

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

Dated the 13th day of December Two Thousand And Nineteen

PRESENT:

THE HON'BLE MR. P. MADHAVAN, MEMBER(J)
THE HON'BLE MR. T. JACOB, MEMBER(A)

O.A.310/1138/2014

S. Rokkudoss,
S/o. S. Sanjeevinathan,
No. 28, Anthoniyarapuram,
87 Karuppur,
S. Pudur Post,
Konerirajapuram- 612 201.

....Applicant

(By Advocate: M/s. R. Malaichamy)

Vs.

Union of India Rep. by

1. The Assistant Director General (GDS),
Department of Posts, Dak Bhawan,
Sansad Marg, New Delhi- 110 001;
2. The Postmaster General,
Central Region, Tamilnadu,
Tiruchirapalli-620 001;
3. Assistant Superintendent of Post Offices,
Kumbakonam North Sub Division,
Kumbakonam 612 001 and
Adhoc Disciplinary authority.

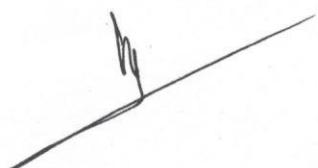
....Respondents.

(By Advocate: Mr. J. Vasu)

ORDER

(Pronounced by Hon'ble Mr. P. Madhavan, Member(J))

The case of the applicant is that he was working as Gramin Dak Sevak Mail Deliverer/Mail Carrier (GDS MD/MC), Kanjivoy BO a/w Palaiyur SO. On 4.7.2006, the third respondent in this case had issued charge memo alleging two articles of charges under Rule 10 of GDS (C& E) Rules 2001. The main allegation was that the applicant had not delivered one speed post article addressed to Shri M. Kanagasabai S/o. Maruthavanan, Main Road, Kartimoolai, Kanjivoy BO. It was also alleged that the applicant had himself signed the signature showing 'delivered' and retained the articles without delivery. Another allegation was that the applicant in this case was entrusted with 112 speed post articles during the period 20.03.2004 to 17.11.2004 and the applicant in this case had shown the same as delivered to respective addresses and when an enquiry was conducted, no such addressess could be found out and endorsement made on receipts were found false. The Disciplinary Authority has appointed an Inquiry Officer and the applicant received notice of enquiry and he sought the appointment of one Mr. Narayanan, who was working at Madurai Head Post Office, as Defence Assistant. But the inquiry officer did not allow the appointment of Mr. Narayanan from Madurai on the ground that Madurai is a long distant place and it would not be possible to complete the enquiry within time. He was asked to appoint some other person as Defence Assistant in nearby divisions. Since there was no other person available with him, he could

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not appoint anyone as his defence assistant as directed by the respondents and the respondents began the inquiry and preliminary sitting started on 26.08.2006. The applicant denied charges levelled against him. There were sittings scheduled on 1.11.2006, 2.11.2006, 3.11.2006 & 6.11.2006 respectively and he received notice for the same on 25.10.2006. But according to him, he could not participate in the inquiry as he fell ill on 31.10.2006. He immediately Telegramed to the inquiry officer on 31.10.2006 for postponement of the inquiry. He also forwarded a request letter and medical certificate showing his illness and advise for complete rest for 20 days and the same was received by the inquiry officer on 3.11.2006. According to the applicant, the inquiry officer was biased and he continued with inquiry and, therefore, he could not participate in the inquiry. Thereafter, the inquiry officer had come to a finding that the applicant is guilty and the disciplinary authority had passed an order punishing him with the order of dismissal. According to the applicant, he was not given an opportunity to defend him by appointing the defence assistant. He would further contend that inquiry officer proceeded with the inquiry even though he sought for an adjournment of inquiry on the ground of ill-health. This also caused prejudice to his case for placing his defence version. Hence, he filed the instant OA seeking the following reliefs:-

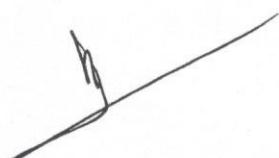
- "1. to call for the records of the 3rd respondent pertaining to his order of dismissal of the applicant from service made in Memo No. ADA/GDS MS/SR/DT dated 24.02.2007, the order of the 2nd

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respondent made in Memo No. STC/4-13/2009 dated 24.11.2009 and the order of the 1st respondent made in No. 21-17/2012-GDS dated 31.03.2014 and set aside the same; consequent to

2. to direct the 3rd respondent to conduct de-nova inquiry for the charges levelled against the applicant vide charges memo dated 04.07.2006 and thereby to reinstate the applicant into service with all service benefits subject to the outcome of the inquiry and
3. to pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

2. Respondents entered appearance and a detailed reply was filed denying the allegations made by the applicant in the OA. According to them, One M. Kanagasabai residing at Kanjivoy had preferred a complaint on 6.12.2004 regarding non receipt of his passport from the third respondent. Inquiries were made and it was found that one Speed Post bearing No. EE 454305721 IN booked by the Passport Office, Tiruchirappalli on 12.07.2004 addressed to M. Kanagasabai, was received on 13.07.2004 at Kanjivoy Branch Post Office and the same was entrusted for delivery to the applicant. The applicant at first retuned the said Speed Post endorsing 'Gone Out'. Thereafter, showed the cover as delivered on 15.07.2004 by signing himself in the delivery receipt. Later it came out that the passport was in the possession of the applicant himself and he had attempted to handover the said passport to the addressee on 3.12.2004 in the presence of three local people. But the said complainant did not receive the same from the applicant. The applicant was compelled to return the said passport on 14.12.2004. Thereafter, during the cent percent verification of the



past work of the applicant was undertaken and it came to light that 112 speed post articles were shown as delivered by the applicant while no such addressee was actually residing in his delivery area. Therefore, department initiated disciplinary proceedings by issuing charge memo under Rule 10 of the Department of Post, Gramin Dak Sevak (C&E) Rules, 2001 with two Articles of charges. Applicant appeared before the inquiry officer and denied the charges framed against him. The Inquiry and Presenting officer were appointed in this regard. The applicant thereupon sought nomination of one K. Narayanan, Postal Assistant, Madurai Head Post Office as his defence assistant as per his letter dated 18.8.2006. The inquiry officer rejected his request stating that the defence assistant from such a far off place cannot be taken and directed the applicant to nominate any other defence assistant from nearby division for conducting inquiry. Thereupon, the applicant filed a bias petition against the Inquiry Officer before the adhoc disciplinary authority. But it was not allowed and inquiry had to be proceeded with. Inquiry was fixed 4.7.2006 and the applicant appeared. But he did not take copies or peruse the copies of the records from the office and sought for sending copy by post. There upon all the relevant documents were sent to him by post and it was received by him on 26.10.2006. Thereafter notice for inquiry was issued and examination of state witnesses was fixed from 1.11.2006 to 6.11.2006 and 27.11.2006. The notice of inquiry was served on 25.10.2006. The applicant thereafter suddenly sent a Telegram on 31.10.2006, just 16 hours before starting of the inquiry, stating that



he was unwell and unable to attend the inquiry. Subsequently, a medical certificate for 20 days rest was also produced. By the time medical certificate was produced, Inquiry officer had examined the 14 state witnesses as the applicant could very well seek cross examination later. But the applicant did not file any application for cross examination of those witnesses. The applicant denied all the charges again and inquiry was completed. In the meanwhile, before enquiry started the applicant approached this Central Administrative Tribunal by filing O.A. 486/2006 and the C.A.T had directed the respondents on 7.7.2006 to complete the disciplinary proceedings within four months i.e. before 7.11.2006. Accordingly, the disciplinary authority directed the inquiry officer to conduct the day to day sittings and complete the inquiry as directed. It was because of that the days are fixed continuously. According to the respondents, the applicant was given all possible assistance and facilitated to conduct his case and he was also permitted to appoint a defence assistant from any of the nearby divisions. But he did not do the same.

3. When notice of inquiry was issued, he appeared and denied the charges. When the examination of witnesses were intimated to the applicant, he immediately sent a telegram stating his inability to attend the same. Though witnesses were examined the applicant could have sought for an opportunity for cross examination if he wished to do so. This was also not done. According to the respondents, there is no merit in the OA and, therefore, it is liable to be dismissed.

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4. We heard both the counsels and perused the pleadings. On going through the contentions, the main point put forward by counsel for the applicant is that the applicant is prejudiced very much since he was not permitted to appoint a defence assistant from Madurai. It was also contended that the applicant was not given a chance to conduct defence properly as witnesses were examined in his absence.

5. Here we have to note that the respondents had issued a charge memo showing two articles of charges on 4.7.2006. The applicant appeared and denied the charges. He thereafter sought the appointment of a defence assistant, Mr. Narayanan from Madhurai Head Post Office to conduct his case. The inquiry officer did not permit this stating that a defence assistant coming from such a long distance would only cause delay or protract the enquiry and directed the applicant to arrange a defence assistant of his choice from a nearby place to conduct his case. But the applicant did not seek appointment of any other person and made an allegation that the Inquiry Officer is biased. But this was rejected and Inquiry Officer decided to proceed with the matter. In the meanwhile, the applicant approached this Bench with OA 486/2006 and this Bench issued a direction to the respondents to complete the enquiry within a period of four months i.e. before 7.11.2006. So the respondents had to speed up the inquiry and the inquiry of examination of witnesses were fixed on 1.11.2006, 2.11.2006, 3.11.2006 and on 6.11.2006. The Inquiry Officer issued a notice to the applicant intimating the same. The applicant states that he fell ill



and he was advised to take rest for 20 days and he sought adjournment by a Telegram. Since the witnesses were already called for examination, Inquiry Officer started evidence and completed the examination of about 14 witnesses. According to the respondents, the applicant was given opportunity to recall the witnesses for his cross examination. But the applicant did not file any request and the evidence was closed. Applicant was again given an opportunity to explain the circumstances appearing against him and he denied all charges again. It is only thereafter the report was filed to the Disciplinary Authority. Though the counsel for the applicant would state that the applicant was prejudiced due to the lack of opportunity given to him and counsel seeks to set aside the order and remit it back to the Disciplinary Authority to conduct a fresh inquiry, on going through the pleadings, we find that the Inquiry Officer had scrupulously followed all the procedures and we cannot find any illegality in the procedure adopted by the Inquiry Officer. The applicant was given opportunity to conduct his case through a defence assistant who is available nearby to the place. But the applicant refused to appoint anybody of his choice. It is the choice of the delinquent officer whether to appoint a defence assistant to conduct his case or conduct it personally. The non-appointment of defence assistant in this case cannot be considered as a reason for setting aside the entire disciplinary proceedings. The contention that the applicant did not get an opportunity to cross examine has also not much merit. The applicant could have filed an application before inquiry officer to recall the witnesses if he wanted to

cross examine them and adduce his part of evidences. So there is no merit in the contention that he was prejudiced in his defence. We find merit in the arguments advanced by the respondents.

6. So we find that there is no merit in the OA and it is dismissed accordingly.

No costs. *D*