

**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**ERNAKULAM BENCH**

**Original Application No. 180/00131/2015**

**Thursday, this the 28<sup>th</sup> day of February, 2019**

**CORAM:**

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member**  
**Hon'ble Mr. Ashish Kalia, Judicial Member**

V.T. Uthup, S/o. Shri Thomas V.U., aged 60 years,  
Assistant Post Master (retired), Head Post Office,  
Kottayam, Residing at Varakulayil, Kallara South,  
Kallara, Kottayam District – 686 611. .... **Applicant**

**(By Advocates : M/s. O.V. Radhakrishnan, Sr. &**  
**Mrs. K. Radhamani Amma)**

**V e r s u s**

1. Senior Superintendent of Post Offices, Kottayam Division,  
Kottayam – 686001.
2. Post Master General, Central Region, Cochin – 682 020.
3. Director of Postal Services, Office of the Post Master General,  
Central Region, Cochin – 682 020.
4. Chief Post Master General, Kerala Circle, Trivandrum – 695 033.
5. P.M. Sankaran, Inquiring Authority, Senior Superintendent of Post  
Offices (Retired), residing at Karthika, Pulikutty Madom Road,  
Irinjalakuda – 680 121.
6. Union of India, represented by its Secretary, Ministry of  
Communication and Information Technology,  
New Delhi – 110 001. .... **Respondents**

**(By Advocate : Mr. T.C. Krishna, Sr. PCGC)**

This application having been heard on 7.2.2019 the Tribunal on  
28.02.2019 delivered the following:

## **ORDER**

**Hon'ble Mr. Ashish Kalia, Judicial Member –**

The relief claimed by the applicant are as under:

- i. To declare that the imposition of a major penalty as per Annexure A-23 issued by an authority other than the disciplinary/appointing authority on the applicant based on Annexure A-22 Inquiry Report which is inherently indefensible and the appellate order at Annexure A-25 and Annexure A-27 revision order and the whole Inquiry proceedings initiated by an incompetent person are violative of Article 311(1) of the Constitution of India and principles of Natural Justice and further declare that the whole Inquiry proceedings are vitiated by non-affording reasonable opportunity and hence are void for breach of Article 311(2) of the Constitution of India.
- ii. to call for the records leading to Annexures A-2, A-22, A-23, A-25 and A-27 and to set aside the same;
- iii. to issue appropriate direction or order directing the respondents to restore the pay of the applicant without regard to Annexure A23 as modified in Annexure A25 and to grant him all monetary benefits including arrears of pay and allowances to which he would have been entitled to but for Annexure A23 order of penalty within a time-frame that may be fixed by this Hon'ble Court;
- iv. to issue appropriate direction or order which this Hon'ble Tribunal deems fit, just and proper in the circumstances of the case; and
- v. to award the costs to the applicant.”

2. The charge against the applicant is as under:

**Article I**

That the said Shri V.T. Uthup while working as Manager, National Speed Post Centre, Kottayam from 12.5.02 to 12.01.06 arbitrarily prepared money receipts in form ACG-17 during the period from 11.1.02 to 29.03.04 showing charges towards conveyance and loading/unloading of express parcel post articles from M/s. M.M. Publications Pvt. Ltd., Erayilkadavu, Kottayam to National Speed Post Centre, Kottayam without actually conveying, loading and unloading EPP articles from M/s. MM Publications Pvt. Ltd., Kottayam and thereby caused payments of government money from Kottayam HO, witnessing these payments to the tune of Rs. 8,883/-0 (Rupees Eight Thousand Eight Hundred and Eighty Three only), violating Rule 60 and 103 of P&T Financial Hand Book Vol. I and thereby failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant thereby violated Rule 3 (1)(i), 3(1)(ii) and 3(1) (iii) of CCS (Conduct) Rules, 1964.”

3. The facts in nutshell are that the applicant working as Assistant Postmaster, Head Post Office, Kottayam retired from service on superannuation on 31.8.2014. While holding the post of Sub Postmaster, Kaduthuruthy SO, he was placed under suspension in contemplation of disciplinary proceedings as per order dated 10.6.2008. The order of suspension was later revoked with immediate effect vide memo dated 13.6.2008. Thereafter, the applicant was transferred to Teekoy as Sub Postmaster. Later after a preliminary inquiry the applicant was served with memo dated 8.8.2008 (Annexure A2) whereby the 1<sup>st</sup> respondent proposed to hold an inquiry against the applicant under Rule 14 of CCS (CCA) Rules, 1965. The applicant submitted his written statement on 16.8.2008 denying the charges in toto and expressing his willingness to be heard in person. The 5<sup>th</sup> respondent was appointed as the inquiry authority to inquire into the charges levelled against the applicant. Shri V.T. Dasan, ASP, Kottayam East Sub Division was appointed as Presenting Officer. The applicant nominated Shri N.G.K. Nair, SSP (Retired) as his defence assistant. On 23.12.2008 the applicant was permitted to inspect the documents. However, on 28.10.2009 the applicant submitted the list of 11 additional documents and only three were made available to him. The applicant has not been furnished with copies of the relevant documents and the inquiry was held on different dates. On 5.7.2011 the applicant was examined and the inquiry was completed. The inquiry authority submitted his report on 1.8.2011 finding that the charges are proved. The inquiry report was forwarded to the applicant and the applicant submitted his representation against the same.

However, the disciplinary authority without considering the grounds made in the representation ordered that the pay of the applicant be reduced by two stages from Rs. 15,950/- plus Grade Pay of Rs. 4,200/- to Rs. 14,790/- plus GP of Rs. 4200/- in the pay band of Rs. 9,300-34,800/- plus GP of Rs. 4,200/- for a period of two years from the date of issue of the order and further directed that the applicant will not earn increments of pay during the period of reduction and that on expiry of the period, the reduction will have the effect of postponing his future increments of pay. The applicant submitted an appeal to the 3<sup>rd</sup> respondent who modified the penalty to reduction of pay by two stages from Rs. 15,950/- plus GP Rs. 4200/- to Rs. 14,790/- plus GP Rs. 4200/- in the pay band of Rs. 9,300-34,800/- plus GP of Rs. 4,200/- for a period of 12 months w.e.f. 26.8.2011 with cumulative effect. Aggrieved the applicant has filed a review petition which was rejected vide Annexure A-26. Aggrieved the applicant has filed the present OA.

4. The applicant submitted that he was not furnished with the copies of the relevant documents requisitioned by him which substantially prejudiced him in setting up his defence. The 1<sup>st</sup> respondent rejected his request stating that the documents were not necessary to defend the case. All the documents were very important and material documents to prove the innocence of the applicant. The entire case is based on an erroneous assumption that M/s. M.M. Publication Ltd. was providing transport for conveyance of EPP articles from their premises. The appellate authority did not carry out an objective assessment of the evidence on record. The 4<sup>th</sup> respondent had

blindly accepted the appellate order without properly evaluating the evidence on record.

5. Notices were issued to the respondents. They entered appearance through Shri T.C. Krishna, Sr. PCGC appearing for respondents 1-4 & 6 and contended that the disciplinary authority had gone through the inquiry report carefully and found that it was conducted after affording all reasonable opportunity to the applicant. The inquiring authority has discussed as to how he arrived at the decision that the charges against the applicant was proved. Further the appellate authority has reduced the punishment with the observation that in addition to the applicant there were several other officials who had also indulged in similar practices and that it is was not fair to single out the applicant and impose harsh penalty. This observation of the appellate authority does not mean that no punishment is warranted against the applicant. The revisional authority observed that the charges leveled against the applicant are grave in nature and a deterrent punishment is warranted in the case. Respondents pray for dismissing the OA.

6. Heard the learned counsel appearing for the applicant and learned Sr. PCGC counsel appearing for the respondents. Perused the records.

7. The applicant has raised the following points in the Original Application for consideration. The first respondent Sr. Supdt. of Posts is not the disciplinary authority, finding of the inquiry officer were totally

perverse, appellate authority has not followed Rule 27 of CCS (CCA) Rules, 1965 while considering his appeal and lastly the relevant documents demanded by him were not furnished.

8. At the outset we find that the applicant was proceeded against for arbitrarily preparing money receipts representing vehicle hire charge/loading/unloading charges etc. for conveyance of EPP articles from MM Publications to speed post centre on various dates. Inquiries made into these irregular payments confirmed that M/s. M.M. Publication had made their own arrangements for conveyance/loading/unloading charges etc. We find that there is strong supporting evidence to prove that the applicant played an active role in incurring the irregular expenditure from public funds. The respondents conducted the detailed inquiry in consistent with the requirements of Article 311(1) and (2) of the Constitution of India in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of the charges. The penalty was imposed on the basis of the evidence adduced during the inquiry. Moreover, the Director of Postal Services/Director (GPO)/Head of Division can impose all penalties specified under Rule 11 of CCS (CCA) Rules, 1965 upon the officials in LSG cadre. The revisional authority has upheld the decision of the appellate authority after considering the points raised by the applicant after clearly evaluating the documentary and the oral evidences adduced during the inquiry. This Tribunal's jurisdiction is very limited in the matter of departmental proceeding. It is only to the extent to see whether there is reasonable and fair opportunity granted to the applicant or not. Let

us view the legal position in this regard.

9. In *Air India v. Cochin International Airport Ltd.* – AIR 2000 SC 801, the Hon'ble apex court explained the scope of judicial review and held that court must act with great caution and should exercise such power only in furtherance to public interest and not only merely making out of a legal point. The court must always keep the larger interest in mind in order to decide whether its intervention is called for or not.

10. The Hon'ble apex court in *High Court of Judicature of Bombay v. Udaysingh* - AIR 1997 SC 2286, *Govt. of Andhra Pradesh & Ors. v. Mohd. Nasrullah Khan* – AIR 2006 SC 1214 and *Union of India v. Menab Kumar Guha* – (2011) 11 SCC 535 held that the court must keep in mind that the judicial review is not taken to adjudication on merit by re-appreciating the evidence and come to its own conclusion on proof of a particular change as the scope of judicial review is limited to the process of making decision and not against the decision itself in such a situation court cannot come into its own independent finding.

11. The plea in the present case taken by the applicant that the finding of the enquiry officer is perverse is not substantiated as the applicant fails to prove any procedural lapses in the entire process of enquiry or decision making process. Merely saying it is perverse will not help him in view of the aforementioned decisions. That another the applicant has also not substantiated as to how Rule 27 of CCS (CCA) Rules, 1965 is violated by

the appellate authority. Under the said rule the appellate authority/revisional authority have powers to confirm/modify/reduce/set aside the punishment. In the present case after going through the nature of charges of financial irregularity they upheld the order of the authorities below. So it cannot be said that they have not followed the above rules. They have exercised their powers enumerated under the CCS (CCA) Rules, 1965 which gives them powers to pass suitable orders in respect of enquiry so conducted and plea taken by the delinquent officer.

12. The other point raised by the applicant that the order dated 28.8.1990 (Annexure R1) is not passed by a competent authority, we find that as per the schedule of appointing/disciplinary and appellate authorities circulated vide letter dated 28.8.1990 (Annexure R1), the Director of Postal Services/Director (GPO)/Head of Division can impose all penalties specified under Rule 11 of CCS (CCA) Rules, 1965 upon the officials in LSG cadre. In the present case the penalty was imposed upon the applicant by the Head of Division, Senior Supdt. of Post Offices which is as per rules. The applicant had not produced any document to nullify the stand of the respondents in this regard and therefore, he fails to convince this Tribunal on this point.

13. As regards the point that applicant has not been furnished the relevant documents by the respondents, the learned counsel for the applicant has relied upon the judgment of the apex court in *Shobha Sinha v. State of Bihar & Ors.* - (2013) 16 SCC 456 wherein the departmental enquiry was

set aside on finding that there was non-supply of essential documents to the delinquent. The court observed that “when a departmental enquiry is conducted against the government servant, it cannot be treated as a casual exercise and procedural fairness is to be shown while conducting the enquiry”. Further in *Union of India & Ors. v. Mohd. Ibrahim* – (2004) 10 SCC 87 the apex court held that “conclusion of enquiring officer upon statement of persons made in course of preliminary enquiry, order of dismissal of the respondent having been based upon the said conclusion, held, was vitiated”.

14. Though this point is taken by the applicant in the OA for the first time that he has not been supplied the preliminary enquiry report, this point has never been raised by him before the enquiry officer or at later stage. Now applicant has raised this in the present OA which cannot be allowed to be taken. The enquiry officer has never relied upon the statement made during preliminary enquiry. Rather this point was never raised when one after another thrice inspection of the document allowed or copies were provided to the applicant. The above said judgments of the Hon'ble apex court relied upon by the applicant is of no help to him as the Hon'ble apex court held only that essential document or statement made in the preliminary enquiry if relied by the enquiry officer then it is necessary to be supplied to the delinquent for fair trial. But in the case in hand the applicant never demanded documents before enquiry officer and on a later stage that enquiry officer had not relied the statement of witness given during preliminary enquiry which was not

supplied to him. Thus there is no force in this submission. Rather the document so listed/relied on has been provided to the applicant and he was allowed to inspect the documents. However, the additional documents which were received from the custodians were also produced for inspection of the applicant on 28.10.2009 and remaining documents were also presented for inspection of the applicant on 10.2.2010. The charge sheet and documents so relied in support of the charges were duly provided to the applicant. If any cogent evidence is there then applicant has to explain as to how non-production of the said document is prejudicial to his defence. The applicant has never explained to any of the authorities from Inquiry Officer to Revisional Authority about this and now he cannot take this plea which is taken for the sake of argument only. Applicant has not submitted that these documents were very much relevant. We find that the applicant failed to prove the relevancy of those documents. Unless it is shown that delinquent was prejudiced by non-supply of some documents, it cannot be said that the reasonable opportunity to defend the case was denied. In *Syed Rahimuddin v. Director General, CSIR & Ors.* - (2001) 9 SCC 575 it was held by the apex court that:

“Unless it is shown, delinquent was prejudiced by non-supply of the documents, the same need not be produced.”

The apex court has clearly laid down the criteria in this regard that when document not supplied, whether it would cause any prejudice to the delinquent, if not then document need not be supplied. The ratio in *Syed Rahimuddin's* case (supra) squarely apply to the present case. The applicant has not disclosed as to what prejudice has caused to him in the matter. Thus,

the applicant fails to convince us on this point and hence it is rejected.

15. Keeping in view the facts and circumstances of the case, we do not find any reason to interfere with the impugned order. Therefore, the OA being devoid of merit, is accordingly, dismissed. No order as to costs.

**(ASHISH KALIA)**  
**JUDICIAL MEMBER**

**(E.K. BHARAT BHUSHAN)**  
**ADMINISTRATIVE MEMBER**

**“SA”**

**Original Application No. 180/00131/2015****APPLICANT'S ANNEXURES**

- Annexure A1** - Photo copy of the Memo No. B/U-101 dated 13.6.2008 of the 1<sup>st</sup> respondent.
- Annexure A2** - Photo copy of the memo No. F7/03/2008-2009 dated 8.8.2008 of the 1<sup>st</sup> respondent.
- Annexure A3** - Photo copy of the daily order sheet No. 03 dated 28.10.2009.
- Annexure A4** - Photo copy of the daily order sheet No. 4 dated 10.2.2010 of the 5<sup>th</sup> respondent.
- Annexure A5** - Photo copy of the deposition of SW No. 01 Shri Rajesh D. Mannath with translation.
- Annexure A6** - Photo copy of the deposition of SW No. 02 Smt. Usha Satheesh.
- Annexure A7** - Photo copy of the Daily order No. 06 dated 1.3.2010 of the 5<sup>th</sup> respondent.
- Annexure A8** - Photo copy of the deposition of SW No. 03 Shri Thomas Pothan dated 1.3.2010 with translation.
- Annexure A9** - Photo copy of the deposition of DW No. 04 Shri Eapen M.G. Dated 1.3.2010 with translation.
- Annexure A10** - Photo copy of the memo daily order sheet No. 07 dated 13.7.2010.
- Annexure A11** - Photo copy of the memo daily order sheet 09 dated 15.7.2010.
- Annexure A12** - Photo copy of the deposition of SW No. 06 Shri P. Damodaran dated 15.7.2010 with translation.
- Annexure A13** - Photo copy of the report of ASP (vig.) RO dated 20.02.2006.
- Annexure A14** - Photo copy of the deposition of SW No. 07 Shri B. Sajeevan dated 10.8.2010 with translation.
- Annexure A15** - Photo copy of the daily order sheet No. 10 dated 10.8.2010.

- Annexure A16** - Photo copy of the order No. ST/5-2/OA 314/2007 dated 18.3.2011 along with the Annexure.
- Annexure A17** - Photo copy of the order dated 3.6.2011 in OA 425/2011 of this Hon'ble Tribunal.
- Annexure A18** - Photo copy of D-1 report No. B/U/101 dated 22.9.2003 of the 1<sup>st</sup> respondent.
- Annexure A19** - Photo copy of the deposition of DW No. 1 Shri P.J. John dated 21.06.2011 with translation.
- Annexure A20** - Photo copy of the letter No. B/U/101 dated 11.10.2004 from SSP Kottayam addressed to PMG Kochi.
- Annexure A21** - Photo copy of the memo No. ST/5-2/Digs./2010 Trivandrum, dated 22.6.2011 of the 4<sup>th</sup> respondent.
- Annexure A22** - Photo copy of the report No. IQY/2/2008 dated 1.8.2011 of the 5<sup>th</sup> respondent with covering letter dated 2.8.2011 of the 1<sup>st</sup> respondent.
- Annexure A23** - Photo copy of the memo No. F7/03/2008-2009 dated 26.8.2011 of the 1<sup>st</sup> respondent.
- Annexure A24** - Photo copy of the appeal dated 21.9.2011 of the applicant to the 3<sup>rd</sup> respondent.
- Annexure A25** - Photo copy of the memo No. ST/7-16/2011 dated 22.7.2013 of the 3<sup>rd</sup> respondent.
- Annexure A26** - Photo copy of the review petition dated 15.11.2013 of the applicant to the 4<sup>th</sup> respondent.
- Annexure A27** - Photo copy of the order No. VIG/RP/VTU/180/2013 dated 30.5.2014 of the 4<sup>th</sup> respondent.
- Annexure A28** - Photo copy of the letter dated 12.10.2004 from M.M. Publications to the Superintendent of Post Offices, Kottayam Division.

**RESPONDENTS' ANNEXURES**

- Annexure R1** - True copy of the letter No. 12/6/89-Vig III dated 27.8.1990.

-X-X-X-X-X-X-X-X-