

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No.444/2012

Friday, this the 7th day of June, 2013.

C O R A M

**Hon'ble Dr.K.B.S.Rajan, Judicial Member
Hon'ble Mr.George Joseph, Administrative Member**

K.T.Joseph
Kooran House, Thettamala P.O.
Vellamunda, Wayanad District- 670 731.
Terminated Gramin Dak Sevak
Mail Deliverer (GDSMD)
Thettamala B.P.O.

Applicant

(By Advocate: Mr.P.K.Ram Kumar)

Versus

1. Inspector of Posts
Maanthavady Sub Division
Wayanad District-670 645.
2. Inspector of Posts
Koothuparamba Sub Division
Kannur District-670 643.
3. The Superintendent of Post Offices
Thalasseri Division
Kannur District- 670 102.
4. Divya K.
GDS Branch Post Master
Thettamala, Mananthawady
Wayanad District – 670 644.
5. Post Master General
Northern Region, Calicut
Kozhikode District – 673 011.

Respondents

(By Advocate; Ms.Deepthi Mary Varghese (R1-3&5)

This Original Application having been heard on 7th June, 2013 this Tribunal on the same day delivered the following:

O R D E R

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

Order dated 17th March, 2011 in OA No. 1096 of 2010 filed by the applicant would reflect the part of the facts in this case, and thus the same is to be supplemented with the subsequent development. The order reads as under:-

"The applicant was put off from duty by the 5th respondent on 1.12.2009. As no charge was framed against him for a long time, he approached this Tribunal earlier vide OA 523/10 seeking a direction to the respondents to reinstate him in service. The aforesaid OA was disposed of vide Annexure A-3 order dated 6.7.2010 directing the applicant to make a representation to the respondents for reinstatement. According to the applicant, he made Annexure A-4 representation dated 20.7.2010 but the same was rejected by impugned Annexure A-6 order dated 3.8.2010. Before the representation was rejected the respondents have issued Annexure A-5 memorandum of charges. The charges levelled against the applicant are as under :-

Article I

That the said Sri.K.T.Joseph, GDS MD with MC duty, while functioning as GDS MD/MC, Thettamala on 22.9.2009 refused to accept articles meant for delivery received through BO bag dated 19.9.2009 and thereby failed to maintain absolute integrity and devotion to duty violating the provisions contained in Rule 21 of GDS (Conduct and Employment) Rules, 2001.

Article II

That the said Sri.K.T.Joseph while functioning as GDS MD with MC duty, Thettamala refused to accept the stamp advance of Rs.100/- given to him and on 24.11.2009 while taking up inspection of the BO misbehaved towards the Divisional Head when he was questioned on this irregularity. Sri.K.T.Joseph also threatened Smt.K.Divya, BPM, Thettamala in the presence of SPOs. Thalassery with threatening words as under :-

"Will call police in case the BPM does not close the office by 1'o clock."

By the above act the said Sri.K.T.Joseph has violated the instructions contained in this office letter No.BD/1-13/05 dated 28.2.2007 and has shown gross indiscipline and insubordination and behaved in a manner quite unbecoming of a government servant and thereby failed to maintain absolute integrity and devotion to duty violating the provisions contained in Rule 21 of GDS (Conduct and Employment) Rules, 2001.

Article III

That the said Sri.K.T.Joseph while functioning as GDS MD with MC duty, Thettamala absented himself from duty on 19.9.2009 and also on 29.10.2009 without the approval of competent authority and thereby interrupted the mail movement and also resulted in the suspension of delivery of postal articles including Regd. Articles and Money Orders. By the above act Sri.K.T.Joseph has violated instructions contained in DG letter No.17-115/2001-GDS dated 21.10.2002 and behaved in a manner quite unbecoming of a government servant, in contravention of provisions contained in Rule 21 of GDS (Conduct and Employment) Rules, 2001.

2. While rejecting his aforesaid representation for reinstatement the respondents have stated in the impugned Annexure A-6 order that the charges framed against the applicant are so grave warranting one of the major penalties in case the charges stand proved. However, the position of the case is that it is

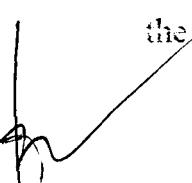
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still pending. The Disciplinary Authority has not yet passed its order. Counsel for the applicant submitted that the respondents are delaying the case purposely to harass him as much as possible. It is in this circumstances that the applicant has again approached this Tribunal by filing the present OA for reinstatement. The applicant has also sought an interim direction to the respondents to enhance his ex-gratia payment as required by in Rule 12(3) (i) of Gramin Dak Sevaks (Conduct and Employment) Rules, 2001 retrospectively from 90 days of his placing under put off duty. On the other hand, counsel for the respondents submitted that the applicant is adopting delay tactics and that is the reason why this inquiry could not be completed so far.

3. We have heard the rival submissions made by the counsel for the parties. We have also seen the charges levelled against the applicant. At this stage it is not desirable that we should interfere with the proceedings. However, we are of the view that the respondents are not conducting the proceedings with promptness. Even though the applicant was put off from duty with effect from 1.12.2009 the charge sheet was issued only after eight months ie. 2.8.2010. That too when the applicant has approached this Tribunal for reinstatement in service vide earlier OA 523/10. The counsel for the respondents has now assured us that the inquiry proceedings will be finalised at the earliest. But he is not ready to commit the time frame within which the proceedings can be finalised. We, therefore, direct the Inquiry Officer as well as the Disciplinary Authority to ensure that the final order by the Disciplinary Authority is issued within a period of three months from the date of receipt of a copy of this order. At the same time, we also direct the applicant to fully cooperate with the inquiry and make no hurdles in its proper conduct. Further proceedings in the matter shall also be taken as expeditiously as possible so that the case is finalised at the earliest.

4. As the applicant is on put off duty for more than 90 days the respondents shall consider enhancement of his ex-gratia payment as required by in Rule 12(3) (i) of Gramin Dak Sevaks (Conduct and Employment) Rules, 2001 and make the necessary payment, if admissible, within a period of two months from the date of receipt of a copy of this order. The OA is disposed of accordingly. There shall be no order as to costs."

2. In the inquiry proceedings only one article 1 stood proved vide para 18 of Annexure A-3. The proceedings culminated into penalty of dismissal from service, vide Annexure A-4 order dated 26-08-2011. The applicant filed OA No. 1018 of 2011 when revision petition before the Revisional authority was pending and the same was disposed of with a direction to the authority to decide the revision application. The Revision petition has been dismissed vide Annexure A-1 order dated 12-12-2011. The applicant has come up in this OA challenging the penalty order of removal and also the dismissal of revision petition and sought for the following reliefs:-



a) To set aside Annexure A1 order and to allow the revision petition preferred by the applicant.

b) To issue a direction to the respondents to re-engage the applicant as GDS MD with MC duty at Thettamaia BPO as if he was continuing in service by setting aside Annexure A4 order.

c) To issue any other appropriate order or direction this Hon'ble Tribunal deem fit to pass on the facts and circumstances of this case.

d) To award applicant the cost of this case.

3. Respondents have contested the O.A. In their counter they have narrated the sequence of events and justified the action taken.

4. Rejoinder has also been filed indicating the events that have taken place from 19-09-2009 till 23-09-2009 in regard to the delivery of the registered article.

5. Counsel for the applicant submitted that the applicant was on leave on 19th September, 2009 when the registered article was received in the post office but the same was not handed over to the substitute who worked on that day. They were made available to the applicant only on 22-09-2009 without indicating the reasons for non delivery prior to that date. There was no complaint from the addressee about the late delivery. The delay in delivery of the article was not accentuated by malafide or extraneous consideration. The penalty imposed is illegal.

6. Counsel for the respondents submitted that the applicant did not deliver the document on 22-09-2009 but delivered only on 23-09-2009.

7. Arguments were heard and documents perused. The applicant has served for a long period of a score and nine years and according to him his service during the said 29 years was unblemished as per para 4.1 of the application. This has not been refuted by the respondents. There were three articles of charge, two of which stood as not proved and in one of them, the allegation that the applicant was on unauthorized absence from 19-09-2009 was also held as not proved. The only charge that was held to be proved was that there was a lapse on the part of the applicant in that the article given to him on 22nd September, 2009 got delivered by him only on 23rd September, 2009. The Post master (PW 1) deposed that on 19-09-2009, only a substitute was working. The fact that the article in question was received by the Post Office on 19-09-2009 was reflected in Article I itself. The reason for not handing over the same to the substitute on 19th or 20th September, 2009 was that since the applicant was not on authorized leave, the article was not handed over to the said substitute. It was on 22nd September, 2009 that the applicant joined when the article was handed over. The finding of the inquiry



officer is that the applicant had already applied for leave and the same however had not been acted by the leave sanctioning authority. The reason for withholding the article on 19th and 20th September, 2009 by the SPM by not handing over the same to the substitute is rather worse than the conduct of the applicant who did not take the article for delivery on 22nd September, 2009. Reason given by the applicant is this regard was that when the article was received in the Post Office on 19th September, 2009 there being no entry to reflect the reason for non delivery on the same or the next day, the same would receive public complaint. The authorities are responsible for delaying the delivery for three days, while for good and sufficient reason, the applicant expressed his inability to take the article for delivery on 22nd September, 2009. Had the BPM or SPM given the reason for non delivery on 19th to 21st, September, 2009, the applicant would not have refused to take the article on 22nd itself. In fact he did accept the articles received in the post office on 22-09-2009 for delivery the same day. His apprehension that public complaint would be received for late delivery is not irrational. The omission to deliver the article for one day cannot deprive the applicant his livelihood by way of dismissal from service. Taking into account the uncontested fact that the applicant had unblemished service for 29 years, the Tribunal holds that there is no justification for the respondents in dismissing the applicant from service for such a minor omission. It has been held by the Apex Court in the case of **Punjab State Civil Supplies Corporation Ltd. vs Sikander Singh (2006) 3 SCC 736** as under:-

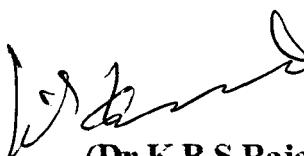
"A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in P.H. Kalyani v. Air France, Calcutta wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct."

8. Absence of complaint by the addressee of the article confirms that there was no serious consequence in non delivery of the article.
9. The OA is, therefore, allowed. The impugned orders at Annexure A-1 and Annexure A-4 are quashed and set aside. It is held that the applicant is entitled to reinstatement as GDS MD with MC duty at Thettamala BPO or in case the said post is already occupied by some other regular employee, in a place nearer to the said place or within the same division. And as regards the period the applicant was out of duty, the same shall be treated as put off duty and allowances for the

same as per rules shall be paid. The period of put off both prior to dismissal and after dismissal till reinstatement would be treated as duty period for other purposes than for payment of TRCA.

10. This order shall be complied with, within a period of two months from the date of receipt of the order. No costs.


(K. George Joseph)
Administrative Member


(Dr. K. B. S. Rajan)
Judicial Member

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