

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 459/2002

Friday, this the 29th October, 2004.

C O R A M :

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

K.S. Balachandran,
Extra Departmental Branch Postmaster,
Adukkom, Teekoy, residing at
Keeriyathottathil, Nadakkal P.O.,
Erattupetta, Kottayam.

..Applicant.

[By Advocate Mr. R. Sreeraj]

v e r s u s

1. The Senior Superintendent of Post Offices,
Kottayam Division, Kottayam : 686 001
2. The Director of Postal Services,
Central Region, Kochi - 682 016
3. Director General, Postal Department,
New Delhi.
4. Union of India, represented by its
Secretary, Ministry of Communication,
New Delhi.

..Respondents.

[By Advocate Mr. P.J. Philip, ACGSC]

O R D E R
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

In this case, the applicant was issued with a charge memo dated 22.3.2000 (A/1) under Rule 8 of the P&T Extra Departmental Agents (Conduct and Service) Rules, 1964 (ED Rules, for short), while he was working as Extra Departmental Branch Postmaster (EDBPM, for short). The charge memo in short is that the applicant while functioning as EDBPM on 9.6.1997 failed to pay the amount of Rs. 200/- withdrawn from S.B.Account No. 306619 opened in the name of Smt. C.R. Minimol to the depositor though he showed the amount as paid to the depositor on 9.5.1997. By

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the aforesaid act, the applicant violated Rule 134 (ii) and 134 (iv) of the Rules for Branch offices and thereby failed to maintain absolute integrity and devotion to duty as envisaged in Rule 17 of the ED Rules. It is pleaded in the O.A. that the charges against the applicant were not proved as there was no reliable evidence in support of the charges. The depositor had not preferred any complaint regarding non-payment of Rs. 200/withdrawn by her on 9.5.1997. In order to prove the charges, the department has questioned Smt. C.R. Minimol, the depositor of the S.B. Account No. 306619. But she categorically admitted before the enquiring authority that the withdrawal form was signed by her and that she had sent her cousin with the SB Pass Book for withdrawal of money and she had correctly received the amount so withdrawn. There is no case that the applicant misappropriated the public money. It is averred that the Examiner of the Government Examiner of Questioned Documents, Hyderabad, was not examined. The disputed points referred to him for opinion and the details of the documents sent to him have not been produced and entered into a finding without its reference. The documents were denied to the applicant on the ground that they are confidential. The charge was not accurate but vague and general. On finding the applicant guilty of charges in the enquiry, he was removed from service vide A2 order dated 13.12.2001. Against the said order, an appeal was preferred by the applicant which was rejected vide order dated 22.4.2002. Aggrieved by the said impugned orders, the applicant has filed this O.A. seeking following reliefs:



- (i) "Call for the records and quash Annexure A/1, Annexure A/2 and Annexure A/3;
- ii) Direct the respondents to reinstate the applicant back to service with all consequential benefits;
- iii) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the end of justice."

2. The respondents have filed a detailed reply statement contending that the applicant was given all opportunities to defend his case. This is borne out by the enquiry report dated 20.10.2001 (R/1). It is stated that the contention of the applicant that the charges against him were not proved, is not correct. There was only one charge that the applicant failed to pay the amount of Rs. 200/- withdrawn from S.B. Account No. 306619 to the depositor on 9.5.1997, which stood proved. It is true that the depositor has not made any complaint. The non-payment of the amount in question was detected by the Sub Divisional Inspector of Post Offices, Palai Sub Division, during cent percent verification of Savings Bank Pass Books. The depositor of Account Smt. Minimol (SW1) stated in her statement dated 12.2.1999(P-2) that she had not withdrawn any amount from her account after February, 1997 and that she had a balance of Rs. 241/- in her account. But during enquiry, she changed her version about the transaction in question. Her deposition during enquiry was that she signed the withdrawal form on 9.5.1997 (P-3(B)) and sent her cousin with the Pass Book for withdrawing the money. The depositor had made earlier withdrawal through messenger duly filling up an application named the messenger and attested the messenger's signature as evidenced by exhibit P-3(C) withdrawal application dated 7.2.1997. It shows that SW-1 knew



the procedure and was quite familiar with it. In this background, there is no reason to believe that Smt. Minimol (SW-1) would send withdrawal application on 9.5.1997 (P-3(B)) without duly filling up the same, without attesting messenger's signature and by just putting her signature. Thus, it can logically be seen that Smt. Minimol's statement dated 12.2.1999 P-2) is in all probability, the correct version and not her subsequent version in the enquiry. There is no evidence to show that the transaction was effected through her cousin. The contention of the applicant that there is no case that the applicant misappropriated public money is irrelevant in this case. It is a case of fraud. The document sent to the Government Examiner of Questioned documents, Hyderabad, for examination are applications for withdrawal/warrant of payment in respect of S.B. Account No.306619 dated 9.5.1997 (P3(B)) of different dates, specimen signatures of Smt: C.R.Minimol and specimen handwriting of the applicant. These documents were produced in the enquiry and they were identified as genuine by Smt. Sobhana, Office Assistant in the office of Senior Supdt. of Post Offices, Kottayam Division. Besides, the opinion of the Government Examiner of Question documents (P-3(A)) was also identified by Smt. Sobhana (SW-3). There are oral and documentary evidences to substantiate the charge. 15 documents were produced during the enquiry and four witness were examined and a correct conclusion was drawn by the enquiry officer. This cannot be subjected to any judicial review. The standard of proof required in departmental proceedings is not proof beyond

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reasonable doubt, but preponderance of probabilities tending to draw inference that the fact must be more probable. Sufficient opportunities were given to the applicant to defend himself. The irregularity was found on 'cent percent verification'. The appellate authority also has verified the report of the enquiry officer and approved the same. Since the report of the enquiry officer and the appellate authority's order are in order, no judicial interference is called for.

3. The applicant also filed an M.A. No. 669/04 praying for acceptance of documents A4 representation and A5 appeal filed by the applicant which have been taken on record vide order dated 22.9.2004.

4. We have heard Shri R. Sreeraj, learned counsel for the applicant and Shri P.J. Philip, ACGSC, for the respondents.

5. The learned counsel for the applicant submitted that it is a case of no evidence. He took us though the important deposition of the witnesses and argued that per se there is no evidence against the applicant. He also submitted that though the non-payment of Rs.200/- to the depositor alleged to have been occurred on 9.5.1997, there is no complaint from the depositor in this regard. The charge memo was issued on 22.3.2000. The depositor during the course of enquiry deposed before the enquiry officer that she had received the amount in question and she encashed the same through her cousin. But invoking the theory of



probability and the statement given by the father of the depositor, the conclusion was arrived at against the applicant. In fact, it is a clear case of no evidence. The allegation of fraud cannot be sustained without proper evidence. Therefore, there was no basis for the finding arrived at by the enquiry officer and that of the decision of the appellate authority, who had never considered the above aspect of the matter while disposing of the appeal of the applicant.

6. The learned counsel for the respondents on the other hand cited various decisions of Hon'ble Supreme Court and the Tribunal reported in 1997 SCC (L&S) 1486, (1997) 6 SCC 339, and SN 74 (1997) 36 ATC (Jab.) FBD, contending that it is not for the Court to examine these aspects though it may be possible to arrive at a different conclusion. In the case of Syndicate Bank vs. B.K. Mahim reported in 2000 (2) KLSJ 151, it was held that it is not proof beyond reasonable doubt, but preponderance of probabilities tending to draw inference that the fact must be probable. We are in respectful agreement with the decisions that has been canvassed by the learned counsel for the respondents and also we are reminded of the fact that this Tribunal cannot sit as a Court of appeal over a decision based on the findings of the enquiring authority in disciplinary proceedings (Government of Tamil Nadu vs. A Rajapandian, AIR 1995 SC 561). In another case reported in AIR 1980 SC 1185, Union of India vs. Parma Nanda, the Apex Court held that the jurisdiction of the Tribunal is to interfere with the disciplinary matters or punishment cannot be equated



with an appellate jurisdiction. The Tribunal cannot interfere with the finding of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse and the conclusion is based on evidence. In normal case, the Tribunal cannot interfere with the disciplinary matters invoking power of judicial review since the Tribunal is empowered to scrutinise only the decision making process , but not the merit of the case itself. In the case of Tata Cellular vs. Union of India, (1994) 6 SCC 651, it is made clear that the Court can only interfere if the decision/action is vitiated by arbitrariness, unfairness, illegality, irrationality or unreasonableness. In this case, the plea is that of "no evidence". Therefore, it has become incumbent upon the Tribunal to call for some of the records and go through the evidence produced in the matter.

7. We have given due consideration to the arguments advanced by the learned counsel for the parties and also gone through the material placed on record. As per the decision in Tata Cellular's case, we are of the view that there is nothing wrong in calling for the relevant records to find out the correctness of the pleadings of the applicant that whether it is a case of no evidence. If it is a case of no evidence, this Tribunal will be justified in going through some of the evidences adduced in this case. For better elucidation, the charge memo dated 22.3.2000 is in short, issued to the applicant for non-payment of Rs. 200/withdrawn from SB Account 306619 of Smt. C.R. Minimol and the applicant, who was functioning as EDBPM, showed the amount as



paid to the depositor on 9.5.1997 and by this act, he violated Rules 134(ii) and 134 (iv) of the Rules and thereby failed to maintain absolute integrity and devotion to duty as envisaged in Rule 17 of the ED Rules. There was only one charge. It is brought to our notice that the charge memo was issued after two and a half years on the basis of the statement obtained from the father of the depositor, who admittedly had not gone to the Post Office for withdrawal of the said amount. The version of the depositor was that she had sent her cousin with the withdrawal slip and she received the amount in question. She did not lodge any complaint. The irregularity was found only when a cent percent verification was done by the Postal Authorities. The only discrepancy that was crept in the transaction was that this entry was not made in the pass book of the depositor. Admittedly, the pass book was not presented when the amount was withdrawn. It is nobody's case that the signatures in the withdrawal form and that of the depositor differ from each other. Even in the appellate authority's order it is contended that the revised 1986 edition of the Rules for Branch Offices does not contain Savings Bank rules which according to the appellate authority, does not mean that a GDS BPM is not bound by the extant rules for SB operations. The conclusion of the disciplinary authority and the approval of the same by the appellate authority is based only on the statement of the depositor's father, which is only 'hearsay'. On going through the law of evidence, we find that as per the principles laid down in Section 32 of the Indian Evidence Act, 1972, 'hearsay



evidence' is not admissible. Hearsay evidence is excluded on the ground that it is always desirable in the interest of justice to get the person, whose statement is relied upon, into Court for his examination in the regular way, in order that many possible sources of inaccuracy and untrustworthiness can be best brought to light and exposed, if they exist, by the test of cross-examination. Section 60 lays down that oral evidence must be direct. Though the Evidence Act is not fully applicable in the matter of disciplinary case, when the disciplinary authority relied on 'hearsay evidence', it should have been corroborated. But it is lacking in this case. Hearsay evidence without corroboration / supporting evidence in our view, is to be treated as 'no evidence' even in disciplinary proceeding in the service matter.

8. We find that the action was initiated against the applicant when a cent percent verification of the Pass Book was conducted by the Postal Authorities and that Pass Book was not made available to the applicant during the enquiry on the ground that it was a confidential report. On our direction, the 'cent percent verification statement' was produced before us and on going through the same we find that nothing incriminating against the applicant to connect the charges. At best, this document reveals that as on 8.5.1997 there was a balance of Rs. 241/- at her credit in the pass book and, therefore, a balance of Rs. 41/- should have been shown in the pass book after deducting the amount of Rs. 200/- in question, which has not been done. The pass book is not produced even as of now. The statement of Shri



Ramakrishnan, father of the depositor, was that the pass book was in his custody. He said that after August, 1997, no amount was withdrawn. On the other hand, the depositor said that she had withdrawn a sum of Rs. 200/- which she categorically admitted in the enquiry. Since the statement of Shri Ramakrishnan was on a surmise and on a mistaken identity that his daughter would not have withdrawn the said amount, it should not have relied on. The only irregularity that was found in this case, is that the applicant had not made the entry in the pass book and the other aspects, i.e. withdrawal of the amount and signature of the depositor etc. were admitted by the depositor in the enquiry. If the entries were not made in the pass book, it has to be viewed in a way that it could only be an omission/inadvertance, but cannot be termed as a 'fraud'. The entire action has been taken on the basis of the said hearsay evidence which cannot be treated as a negligence on the part of the applicant to warrant the extreme punishment of dismissal from service.

9. Considering the entire aspects in detail, we are of the view that the applicant's dismissal from service is based on such a weak pillar of evidence. Neither the disciplinary authority nor the appellate authority had given due consideration to the above aspect and the impugned orders were passed without due application of mind. In our view, this amounts to miscarriage of justice and also the punishment of dismissal imposed on the applicant touches the conscience of this Tribunal (see, 2003 (8)

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SCC 9, Dev Singh vs. Punjab Tourism Development Corpn. Ltd. & Anr., and therefore, the impugned orders are not sustainable in law. In this view of the matter, we have no hesitation in setting aside the impugned orders A/1, A/2 and A/3.

10. In the result, the O.A. is allowed and we set aside the impugned orders A/1, A/2 and A/3 with a direction to the respondents to reinstate the applicant forthwith with all consequential service benefits. However, the applicant will not be entitled to any back wages (see, Telecommunication Engineering Services Association and (India) Anr. vs. Union of India and Another, 1994 (4) SLR 15). No order as to costs.

(Dated, the 29th October, 2004)

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H.P. DAS
ADMINISTRATIVE MEMBER



K.V. SACHIDANANDAN
JUDICIAL MEMBER

cvr.