

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION No. 494 OF 2008

Dated 18th Friday September, 2009

CORAM:

HON'BLE Mr GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Mr K GEORGE JOSEPH, ADMINISTRATIVE MEMBER

G.Rajendra Prasad, S/o Gopalan
Ex-GDSMD, Kappil, Edava,
R/o Vadakke Bhagom, Kappil PO
Edava, Thiruvananthapuram..

..Applicant

[By Advocate : Mr. R.Anil Kumar]

-Versus-

- 1 Union of India represented by
The Secretary, Govt of India Ministry of
Communications, Department of Post, New Delhi.
- 2 The Chief Post Master General
Kerala Circle, Trivandrum.
- 3 The Sr.Suptd.of Post Offices
Trivandrum North Division, Trivandrum.
- 4 The Assistant Suptd.of Post Offices,
Trivandrum North Division, Trivandrum.

Respondents

[By Advocate: Mr. T.P.M. Ibrahim Khan, SC&SC]

The application having been finally heard on 27th August, 2009, the
Tribunal delivered the following:

ORDER

(Hon'ble Mr. K. George Joseph, AM)

The applicant was a GDS Mail Deliverer at Kappil P.O. During the annual inspection on 21.3.2000 it was detected that the applicant had wrongly delivered two registered posts containing Indian Passport sent by the Passport Officer, Trivandrum to persons other than the addressees. A charge sheet was issued and full-fledged enquiry was conducted as per rules and the punishment of removal from service was inflicted upon the applicant vide Annx.A5 order dated 29.8.03. The appellate authority rejected the appeal against the said order vide Annx.A7 order dated 5.4.04. Aggrieved by these two orders, the applicant has filed the present OA with a prayer to quash Annxs.A5&A7 orders and to direct the respondents to reinstate the applicant in service with full salary and other monetary benefits w.e.f. 29.8.2003 including seniority.

2 The Articles of charges on which action was taken against Shri Rajendra Prasad, the applicant, are given below:

"Article-I: That the said Shri G.Rajendra Prasad while working as EDDA-II Kappil BO irregularly delivered TVM Pettah RL No.P.12187 sent by the Passport Officer, Trivandrum-695024 addressed to Shri Satheesan Sukumaran, Valiaveedu, Kappil to Shri Satheesan Sivadasan, Valiaveedu, Kappil on 17.5.1999 in violation of Rule 127(1) Postal Manual Vol.VI Part III and has thereby failed to show devotion to duty and thus violated Rule 17 of P&T ED Agents (Conduct & Services) Rules, 1964.

Article II: That the said G.Rajendra Prasad while working as EDDA-II Kappil BO irregularly delivered RL No.P-27828 of TVM Pettah PO sent by the Passport Officer, Trivandrum-695024 addressed to Shri Salim Basheer, Panikkadudi Veedu, Kappil BO to an unknown person on 26.11.99 in violation of devotion to duty and maintain absolute integrity in violation of Rule 17 of P&T ED Agents (Conduct & Services) Rules 1964".

3 The grounds for relief urged by the applicant are :

"(b) Annexure A5 and A7 suffer from the vice of non application of mind. The conclusion reached to the disciplinary authority and appellate authorities is totally erroneous and based on surmises and

guess work. No disciplinary authority would have come to such a conclusion on the basis of the evidence on record. It is a case of no evidence and the punishment of removal imposed is totally unsustainable and against the principle of natural justice and fair play. Though the applicant had filed an appeal before the appellate authority, the appellate authority without hearing an opportunity of being heard was afforded the vested right of appeal was taken away due to the arbitrary order passed by the appellate authority.

(c) Art.311 of the Constitution of India specifically states no member of the civil service shall not be dismissed without giving a reasonable opportunity of being heard. Annx.A7 order is highly illegal and is liable to be set aside.

(d) The enquiry is also vitiated by the procedure lapses and the same was conducted not in accordance with the rules. Person whose name is not indicated in the witness list were also called and examined. None of the documents furnished by the respondent were given to the applicant. There was no independent enquiry conducted by the disciplinary authority.

4 The main focus of the argument of the learned counsel for the applicant was that a person whose name was not included in the witness list was called and examined. This lapse on the part of the Inquiry Officer has vitiated the enquiry. Shri S.Sameer, GDSMD Kappil was examined as Court witness on 12.12.02. The court witness has deposed that there was no such Salim Basheer in Panikkakudi Veedu. The argument of the defence was that Shri Salim Basheer was available at the given address. The Inquiry Officer had relied upon the deposition of the court witness and held the second charge as proved. The argument of the applicant is that summoning of Shri S.Sameer as court witness is illegal on the ground that name of the witnesses has not been included in the charge sheet and that engagement of the new witness during the course of enquiry is against the provisions of law. The objection raised by the applicant was overruled by the Inquiry Officer

and he was not given an opportunity to cross examine the court witness, therefore, these procedural lapses vitiated the enquiry.

5 The respondents contested the OA. The learned counsel for the respondents submitted that Note to Rule 14 sub rule (15) empowers the inquiry authority to examine any witness at his discretion if there is inherent lacuna in the evidence which has been originally produced. Shri Salim Basheer, Panikkakudi veedu, Kappil was cited as one of the defence witnesses. Notices were sent to him which were returned with the remark 'out of station', therefore, it was necessary to examine the GDSMD who made such remark to find out the truth. At the time of enquiry the main argument of the defence side was that Sh.Salim Basheer, was available at the given address about three months back. But the applicant could not produce any supporting evidence. Sh.S.Sameer, who replaced the applicant as GDSMD had to be summoned as Court witness. In support of the discretionary power vested with the Inquiry Officer to consider the additional evidence, the observation of the Hon'ble High Court of Kerala in Rajendra Panicker Vs. Kerala State Warehousing Corp. (2005 KHC 1246) was cited. The learned counsel for the respondents emphasised that there was no procedural lapse in the disciplinary proceedings. The deposition of Sh.S.Sameer was essential to disprove the argument of the applicant which was raised without any supporting evidence. Therefore, the Inquiry Officer was right in using his discretionary power under Rule 14 sub rule (15).

6 Arguments were heard and documents perused.

7 A perusal of Annx.A3, enquiry report, shows that the Inquiry Officer had performed his task with due diligence and care. He had carefully analysed the evidence and had given well reasoned findings, holding both the charges against the applicant as proved. He had justified the need to summon Shri S.Sameer as court witness in para 14 of the enquiry report which is reproduced below:

"14 In the sitting No.10 held on 3.10.02, the Presenting Officer contended that the remarks on the RL No.1061 dated 3.8.02 have direct bearing on charge No.II framed against the charged GDS and therefore requested that the correct position of the matter might be enquired into. After examining the point in detail, I found that there was force in the contention of the Presenting Officer. I therefore ruled that the GDSMD Kappil who made remarks on the said RL would be called and examined as Court witness. Accordingly, Sh.S.Sameer GDSMD Kappil who made remarks on the said RL was called and examined as court witness in the sitting held on 12.12.02. Before the commencement of the inquiry, the defence side objected to the examination of the witness on the ground that the name of this witness has not been included in the charge sheet and that engagement of a new witness amidst the course of inquiry is against the provision. This objection was over ruled by me in view of the above fact and also in view of the facts and circumstances as spelt out in the proceedings of the sitting No.10 dt. 3.1.02. (As pointed out in the proceedings of the sitting No.10, disposal of RL No.1351 of PMG Jn.PO dt.9.9.02 sent to Shri Salim Basheer, Panikkakudi Veedu, Kappil was enquired into which revealed that the above RL was received back undelivered long back and was kept at Vigilance Section of CPMG's office by mistake without handing over to me). The remark for delivery of this RL was 'no such addressee at Panikkakudi'. Notice for the sitting held on 20.11.02 (sitting No.11) sent to Shri salim Basheer Panikkakudi, Kappil by registered letter No.3261 dt. 6.11.02 was also received back undelivered on 11.11.02 with the remark 'no such addressee at Panikkakudi'. The wrapper of RL No.1351 dt. 9.9.02, 3261 dt. 6.11.02 and 1061 dt. 3.8.02 were all examined by the Presenting Officer and the Defence side in the sitting held on 20.11.02."

8 The disciplinary authority had accepted the enquiry report after carefully and dispassionately going through all the records and documents in

the case. The order of the disciplinary authority is well reasoned and impartial. The Appellate authority dealt with the issue of calling court witness. He has noted that the defence side also examined the court witness during the enquiry. His order at Annx.A7 rejecting the appeal is also well reasoned. With the detection of fake Passport from criminals and terrorists within and out side the country causing threat to national security, Govt had issued instructions to all the concerned to be vigilant on delivery of Passport to the correct addressee itself. Separate register was being maintained by the Post Office for recording particulars of receipt and delivery of registered post containing Passport in each Post Office. It was incumbent upon the Inspecting Officers to check the correctness of the delivery of such registered post. The gravity of offence and threat to national security in delivering Passport to wrong persons are understood by all except the applicant. In spite of instructions of the Postal authorities that if the addressee was not available at the address, the registered article should be returned to the sender and in spite of the instructions of the Passport Officer on the cover of the article to the effect that it should not be redirected or delivered to unauthorised person, the applicant wilfully made wrong deliveries.

9 It is not mandatory to give a personal hearing by the appellate authority. It was open to the applicant to demand a personal hearing which he did not do. After forfeiting the right to demand a personal hearing, there is no point in complaining that he was not given a reasonable opportunity of being heard. If he had demanded an opportunity of being

personally heard and if the appellate authority had refused to give him hearing then there would have been a cause for the applicant to agitate.

10 Summoning a person as Court witness whose name was not included in the witness list is perfectly in accordance with Rule 14 sub rule (15). The Hon'ble High Court of Kerala in 2005 KHC 1246 (supra) has held as under:

"The object of a disciplinary enquiry is not merely to compile the evidence adduced by both sides. It is to get at the truth. The enquiry officer is an independent authority invested with the duty to find the truth regarding the allegations of the management against the delinquent. As such, he is duty bound to do every thing in his capacity to get evidence for and against the allegations, if he possibly can, of course, as suggested by the parties."

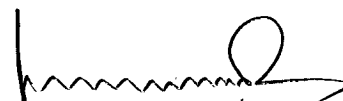
11 None of the grounds raised by the applicant stand legal scrutiny. The principles of natural justice and fair play have been observed at every stage of the action taken against the applicant.

12 In the light of the above discussion, the O.A fails.

13 The O.A is dismissed. No order as to costs.



(K. George Joseph)
Administrative Member



(George Parackal)
Judicial Member.

Dated the 18th September 2009

kkj