

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.503/2003

Friday, this the 17th day of December, 2004.

CORAM:

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

HON'BLE MR A.K.BHATT, ADMINISTRATIVE MEMBER

C.Kelu,
Gramin Dak Sevak Mail Deliverer(GDSMD),
(Removed from service),
Arur.P.O., Branch Post Office,
Vadakara North Sub Division. - Applicant

By Advocate Mr Sasidharan Chempazhanthiyil

Vs

1. A.K.Balan,
Assistant Superintendent of
Post Offices & Enquiry Officer,
Vadakara Division,
Vadakara.
2. Sub Divisional Inspector of
Post Offices,
Vadakara North Sub Division,
Vadakara.
3. Superintendent of Post Offices,
Vadakara Division, Vadakara.
4. Postmaster General,
Northern Region, Calicut.
5. Union of India represented by
Director General,
Posts, New Delhi. - Respondents

By Advocate Mr TPM Ibrahimkhan, SCGSC (R.2 to 5)

The application having been heard on 15.12.2004, the Tribunal
on 17.12.2004 delivered the following:

O R D E R

HON'BLE MR A.K.BHATT, ADMINISTRATIVE MEMBER

has been
The following relief sought by the applicant in the
present application:

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i) Call for the records and quash A-2, A-5, A-6 and A-8.

ii) Direct the respondents to conduct a fresh enquiry through an Enquiry Officer other than 1st respondent from the stage of issue of charge sheet and to reinstate the applicant back to service till the result of such an enquiry is made.

2. Facts of the case in brief are, that the applicant was working as GDSMD, Arur Post Office with effect from 1.5.1980. On the allegation of failure to make payment of a money order for Rs.1,525/- payable to Smt. P.K.Janu Amma by allegedly forging signature of the payee and mismanaged the money, an enquiry was conducted against the applicant under Rule 8 of P&T ED Agents (Conduct & Service) Rules, 1964. Enquiry Officer was appointed and on the basis of the enquiry report, the disciplinary authority (DA for short) removed the applicant from service. The applicant was also put off duty during the pendency of the enquiry. Appeal and revision petition was rejected by the competent authorities.

3. The grounds taken by the applicant are that, this is a case of no evidence. The charge of forgery was not proved. No handwriting expert was summoned to prove that it was the applicant who put the signature of the payee in the money order form and therefore, the finding of forgery was based on presumption only. The applicant requested for a change of Inquiry Officer (I.O. for short) as the appointed I.O. was the subordinate of the 3rd respondent. However, the request

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was rejected. The applicant had 19 years of unblemished service and that should have been taken into account while imposing the penalty of removal from service which is disproportionate to the charge. The payee at one place states that she did not receive the money but at another place admits that she received the value of the money order. She also has stated that she suffers from memory lapses. The money order was received at Arur Post Office on 8.6.98 and it should have been returned at the most, on 14.6.98 or 15.6.98, but it is alleged to have sent for delivery on 16.6.98. As per rules, no money order received in the Post Office should be retained for more than 7 days and if it was not paid within 7 days, it should have been returned to the remitter which was not done. This betrays serious lapse on the part of the Branch Post master (BPM).

4. In the reply submitted by the respondents, it has been stated that the enquiry was conducted as per rules and the evidence adduced has been discussed in the enquiry report forthwith. During the fact finding enquiry, the applicant admitted in his written statement the forgery and misappropriation of the value of the amount in question and in the circumstances, it was not considered necessary to get the opinion of the handwriting expert. The applicant's request to change the enquiry officer was duly considered by respondent No.2 and rejected as there was no adequate ground for acceding to such request. Giving appropriate punishment in such cases of non-delivery of money order is necessary so that the ^{poor} ~~power~~ payees do not suffer and the department does not lose the

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trust and confidence that it enjoys. Penalty imposed is not disproportionate to the charge. PW-3 (BPM, Arur) deposed before the I.O. that the statement given by the applicant before PW-1 (IPO (PG) Vadakara) was not under threat or inducement. Nothing has been brought out in the enquiry to substantiate the argument of the applicant that the statement of the applicant was the result of connivance and collusion between the 2nd respondent and PW3 (BPM).

5. The respondents have further explained that the Postman Book is not the only documentary proof for having entrusted the money order in question to the applicant. The acquittance of the applicant for receipt of the money order in question was obtained in Annexure-P9 (BO Journal) on all days. This is ample proof to show that the money order was received for payment by the applicant. So the contention of the applicant that it was not entrusted to him by PW 3 (BPM) is not correct.


6. Heard the counsel on both sides. Learned counsel for the applicant reiterated written pleadings. He has drawn our attention to the fact that the forgery has not been proved and the payee has given contradictory statement. He has also stated that the so-called confessional statement which has been mainly relied on by the I.O. and D.A. cannot be depended on as it was taken under threat and coercion. Shri Vishnu stressed on the unblemished service record of the applicant for 19 years. He also stated that at the time of

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misappropriation, BPM, Arur was having financial difficulties and her involvement in the misappropriation cannot be ruled out.

7. Counsel for respondents reiterated the written pleadings and contended that Postman Book is not the only documentary proof but the B.O. Journal shows that the money order in question was obtained by the applicant on all days.

8. We have considered the case. It is an established principle that in judicial review, we do not re-appreciate the evidence and the adequacy or otherwise of the evidence is also not looked into. The Tribunal cannot sit on appeal against the orders passed by the departmental officers. It is also no a settled principle that the level of evidence required in departmental proceedings is entirely different from that in a criminal case. Whereas in a criminal case, the guilt of the accused is to be proved beyond doubts, all reasonable in the departmental proceedings, it is the preponderance of probability that is taken into consideration. In this case, there is a complaint by the payee on 1.7.98 and 2.7.98 before the IPO, Varkala that she was not paid the money order on 16.6.98, and she disowned the signature on the M.O. form. She also stated that she was available at her residence during the period 8.6.98 to 16.6.98 and she did not get any intimation regarding the arrival of the money order. Later the amount of the money order was given by the applicant at her residence on 28.6.98. On being confronted with this statement, the applicant had admitted the misconduct before



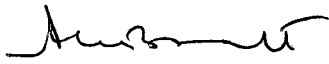
the BPM, Arur and I.P.O., Varkala. This has been confirmed by the BPM, Arur before the enquiry officer. The B.O. Journal entries show that the money was given to the applicant on all days. The applicant has tried to take benefit from the contradictory statements given by the payee and the memory lapse admitted by her before the I.O. However, there is sufficient evidence as above which has come out during the enquiry to prove the misconduct of the applicant. The applicant applied for a change of I.O. on the basis that he was an immediate subordinate to R-3(SPO, Varkala Division) and therefore, biased against the applicant. However, for the simple reason that an I.O. is working in the office of the disciplinary authority cannot be a fault for change of I.O. and we do not find any ground in such rejection of the request by the I.O. The applicant has contended that the forgery has not been proved and the handwriting expert was not summoned. However, the misconduct of the applicant has been proved by the documentary evidence as well as the evidence given by the BPM, Arur and on the face of the complaint made by the payee that the money order was not received by her between 8.6.98 and 16.6.98 and therefore, the applicant does not get any benefit from the alleged memory lapse on the part of the payee. The applicant also admitted his misconduct in the fact finding enquiry although the counsel for the applicant has been mentioned that this statement was taken from him under coercion and threat of police action. However, we have discussed that even without this piece of evidence, there is sufficient documentary evidence to prove the misconduct of the

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applicant. The applicant has not been able to point out any such procedural fault in the departmental proceedings which may vitiate the entire departmental proceedings.

9. To sum up, we do not find any reason to interfere with the orders of the D.A., the appellate and revisional authorities. The O.A. is dismissed. No costs.

Dated, the 17th December, 2004.



A.K. BHATT
ADMINISTRATIVE MEMBER



K.V. SACHIDANANDAN
JUDICIAL MEMBER

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