribed procedure in finalising the disciplinary action. It is no where stated that the punishment order was issued under Rule 15. Common enquiry was held in respect of the applicant and another official namely Sri K.Eswaraiah. The disciplinary authority finalised disciplinary action in respect of both the officials. The appellate authority upheld the order of the disciplinary authority. The applicant did not prefer a petition to the competent authority on the order of the appellate authority.

(7) & (8) & (9) : It is submitted that the disciplinary authority recorded its reasons for disagreement with the IO report, in its disciplinary proceedings. The appellate authority considered all the grounds of appeal of the applicant and rejected his appeal. The applicant did not prefer a petition to the competent authority on the orders of the appellate authority.

10. It is submitted that the disciplinary authority considered all aspects of the case in awarding the punishment.

11. It is submitted that the applicant was prosecuted by the police, for committing theft of the articles in his possession, from out of parcel bags entrusted to him in the course of official transactions, under Section 52 of Indian Post Office Act which is reproduced below:

Section 52 of IPO Act:

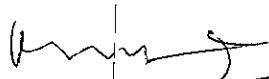
Penalty for theft, dishonest misappropriation, secretion, distraction or throwing away of Postal Articles:

Whoever being an officer of the post office commit theft in respect of, or dishonestly misappropriates, or for any purpose whatsoever, secretes destroys or throws away, any

ATTESTOR

DEPONENT


सहायक निदेशक डाक सेवा
Assistant Director of Postal Services,
पोस्टमास्टर जनरल का वायलिय
O/o. T. Postmaster-General,
हैदराबाद थोक Hyderabad Region,
हैदराबाद, HYDERABAD-500 001.


सहायक निदेशक डाक सेवा
Assistant Director of Postal Services,
पोस्टमास्टर जनरल का वायलिय
O/o. The Postmaster-General,
हैदराबाद थोक Hyderabad Region,
हैदराबाद, HYDERABAD-500 001.

postal articles in course of transmission by post or anything contained therein, shall be punishable with imprisonment for a term which may extend to seven years and shall also be punishable with fine. The applicant was acquitted on 16.6.93, because of the failure of the prosecution to prove the case against him under section 52 of the IPO Act beyond all reasonable doubts. The Hon'ble MM for Railways, Secunderabad in its judgement dtd 16.6.93 in page 20 gave the liberty to the department to proceed departmentally against the applicant and another departmental official. Thus the acquitted of the applicant in the criminal case is no way alters the departmental action taken against the applicant. Copy of judgement dated 16.6.93 is annexed as Annexure-III.

6. In reply to para 6 : It is submitted that the applicant did not exhaust the reminders available to him. He did not submit a petition to the competent authority on the orders of the appellate authority.

7. In reply to para 7 : Needs no comments.

8. In reply to para 8 : It is submitted that this Hon'ble Tribunal while disposing of on 21.9.94 OA 214/94 filed by the applicant advised the applicant to file a proceeding in the appropriate forum in view of his acquittal in CC 114/88, if the incident mentioned in the said CC and the relevant departmental enquiry is one and the same." As submitted above the incidence mentioned in the CC and the relevant departmental enquiry are quite different. The applicant has not made out any case. There is no merit in the OA. It is prayed that the OA be dismissed with costs.

DEPONENT

सहायक निदेशक डाक सेवा

Assistant Director of Postal Services,

पोस्टमास्टर जनरल का अधिलय

O/o : The Postmaster-General,

हैदराबाद ईक्य Hyderabad Region,

हैदराबाद, HYDERABAD-500 001.

Before me.

सहायक निदेशक डाक सेवा

Assistant Director of Postal Services,

पोस्टमास्टर जनरल का अधिलय

O/o : The Postmaster-General,

हैदराबाद ईक्य Hyderabad Region,

हैदराबाद, HYDERABAD-500 001.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
AT HYDERABAD

O.A. No. 218 of 1995.
218

M. Laxmaiah .. Applicant

And

Director of Postal Services
Hyderabad Region, Hyderabad
and another.

.. Respondents.

Reply

Received
16-7-96

J.S. Ravikumar



Filed by M.V. Ravikumar
ACM

15.7.96
15.7.96

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

48

OA No. 868 of 1995

Between:

M. Laxmaiah

...Applicant

A N D

Director of Postal Services,
Hyderabad Region and another.

...Respondents

REJOINDER FILED BY THE APPLICANT

I, M. Laxmaiah, S/o Chilkaiah, aged about 46 years, dismissed
Mail Guard of RMS 'Z' Division, do hereby solemnly and sincerely
affirm and state on oath as follows:

1. That I am the applicant in OA No. 868/95 before this Hon'ble Tribunal and of the case. I have gone through the counter affidavit in the case and submit as follows:
2. That with regard to para 4, it is humbly submitted that it is not proved that the raiding party entered the mail van at Tandur. After raiding the van, a panchanama was purported to have been conducted and one witness was a fruit vendor at Vikarabad Rly Platform, who cannot be expected to be available at Tandur Rly Station. During the rule 14 enquiry, this witness was not produced by the prosecutor. In the absence of producing the panchanama witnesses, the recovery of the articles as contended has not been proved. It is also submitted that there was no basis for the disciplinary authority, who found the charge as not proved to disagree. It is further submitted that acquittal for the failure to prove is tantamount to lack of evidence. It is stated that the Hon'ble Magistrate gave liberty to take departmental action and acting on this direction could not save the action taken before the judgement. As per the judgement of the Hon'ble Magistrate, I may be proceeded against departmentally on any date after pronouncement of the judgement. But in my case, dismissal was passed much earlier, which cannot be protected by the direction of the Hon'ble Magistrate.

M. Laxmaiah

3. That with regard to para 5, I humbly submit that apart from allowing an outsider in the van, the departmental charge sheet and criminal charge sheet do not differ at all. Even that outsider is implicated as an accused and except that the Hon'ble Court did not inquire into the merits of allowing an outsider, it has dealt all the aspects dealt departmentally. Even the outsider was implicated in the criminal case as a co-accused. The documents and witnesses relied upon both by the Deptt and the Court are one and the same. It is, therefore, submitted that the departmental and criminal charges are one and the same. I did not seek keeping the enquiry pending as it was initiated during the interval between the closure of the case by the Police first and its reopening by them again. It is, however, submitted that even if a ~~SPM~~ ought to have done so in the circumstances of the case.

4. That with regard to para 5 (2), it is submitted that rule 81 of P & T Manual Vol.III was deleted on 16.1.89 calnder case No in the Hon'ble Court being 114/88 and the appeal being dated 9.9.88, rule 81 was in force at the relevant time and the appeal should have been kept pending disposal of the criminal case.

5. That with regard to para 5 (3), it is submitted that the case was under challenge at the level of appellate authority when the OM stipulating supply of IO's report was issued on 26.6.89. The appeal was disposed only on 31.8.89. The respondents cannot seek protection under later order of the Supreme Court (dt. 29.11.90) for the omission on their part. It was held by the Hon'ble CAT, Allahabad vide (1993) 23 ATC 161 Allahabad that if the case is under challenge prior to Ramzan Ali's case, the challenge would continue and the cut off date 29.11.90 will not apply for supply of IO's report.

6. That with regard to para 5 (5), it is humbly submitted that there is only one rule in CCS (CCA) Rules for the imposition of penalty. The common proceedings ordered under rule 18 of CCS (CCA) rules does not allow issuing a common dismissal order

M. Lazarus

Punishment should be individual in as much as the appeal also should be individual. Punishment also should differ from person depending on the individual circumstances.

7. That with regard to para 5 (6), I humbly submit that the disciplinary authority did not follow the rules in disagreeing with the IO's report. The IO held the charges not proved based on evidence adduced during the enquiry. Possession of the articles unauthorisedly was sought to be proved through the Panchanama. But none other than the Police Inspector, Postal Inspector and a Police Sub-Inspector were produced during the enquiry, though the Panchanama was supposed to have been signed by one outsider Shabuddin a native of Bashirabad eking out living by selling fruits at Vikarabad Rly Station. Actually the raiding party entered the van at Sedam. But they say that the raid was at Tandur. It is not explained how one selling fruits at Vikarabad Rly Station could be present and be available to the raiding party at Tandur. Another signatory to the Panchanama was Sri Sivaraj, the TTE. He was also not produced as a witness. There was an allegation that Shri Subash Balatkar an outsider was in the van. If the TTE really entered the Mail Van and found an outsider unauthorised person, he would have charged the person. Shri Sivaraj was not produced as a witness, which shows that he was not a party to the raiding. In the van besides myself, there were Shri Eswaraiah, MG and Subash Balatkar. But the panchanama report does not bear their signature. In view of this, it is humbly submitted that there was no raid either at Sedam or at Tandur or even at Hyderabad and the entire story of raid was concocted. Realising this, the IO held the charge as not proved. If the disciplinary authority wanted to differ, he should have sent the IO's report with reasons for disagreement vide (1993) 23 ATC 726 Ahmedabad. This was not done and the punishment awarded behind my back was a stab in my back.

8. That with regard to para 10, it is submitted that the disciplinary authority was inconsiderate. Anyhow, his consideration should be reflected in writing in the punishment order, which is lacking in the case.

Sub

Mr. Laxmikant

IN THE CENTRAL ADMINISTRATIVE
TRIBUNAL : HYDERABAD BENCH
HYDERABAD

OA No. ~~218~~ of 1995

Between: OA 218 ~~75~~

M. Laxmaiah ..

Applicant

A N D

Director of Postal
Services, Hyderabad
Region and another. .. Respondents



REJOINDER

Filed for: The Applicant

Filed on: 27.7.96

filed by:

Sanka Ramakrishna Rao, Advocate,
1-1-230/9, Andhra Bank Lane,
Chikkadapally, Hyderabad.

*Received
27.8.96
for M.V. Rao & Rees*

COUNSEL FOR APPLICANT

*maybe filed
27/8/96
J.M.*

9. That with regard to para 11, I humbly submit that both the departmental and criminal charges are one and the same. There was no need at all to quote section 52 of IPOs Act, when no theft took place.

10. That I further submit that the respondents are silent on my submission under para 5 (4) and (6).

It is, therefore, respectfully prayed that the Hon'ble Tribunal may be pleased to grant the reliefs prayed for in the OA, in the light of the submissions made above, in the interest of justice and be pleased to pass such other and further order or orders as the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

Sworn and signed on this
the 27th day of July, 1996
at Hyderabad.

M. Laxmi
D E P O N E N T

Before me

B. Buchaih
ADVOCATE
(B. BUCHAIH)

Mr. Ram

Counsel for the App/Cont.

12/12
MA.1014/94 in OASR.3085/94

ORIGINAL

Notice in P.R.A.

List it on 23.1.95.

POSTAL

REG CAS

IN THE CENTRAL ADMINISTRATIVE
TRIBUNAL HYDERABAD BENCH AT
HYDERABAD.

D
H.R.R
M(A)

H.W.R.J
VC

MA.1014/94 in OASR.3085/94

13-2-95 formally

List it on ~~21-2-95~~ by noting the name of
Smti N. V. Aggarwal Reddy
instead of Shri N. A.
Devadas for the respondent

DR. A. N.
M(A)

DR. V. N. D
VC

B.O.

DR.C.J.

13-2-95

✓ Post it on 15-2-95
DR.C.J.

B.O.

DR.C.J.

15-2-95

Condone the delay of 6 years & months
21 days in filing OA

Mr.

Mr. S. Rama Krishna Rao
COUNSEL FOR THE APPLICANT

AND

Mr. N. R. Deva Raj

✓ STANDING COUNSEL FOR C.G.

Alleged that the applicants while on duty
on the intervening night of 6/7.4.84

had unauthorisedly allowed a stranger
into the Mail Van
by name Subhash Balakar, and were found

in possession of certain V.P. articles viz., Ball pen

Nail Cutter, ^{Paint etc} These articles are part of the V.P. Parcels ^{Chargé} Conveying in the Van.

A Case in Cr No 74/84 was registered

with proper charge against the

applicants & Subhash Balakar. The case was registered for Rs 400 at 109 I.P. The accused under investigation

These OAs are clubbed and heard together

for the following reasons :-

(a) Both the applicants were subjected

to disciplinary action in a joint

disciplinary proceedings and

were dismissed from service on

Common charges of misconduct;

(b) the applicants have challenged

the orders imposing punishment

and orders rejecting their appeal

on similar grounds; and

(c) the respondents have opposed these OAs on similar grounds in their counter affidavit; and

(d) inquiry records are one and the same.

Thus they are being disposed of by this common order.

Lakshman

①

OA 218/95

See 1u(1) of the Act 21. Nov. 1994

During 1984

Manikman, RMS Z Dr Hyderabad

On 7.6.84 he was on duty in Section Z 29-In Sections

in and out from Hyderabad to Guntakal.

A) Charge memo No K5/1184-85 d. 26.2.87

Charge - P.15

Common disciplinary proceedings

No 1184-85

Witnesses

1. H. Nageswaran

2. Mirza Ali Naqvi (B) To held charges Not Proved

3. Rahmatullah report d. 29.6.88

(C) DA disagreed with the findings of the IO and imposed the penalty of dismissal

on his application

dated 22.8.88

(d) Case in Cr No 74/84 of RBS 1 Hyd

Charge sheet in Cr. 114/88 on filing XII for Rely. See below
16.6.93 acquited.

(i) Appeal d. 28.6.93 - after acquittal - is not yet considered

Memo No. RBH/ST/21-3/35/88
31.8.89 (p. II, A-1)

OA No 214/94 - Dismissed

1) 1993(23) ATC 131 (Mad)
161 (All) Witness were not disinterested

2) Rule 81 of RT Manual Material witness was not Examined

3) AIR 1962 SC 364

4) 1988(7) ATC 755 (Delhi) Contractor vs UOI

5) 1981(16) ATC 691 (Mad)

6) U.P. V. V. V. vs UOI
1988 (1) SLR 152
1987 (3) SLR 703

7) 1987(3) ATC 219

8) 1992(20) ATC 682 (Delhi)

1993(5) SLR 532 (SC)

MD ECIL Hyd vs. B. Venkateswaran

9) v. 15(2) the DA can differ from or
modify the findings of an Enquiry. Other
report but when he has to do so he
right to fully examine the witness on record
and come to a conclusion in his own words
only. Quoted in SL. Venkateswaran vs UOI
1987 (6) SLR (CAT) 747 - 1987 (3) SLR 608

to give

(a) whether the Disciplinary Authority was required to give further opportunity to the applicants furnishing the statement of reasons for his disagreement with the findings of the T.O.?

(b) whether the Appellate was required to await result of Criminal trial on C.C.R.U/88 before to come ~~to~~ in MM for Railways, Soc. Sec.?

(c) whether the punishment imposed on the Applicants can be justified on the acceptable evidence in the facts & circumstances of the case.

The fact that FIR has been registered does not ^{de} entitle the Govt to take disciplinary actions against Employee in C.Sharmas v/s 1991(1) SLJ (C.A) 401

Explanation 1 to 3
89

Witnesses

1) K Appas (186) to (183)

2) H Nagaswami (181) to (182)

(180) to (173) (112) to (105) Brown Reserve Bag → Elavarasal

Charge - p. 167
Q. 19

Green A Bag → Mr. Lakshmin
Subash

3) Md Rahimuddin
(164) to (161)

Red Bag (16) -

(16) (168) (169) (165) (166)

Alfred

4) Mrs. Tahira Ali Naik (160) to (153)

Exps - M. Tahira Ali Naik

Daily report

169 (169) (167) (168) (169)

R Shivarajan

Warren
Mohit

158 (158) (159) (158)

Magroo

Moni
Lakshmi

Varaih (159) 3/2/88 was in progress

Dehoni

(3)

See 1u(1) of the AT Act

OA 217/1995

21.4.94

Eshwaran, Main accused in RMS 2 on Hyd.

in Smt 229 In as our ie from

Hyd to Guruvayur K base

6 u. 84. night.
7

Charge memo K5/1/84-85 d. 28.2.87

IO held charges not proved

DA disagrees with the findings
as in his proceedings

even us ad dated 22.8.88

imposed the penalty of dismissal

Appeal

Proceedings R.D.H / 55/211-3/35/88

d. 31.8.89.

Ctrl. person enters in acquittal

on 11.6.93.

further representations by appellate

authority to remand

not entered any response

OA 216/94 Disposed off

T. Bhuvanam vs DRM Smt

(1950) 12 A.R. 134 (Env)

on 7th Jan. Train reached Tadur at 5.50 AM &

- 1) Panchavati was prepared
between Tadur and Begumpet
Train reached Begumpet at 9 am
i.e. 5.50 am and 9 am.
- 2) Shrikrishna TTE was present throughout
Panchavati (Exh. Maitland's Report)
- 3) Maitland had made some observations on the
reverse day report. PWB states we review
Shri Shriram Bhosla

Writ of Maitland Maitland d. 15.2.88

Re. 1148/484 [3 yrs 10 mos]

Q(4) PW

Q(13) PW

ORDER

(PER HON'BLE SRI B.S. JAI PARAMESHWAR: MEMBER(JUDL.))

Heard Sri S. Ramakrishna Rao, learned counsel for the applicant and Sri N.V. Raghav Reddy, learned standing counsel for the respondents in these 2 OAs.

These 2 OAs are filed under Sec. 19 of the Administrative Tribunals Act. These applications were filed on 21.11.1994.

These OAs are clubbed and heard together for the following reasons:-

- a) The applicants were subjected to disciplinary action in a joint disciplinary proceedings and were dismissed from service on common charges of misconduct.
- b) The applicants have challenged the orders imposing punishment and order rejecting their appeals on similar grounds.
- c) The respondents have opposed these OAs on similar grounds in their counter affidavit.
- d) Enquiry records are one and the same.

Thus, they are being disposed of by this common order.

The facts giving raise to these OAs are, in brief, to the following facts:-

During 1984-85 the applicants were working as mail guard and mailman, respectively, in Rail Mail Service (RMS) Z-Division, Hyderabad.

R

..3

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

OA No. 217/95 &
OA No. 218/95

Date of Decision: 25.7.1997

Between:

OA No. 217/95

K. Eshwaraiah

AND

1. Director of Postal Services,
Hyderabad Region, Hyderabad.

2. Superintendent of Railway
Mail Service, Z-Division,
Hyderabad.

Applicant

Respondents

OA No. 218/95

M. Lakshmaiah

.. Applicant

AND

1. Director of Postal Services,
Hyderabad Region, Hyderabad.

2. Superintendent of Railway
Mail Service, Z-Division,
Hyderabad.

Respondents

Counsel for the applicant: Mr. S. Remakrishna Rao

Counsel for the Respondents: Mr. N.V. Raghav Reddy

(Common for both the OAs)

CORAM:

THE HON'BLE SRI R. RANGARAJAN: MEMBER (ADMN.)

THE HON'BLE SRI B.S. JAI PARIMESHWARI: MEMBER (JUDL.)

R

While the disciplinary proceedings were under progress against the applicants, RRS, Hyderabad submitted the charge sheet in CC No.114 of 88 before the court, XIII Metropoliton Magistrate, (Railways) Secunderabad. After trial, the court by its judgement dt.16.6.93 acquitted the applicants. At this stage, it is to be mentioned here that the applicants were prosecuted for contravention of Section '52' of the Indian Posts Act.

After the acquittal by the competent criminal court, the applicants filed OA 214/94 before this tribunal. The said OA was dismissed holding that when there was no power of review in regard to the appellate authority, the only remedy that was open to the applicants in such a case was only to file a revision against order dt.16.6.93 in the appeal and/or move this Tribunal under Sec.19 of the AT Act. by filing a petition for condonation of appeal- the delay.

Accordingly the applicants have filed these 2 OAs.

The applicants have challenged the orders passed by the respondents 1 & 2. Respondent-1 is the disciplinary authority who imposed the penalty disagreeing with the findings recorded by the Enquiry officer. The Respondent-2 is the appellate authority who rejected the appeal and confirmed the punishment.

These on the grounds The applicants have challenged the orders that the disciplinary proceedings should have been kept pending till the disposal of the criminal case, that under Rule 81 of the P & T Manual, Vol. III, the appellate authority should have kept the appeal pending when the criminal case was pending before the court of law. That the orders of dismissal are vitiated for non-supplying the report of the Enquiry Officer and for not asking their explanation. That the disciplinary authority while disagreeing with the findings of the Enquiry Officer

On the intervening night of 6/7-4-84 both the applicants were on duty in Section Z-29 from Hyderabad to Guntakal and on return journey. It is alleged that the applicants while on their duty on the night of 6/7-4-84 they had unauthorisedly allowed a stranger by name Subash Balatkar into the mail van and they were found in posession of certain V.P. articles viz. cassettes, cooling glasses, nail cutters, bal-pens etc. of foreign origin which are detailed in the chargememo. It is stated that these articles formed part of V.P. Parcels being transmitted in the mail van.

With respect to the said incident a case in Crime No.74/84 of PBS, Hyderabad was registered against the applicants and Subash Balatkar. The case was registered for the offence punishable under Section 420 and 409 of the Indian Penal Code. The case was under investigation.

In the meanwhile the applicants were served with a major penalty charge memo No.K 5/1/84-85 dated 26.2.87. The applicants denied the charges on 10.3.1987. A detailed inquiry was conducted against the applicants in a common proceedings. The enquiry officer by his report dated 29.6.88 recorded the finding that the charges levelled against the applicants were not proved.

The disciplinary Authority disagreed with the findings of the inquiry officer and imposed the penalty of dismissal of the applicants from service, vide proceedings of even No. dated 22.8.88.

Against the said orders of dismissal, the applicants preferred appeals to the appellate authority. The appellate authority considered the appeals of the applicants and by his proceedings No.RDH/SE/21-c/35/88 dt.31.8.88 dismissed the appeals and confirmed the punishment.

R

The respondents have filed a counter stating that the applicants were working as mailguard and mailman respectively in RMS Division, that on 6/7th April 1984 they were on duty in Z-29 in Hyderabad to Guntakal and back sorting postal and mail articles that a search party consisting of Inspector, CBCID and Sub-Inspector CBCID, Hyderabad and Panchas entered into the mail van of the said Rayalaseems Express at Tandur point that they noticed the applicants on duty and found an outsider by name Subash Bala Takar inside the mail van that they also found brown, green rexine, and cream coloured bags in their posession that they found Subash Bala Thakar travelling in the mail van unauthorisedly that the applicants had allowed him in the mail van that on inspection of the 3 bags found in the mail van, they revealed to contain the articles Cassettes - viz. nail cutter, 11 gun, clothes of foreign make and detailed in the charge memo that those articles were suspected to have been extracted from the V.P. parcels that they enquired with the applicants as to the presence of Subash Bala Takar in the van and as to the posession of these articles with them, that they seized the same under a Panchnamo that the matter was reported to RPS police station, Hyderabad, that a case was registered in crime No.74/84 against the applicants and another for the offences under sections 420 and 409 of the Indian ~~Penal~~ Code, that a charge memo was issued to the applicants that a detailed enquiry was held into the charges that the enquiry officer submitted his report on ~~26.6.88~~ 29.6.88 that the Respondent-2 on going through the enquiry records, the evidence placed by the Disciplinary authority and also on behalf of the applicants, disagreed with the findings of the enquiry officer that the Respondent-2 found the charges substantially proved against the applicants that the Respondent-2 accordingly passed the orders of dismissal that against the said orders, the applicants preferred appeals to the Respondent-1

R

has not given cogent reasons in the punishment order, that the disciplinary authority had not given prior notice to them although there was disagreement with the findings of the enquiry officer. That the procedure followed in imposing the punishment of dismissal is not correct; that the disciplinary authority before imposing the punishment had not considered their evidence and to remain in service, that he had not applied his mind as to the quantum of punishment. That the disciplinary authority has not considered the reasonings given by the Enquiry Officer in his report, that the persons who were present at the time of preparing panchnama were not examined that the basis of preparing panchnama was doubtful. The inspector and his party entered the mail van at Sedam while the Panchnama was prepared at Tandur that the attestors to the Panchnama were outside persons that the TTE who entered the van at Tandur could have taken action against the stranger Shri Subhash Bala ^{Takar} who was in the mail van. This indicated that the TTE did not enter the mail van at all that the Panchana was a concocted document that no document were produced to show that the attestors travelling in the mail van that Subash Bala Takar was not examined in the enquiry that all the VP Parcels found in the mail were intact that none of the articles referred to in the charge memo did not pertain to any VP parcel conveyed in the van that they were not in possession of articles detailed in the charge memo that the competent Criminal Court has recorded an acquittal against them and that the impugned orders are not sustainable.

With these grounds, the applicants pray to set aside the orders passed by the respondents 1 & 2 ~~be set aside~~ and consequently, to direct the respondents to reinstate them into service.

R

..6

52

that therefore there are no merits in the OAs and that they be dismissed with costs.

The first contention of the learned counsel for the applicant is that the disciplinary authority should stay the disciplinary proceedings till the conclusion of criminal trial. It is to be noted that with regard to the incident occurred on 6/7.4.84 in Rayalaseems Express at Tandur point was the subject matter of a case registered in crime No.74/84 by the PBS, Hyderabad against the applicants, and another.

In fact, the investigation was completed and the criminal trial was still under progress when the disciplinary authority imposed the punishment of dismissal. The applicants participated in the enquiry through out. They cross examined the witnesses and the investigating officer. The Investigating officer specifically stated that during the midst of investigation he was transferred and he was not aware of the final out-come of the investigation in the case.

The apex court in the case of State of Rajasthan Vs B.K. Meena (reported in AIR 1997 SC page 13) has laid down guidelines as to when disciplinary proceedings could be stayed till the conclusion of criminal trial. Reiterating the same view, the apex court again in the case of (1997 Supreme Court Cases (L&S) 548) Depot Manager, A.P. State Road Transport Corporation Vs. Mohd. Yousuf Miya and others, explained distinctive features of Criminal trial and the Disciplinary proceedings. The Apex Court has been pleased to observe as follows at para-8 :-

" *** *** *** "

The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty.

that the respondent-1 after considering the impugned order in the appeals rejected the same and confirmed the punishment that the applicants and another who was found in the mail van were prosecuted for the offence punishable under Section 52 of the Indian Posts Act that the court of XIII Metropoliton Magistrate (Railways) found lack of evidence on behalf of the prosecution to attract the ingredients of Section 52 of the Indian Posts Act and gave benefit of doubt, 'thus' the applicants were acquitted by the judgement dt.19.6.93 that, thereafter, on 28.6.93 the applicants submitted a representation to the Respondent-1 for reconsideration in the light of the acquittal by the court of XIII Metropoliton Magistrate (for Railways) that the joint disciplinary proceedings were commenced on 18.5.87 and concluded on 16.2.88 that the applicants participated in the enquiry without any murmur that at the stage of enquiry the applicants never submitted before the enquiry officer for staying the disciplinary proceedings till the conclusion of the trial in the criminal case in CC No.114/88 that Rule 81 of P&T Mannual Vol.III was deleted with effect from 16.1.89 that the appellate authority decided the appeals of the applicants on 31.8.89; that therefore there was no violation of any rule in the P&T mannual, that during 1988 there was no obligation on the part of the disciplinary authority to furnish a copy of the report of the enquiry officer to the applicants that the decision in the case of Union of India Vs. Mohd. Ramjan Khan is prospective in operation that the disciplinary proceedings were conducted in accordance with the rules and adhreing to the principles of natural justice that the disciplinary authority was not satisfied with the findings recorded by the enquiry officer that the appellate authority considered all the grounds urged by the applicants in his order dt.31.8.89 that the acquittal of the applicants on 16.6.93 in the criminal case by the court of XIII Metropoliton Magistrate (Railways), Hyderabad has no impact on the impugned orders that the said acquittal does not in any way alter the course of action taken by the Respondents 1 & 2

R

In the absence of any application from the applicants there was no obligation ^{on} ~~the~~ part of the enquiry officer to postpone the disciplinary proceedings till the conclusion of trial in CC No.114/88. They should have brought to the notice of the enquiry officer through an application that they were being prosecuted ~~with~~ criminally on the same set of charges ^{and} that they would be prejudiced in their defence. The learned counsel for the respondents submitted before us the entire records of the disciplinary proceedings. We find no such application from either of the applicants. More over we feel it ~~was~~ not necessary for the disciplinary authority to wait till the conclusion of criminal trial.

The standard of proof in disciplinary proceedings and criminal trial is quite different. Proof beyond reasonable doubt is the rule applicable to criminal trial. Preponderance of probabilities and adherence to the principles of natural justice are the two fundamental guidelines in the disciplinary proceedings. An employer may not be justified to continue an employee who is under cloud till the conclusion of trial in a criminal case, for, trial in criminal cases ~~prolonged~~ ^{dragged} for years to conclude.

When the police submitted charge sheet in the criminal case No.114/88 before the XIII Metropoliton Magistrate, (Railways), Secunderabad, then the disciplinary proceedings were at the stage of recording the evidences. On going through the records it was disclosed that the enquiry authority had commenced recording the evidence of witnesses on behalf of the disciplinary authority.

There is no legal prohibition for the enquiry authority to proceed with the enquiry.

Hence this contention of the applicants is liable to be rejected.

The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under ~~the~~ criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct of breach of duty of the delinquent officer to punish him for his misconduct. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.

*** *** "

The applicants at no point of time had submitted any application before the enquiry officer praying for stay of the disciplinary proceedings till the conclusion of criminal ~~crime~~ trial. In fact, the police submitted the charge sheet before the court during the earlier part of 88. The criminal case was registered in CC 114/88. The court framed the Charge under Sec 52 of the Indian Posts Act.

M

same proceeding. It is open to disciplinary authority to hold the inquiry himself. It is equally open to him to appoint an Enquiry Officer to conduct the inquiry and place the entire record before him with or without his findings. But in either case, the final decision is to be taken by him on the basis of the material adduced. This also appears to be the view taken by one of us (P.P. Jeevan Reddy, J.) as a judge of the Andhra Pradesh High Court in Mahendra Kumar Vs. Union of India, 1983(3) SLR 319, 324 and 325 (AP HC). The second contention accordingly stands rejected.

In view of the above position the contention of the applicants is liable to be rejected. Accordingly it is rejected.

The applicants contend that the Panchnama prepared by the investigating officer is a concocted document. They have taken this contention on the premise that the same does not contain their signatures.

It is an admitted fact that on 6/7/4/84 the applicants were on duty in section Z-29 in Rayalaseema Express, running between Guntakal and Hyderabad. The applicants were then working as Mail Guard and Mailman respectively.

The Inspector CBCID was on duty on the Rayalaseema Express. He boarded the train at Wadi junction. At Sadam the guard noticed a person entering into the mail wagon in which the applicants were on duty. At Tandur Point they entered the mail van. The train reached Tandur point at 5.50 a.m. and it finally reached Begumpet at 9.00 a.m. During this interval the CBCID along with Panchas and a railway official searched the mail van where the applicants were working. They found Subash Bala Takar, unauthorisedly travelling in the mail van. The said Subash Bala Takar was an ex-postal employee of Guntakal Division. The checking party noticed that the applicants and Subash Bala Takar were possessing 3 bags. A brown ^{rexine} ~~recene~~ bag was in possession of Eswaraiah, the Mailguard. A cream coloured bag was in possession of Lakshmaiah, the Mailman. A red coloured bag was found in possession of Subash Bala Takar. The Inspector

Likewise there is another contention that can be considered at this stage. The disciplinary authority imposed the punishment on 22.8.88. At that time the criminal case ^{c.c. No.} trial in 114/88 was pending. Now the applicants have cited Rule 81 of the P&T Manual Vol. III to contend that the appellate authority was expected to await the decision in the criminal trial. On the other hand, the respondents in para-2 (page-3) of their counter have contended that the said rule 81 was withdrawn effective from 16.1.89 and that the appellate authority decided the appeals on 31.8.89. In reply the applicants submit that their appeals being dated 9.9.88 the appeals should have been kept pending, awaiting decision of the criminal trial. The Respondents have produced ~~.....~~ under which Rule 81 of the P&T manual was withdrawn. It is at Annexure R-III. Therefore, there is no substance in the contention of the applicants that the appellate authority should have waited for the decision in criminal trial.

The learned counsel for the applicants submitted that the disciplinary authority imposed the punishment without furnishing the copy of the report of the enquiry ^{officer} to the applicants and thereby they have been deprived. It is submitted that they have not been given an opportunity to say against the disagreement of the disciplinary authority with the findings recorded by the enquiry officer. The said controversy has been set at rest by the Hon'ble Supreme Court of India in the case "State Bank of India Vs S.S. ~~Keshal~~ reported in 1995(5) SLR P.181 honourable Supreme. In para-6 the court has been pleased to observe as under:-

" So far as the second ground is concerned, we are unable to see any substance in it. No such fresh opportunity is contemplated by the regulations nor can such a requirement be deduced from the principles of natural justice. It may be remembered, that the Enquiry Officer's report is not binding upon the disciplinary authority and that it is open to the disciplinary authority to come to its own conclusion on the charges. It is not in the nature of an appeal from the Enquiry Officer to the disciplinary authority. It is one and the

Pr

in the case of Ch. Arpe Bro Vs Divisional Operating Superintendent (M) and others reported in 1997 All India Services Law Journal Page 355.

The fact that the applicants were on duty in the mail wagon on that particular night of 6/7.4.84 is not in dispute. The fact that the Inspecting Officer entered the mail wagon for search along with Panchas is borne out by the daily report submitted by K. Eswaraiah, Mail-guard. It is at Exhibit P-1. It is alleged that after the inspector conducted the search the daily report has been altered.

However, the fact remains that the investigating officer entered the mail wagon at Tandur point. The alteration has been made to suggest that the inspector and panchas entered the mail wagon at Wadi. The evidence adduced before the enquiry officer has been perused by us. The Enquiry Officer clearly has stated at Wadi Railway Station they found an unauthorised person entering into mail wagon and that they kept a watch on the mail wagon till it reached Tandur. Since the unauthorised person did not enter the mail wagon even at Tandur point they suspected and made search of the mail wagon.

Now the applicants have come out with a theory that a false base has been foisted against them. They dispute the preparation of Panchnama, they dispute the stranger i.e. Subash Bala Takar travelling in the mail van unauthorisedly and they dispute each and everything.

When the respondents served articles of charges on the applicants on 26.2.87 i.e. about 2 years 10 months later they submitted an explanation to the charge memo simply denying the allegations made in the charge memo. When certain facts which were within their knowledge regarding concoction of Panchnama

checked the contents of these bags. The contents of these bags are detailed in the chargememo.

The applicants have not given any plausible explanation for the presence of Subash Bala Takar in the Mail van. It is their defence that the said Subash Bala Takar entered the mail van along with the inspector and others. Further the applicants have not given any explanation for the possession of articles found in their respective bags.

During the disciplinary proceedings the disciplinary authority examined K. Appa Rao, H. Nagarajan, Mohammed Rahimuddin and Mir Tahir Ali Nasri the ^{Investigating} ~~Inspecting~~ officer.

The learned counsel for the applicants submitted that material witnesses were not examined in the inquiry that the alleged Subash Bala Takar was not examined in the inquiry that he was a material witness that the TTE who had come to the mail-wagon was also not examined, that the Panchnama has been concocted by the police Inspector that attestors to the Panchanama were not examined in the enquiry ^{and} that this is a case of no evidence and therefore, the impugned orders are not sustainable in law.

The learned counsel for the applicants in support of various contentions relied upon the decision of this Bench in

In the disciplinary proceedings the standard of proof is the preponderance of probabilities. In the disciplinary

is

It all depends upon the nature of the charges made against the delinquent servant. In certain proceedings burden of proof may fall on the delinquent employee to establish his innocence. We feel it proper to recall ~~now~~ the observations of the Hon'ble Supreme Court of India in the case of Orissa Mining Corporation Vs. Anand Chandra Prusthi, reported in 1997 (1) SLR P.287.

In paras 5 & 6 the Lorsships have observed as follows:-

"

In a disciplinary or a departmental inquiry, the question of burden of proof depends upon the nature of charges and the nature of explanation put forward by the delinquent officer. In this sense, the learned counsel for the applicant may be justified in complaining that the standard of proof stipulated by the High Court in this case sounds inappropriate to a disciplinary inquiry. At the same time we must say that certain observations made by the inquiry officer in his report do lend themselves to the criticism offered by the High Court.

On a consideration of the totality of the facts and circumstances of the case including the nature of charges we are not inclined to interfere in the matter. The position with reference above viz. that there is no such thing as an absolute burden of proof, always lying upon the department in a disciplinary inquiry. The burden of proof depends upon the nature of explanation and the nature of charges. In a given case the burden may be shifted to the delinquent officer, depending upon his explanation. For example take the first charge in this case. The charge was that he made certain false notings on account of which loans were disbursed to certain ineligible persons. The respondent's case was that those notings were based upon certain documents produced and certain records maintained by other employees in the office. In such a situation it is for the respondent to establish his case. The department is not expected to examine those other employees in the office to show that their acts or records could not have formed the basis of wrong notings made by the respondent.

2

and bringing the mailman viz. Subash Bala Takar into the mailvan, we feel that these facts should have been brought out in unambiguous terms in the daily report. The daily report has been prepared by K. Eswaraiah. It contains the first hand information and the immediate version of the incident.

In exhibit P-1 no such details have been incorporated. In exhibit P-1 it is nowhere stated that the police inspector entered the mailvan, threatened him and prepared the panchnama. From the evidence it is clear that the mailvan was in service from 5.50 a.m. to 9 a.m. i.e. till the train reached Begumpet from Tandur point. Even the applicants cross-examined the witnesses suggesting so many versions regarding panchnama and the presence of Subash Bala Takar. We have gone through the evidentiary material placed on record by the disciplinary authority. We feel that the applicants failed to bring to the notice of the higher authorities if any high handed acts were committed by the ^{CB} CID Inspector. They would not have kept quiet when the police inspector entered the mailvan and prepared a Panchnama.

It is the case of the police Inspector that in the mailvan he noticed 3 bags. Eswaraiah, Mailguard was carrying a brown rexine bag. M. Lakshmaiah, Mailman was carrying a cream coloured bag and Subash Bala Takar was carrying a red coloured bag. If really Subash Bala Takar entered the mail van along with the inspector of police then in the ordinary course of things the ^{in the Van} L police inspector under the panchnama recovered 3 bags. In the 3 bags the inspector noticed certain articles detailed in the Panchnama. It is the case of the Disciplinary Authority that these articles ^{which} might have been unauthorisedly extracted from mail bags or VP Parcels. The applicants had not given any satisfactory explanation for posession of the bags as well as the contents in the bags. Hence the inspector seized them under a Panchnama.

initiating the disciplinary proceedings. Even the registration of the FIR by the police does not debar the disciplinary authority to proceed with the disciplinary action against the delinquent employee.

The CC 114/88 ended in acquittal on 16.6.93. By then both the disciplinary authority and the appellate authority had concluded the disciplinary proceedings.

In our humble view finding of guilty in departmental proceedings is not obliterated by the subsequent acquittal of the applicants on the same charge in the criminal trial. (See K.P. Gour Vs Union of India (1991) 15 A.T.C. 190 (Jabalpur Bench.)

We find no reasons to interfere with the impugned orders. In the result there are no merits in this OA.

The OAs are accordingly dismissed.

No order as to costs.

(A copy of the order be kept in the records of the O.A. No. 218/95)

(Enquiry proceedings consisting of 4 files have been perused by us and returned to the learned counsel for the respondents.)

प्रमाणित प्रृष्ठ
CERTIFIED TO BE TRUE COPY

न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय अदालतीकूल अधिकारी
Central Administrative Tribunal
हैदराबाद अदालतीकूल
HYDERABAD BENCH

0421781248/85

Case Number.....	0421781248/85
Date of Judgement.....	25/2/85
Copy Made Ready on.....	18/8/85
अनुमान अधिकारी (न्य चिक्क) Section Officer (J)	

In view of the principles enunciated above we feel that there must have been some kind of explanation from the applicants and that explanation is not forthcoming. When the applicants admitted themselves to be on duty on the night of 6/7.4.84, that certain incident took place in the mailvan then if the incident was as per the version put forth now then K. Eswaraiah, Mailguard should have reported to the higher

..... then itself and should have mentioned the said facts in detail in his daily report. The incident on 8.4.84 place between 5.50 a.m. and 9. a.m. while the Rayalaseema Express was moving between Tandur point and Begumpet. The applicants did not whisper a word at any time between 8.4.84 and 10.3.87. The daily report furnished by the applicants do not disclose anything which the applicants have now taken as a kind of defence in their efforts to prove their innocence. Non-examination of the TTE on duty who visited the mailvan and non-examination of Sivash Bala Takar did not in any way affect the credibility of the evidence relied upon by the disciplinary authority. The evidence relied upon by the disciplinary authority is sufficient enough to prove the misconduct on part of the applicants. Even to this day, they have not explained the presence of the bags and their contents in the mailvan. It is not their case, ^{that the} investigating officer and the raiding party themselves brought these three bags and planted the bags in the mail van to implicate them. We find no reason to disbelieve the evidence relied upon by the disciplinary authority.

The Disciplinary Authority and the appellate authority have clearly analysed the ^{evidence} findings and rightly disagreed with the findings recorded by the enquiry officer in his report.

Further as already observed the employer is not required to await till the decision in the criminal trial before

Jr