

**Central Administrative Tribunal
Madras Bench**

OA/310/00532/2017

Dated the 28th day of April Two Thousand Twenty One

P R E S E N T
Hon'ble Mr.S.N.Terdal, Member(J)
&
Hon'ble Mr.C.V.Sankar, Member(A)

A.Alphonse Rayar,
Gramin Dak Sevak Mail Deliverer,
Koovathur BO,
a/w Kallathur Thandalai SO 621 803,
Tiruchirappalli Postal Division.Applicant
By Advocate **M/s.P.R.Satyaranayanan**

Vs.

1. Union of India, rep. by
The Director of Postal Services,
O/o Postmaster general,
Central Region,
Tiruchirappalli 620001.
2. Senior Superintendent of Post Offices,
Tiruchirappalli Postal Division,
Tiruchirappalli 620001.
3. The Inspector Posts,
Jayamkondachlapuram Sub Division,
Jayamkondachlapuram 621 802.Respondents

By Advocate **Mr.M.Kishore Kumar-SPC**

ORAL ORDER
[Pronounced by Hon'ble Mr.S.N.Terdal, Member(J)]

The relief prayed for in this OA is as follows:-

“to call for the records relating to the impugned proceedings No. Rule 10/AA/Dlgs dated 16.11.2016 issued by the third respondent under Rule 10 of GDS (Conduct & Engagement) Rules, 2011 and quash the same as illegal and arbitrary and pass such further or other orders as this Tribunal may deem fit and proper in the circumstances of the case and thus render justice.”

2. Heard Mr.P.R.Satyanarayanan for the applicant and Mr.M.Kishore Kumar for the respondents. Perused the pleadings and all the documents.
3. The relevant facts of the case are that a Charge Sheet was issued to the Applicant on 22.2.2016 under Rule 10 of Department of Posts, Gramin Dak Sevak (Conduct & Engagement) (GDS(C&E), Rules, 2011 for the following misconduct:-

“ Shri A.Alphonserayat who is working as GDS MD Koovathur BO a/w Kallathur Thandalai SO with date of engagement as 02.04.1990, in the year 2015 he had himself volunteered to officiate as Postman in vacant Postman beats in Thiruchirapalli HPO and officiated as Postman 8th beat of Thiruchirapalli HPO between the period 17.08.2015 and 25.08.2015. During this period he was entrusted with the works of Postman, while doing so the said GDS has detained more than 500 ordinary postal articles at a private shop named 'Chitra Hot Chips' near karumandapam bus stop, meant for delivery in 8th beat received between the period 17.08.2015 and 24.08.2015 i.e., his period of duty in 8th beat and without noting delivery remark on the articles for their non-delivery on the respective dates. The said detained ordinary articles (Thapals) were recovered from the said shop by Shri C.Annadurai, PRI(P), Thiruchirapalli HPO on 25.08.2015 while inquiring a public complaint. Later the said detained ordinary articles were got delivered in the 8th beat through Shri N.Rajan (26th beat Postman, Tiruchirapalli HPO) and Shri K.Varadharajaperumal (20 beat postman) on 26.08.2015.”

After inquiry on the said misconduct, the applicant was imposed with a penalty of

withholding of annual increment in TRCA, without cumulative effect for a period of 3 years with immediate effect on 27.2.2016. However, later, on 16.11.2016 departmental inquiry was started again for the same misconduct under the same rule. The said alleged misconduct is extracted below:-

“The undersigned proposes to hold an inquiry against Shri A.Alphonse Rayar, GDS MD, Koovathur BO a/w Kallathur Thandalai SO 621 803 under Rule 10 of Department of Posts, Gramin Dak Sevak (Conduct & Engagement) (GDS(C&E), Rules, 2011. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A statement of imputations of misconduct or misbehaviour in support of each article of charge is enclosed in 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).”

The said misconduct in the form of article is extracted below:-

“ARTICLE I:

Shri A.Alphonse Rayar, GDS MD, Koovathur BO a/w Kallathur Thandalai SO, while officiating as Postman, Beat No.8, Tiruchirappalli HO failed to deliver 517 unregistered letters which were entrusted to him for delivery during the period from 17.08.2015 to 25.08.2015 and kept these articles, undelivered inside a private shop at Karumandapam, Tiruchy and without handing over them to the Delivery Clerk or to the ARM with suitable remarks thereon for non-delivery. Thus it is imputed that the said Shri A.Alphonse Rayar violated the provisions of Rules 127(1) and 129(1)&(2) of Postal Manual Volume-VI Part III and thereby failed to maintain devotion to duty as required of him under Rule 21 of Department of Posts, Gramin Dak Sevak (Conduct & Engagement) Rules, 2011.”

Counsel for the applicant vehemently and strenuously submits that holding second departmental inquiry on the same set of facts is not permissible under law and also as per the law laid down by the Hon'ble Supreme Court in catena of judgments including the one reported in 2004 (13) SCC 342 Lt. Governor, Delhi & Others vs.

HC Narinder Singh; (2004) 13 SCC 343 Radhika Kapur & Others vs. DLF Universal Ltd.; Union of India & Another vs. Kunisetty Satyanarayana (Appeal (Civil) 5145 of 2006; R.Kannan vs. The Director W.A(MD)No.1469 of 2011 & M.P(MD) No.1 of 2011 & W.A(MD)No.1470 of 2011 & M.P(MD)No.1 of 2011); S.Arumugathiraviam vs. Tamil Nadu Small Industries Corp. Ltd., (W.P.No.12326 of 2001).

4. The respondents have filed reply statement. In the reply statement at Para 10, they have admitted that they have conducted the departmental inquiry, imposed the punishment and implemented the punishment and they further state that still they have got power under the law to issue a second charge sheet for the same misconducts. The relevant portion of the reply is reproduced below:-

“10.....Though the punishment was already imposed and implemented, it doesn't mean that he should not be charge sheeted again for the same offence. The procedure to be followed while proposing enhancement of the penalty already imposed has been scrupulously adhered to, as per GOI Decision below Rule 29(3) of CCS(CCA) Rules. Hence the averment of the applicant does not hold good.”

But, however, when enquired, counsel for the respondent invited our attention to Rule 19(1) of Gramin Dak Sevak (Conduct & Engagement) Rules, 2011 which is extracted in their reply at para-8. The relevant portion is re-produced below:-

“revision of punishment order has to be taken up after the expiry of the period of limitation for appeal (ie) 3 months from the date of order, but within six months from the date of order.”

On the basis of the above extracted rule, according to the counsel for the respondents they are entitled to start departmental inquiry on the same misconduct. Counsel for the respondents referred to the judgments stated in his reply, in support of his

averments. The said judgments are extracted below:-

“This has been emphasized the Hon'ble Apex Court in many cases viz, The State of Madhya Pradesh v. Bani Singh & Anr., AIR 1990 SC 1308; State of Punjab & Ors. v. Chaman Lal Goyal (1995) 2 SCC 570; Deputy Registrar, Cooperative Societies, Faizbad v. Sachindra Nath Pandey & Ors., (1995) 3 SCC 134; Union of India & Anr. v. Ashok Kacker, 1995 Supp (1) SCC 180; Secretary to Government, Prohibition & Excise Department v. L.Srinivasan, (1996) 3 SCC 157; State of Andhra Pradesh v. N.Radhakrishnan, AIR 1998 SC 1833; Food Corporation of India & Anr. V.V.P.Bhatia, (1998) 9 SCC 131; Additional Supdt. Of Police v. T.Natarajan, 1999 SCC (L&S) 646; M.V.Bijlani v. Union of India & Ors., AIR 2006 SC 3475; P.D.Agrawal v. State Bank of India & Ors., AIR 2006 SC 2064; and Government of A.P. & Ors. v. V.Appala Swamy, (2007) 14 SCC 49.”

But, however, the law laid down in these cases are not applicable in the facts of the present case and from the close reading of the said extracted Rule 19(1), it is clear that it does not empower them to hold departmental inquiry for the same misconduct once again.

5. In view of the above said undisputed facts and the law laid down by the Hon'ble Supreme Court in catena of the cases cited by the counsel for the applicant, we are of the view that the second charge sheet cannot be sustained under law. Accordingly, OA is allowed. No costs.

(C.V.Sankar)
Member(A)

28.04.2021

(S.N.Terdal)
Member(J)

/G/