

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 512 of 2008

Wednesday, this the 30th day of September, 2009

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member

Hon'ble Mr. K. George Joseph, Administrative Member

R. Somasekharan Nair, Aged 49 years,
 S/o. Chellappan Nair, Ex. GDS SPM Kollad
 P.O., Residing at Palakulath House, Pariyaram P.O.,
 Puthupally, Kottayam - 686 021.

Applicant

(By Advocate – Mr. P.C. Sebastian)

V e r s u s

1. The Director of Postal Services,
 Central Region, Kochi - 682 018.

2. The Senior Superintendent of Post Offices,
 Kottayam Division, Kottayam.

3. Sajeevan B (Inquiring Authority), Inspector
 of Posts, Kottayam West Sub Division, Kottayam.

4. The Union of India, Represented by Secretary to
 Govt. of India, Ministry of Communications,
 Department of Posts, New Delhi.

Respondents

(By Advocate – Mr. T.P.M. Ibrahim Khan, SCGSC (R1, 2 & 4)

The application having been heard on 15.9.2009, the Tribunal on
30-09-09 delivered the following:

O R D E R

By Hon'ble Dr. K.B.S. Rajan, Judicial Member -

The applicant was serving as Extra Department Sub Post Master at
 Kollad Post Office. He was served with a memorandum containing three
 charges against him which are as under:

[Handwritten signature]

"Article of charge I

That the said Shri R. Somasekharan Nair, while functioning as GDSSPM Kollad during October 2004, failed to produce the entire cash and stamp balances for verification before the SP Kottayam East Sub Division on 13.10.2004 and thereby violated the provisions of Rule 84 of Postal Manual Volume VI Part III (Sixth Edition) and failed to maintain absolute integrity and devotion to duty as envisaged in Rule 21 of GDS (Conduct and Employment) Rules, 2001.

Article of charge II

That the said Shri Somasekharan Nair, while working as GDSSPM Kollad on 12.10.2004, charges three money orders as paid in the accounts of the office without actually effecting payment of these money orders and misappropriated Govt. money to the tune of Rs. 3884/- and thereby failed to maintain absolute integrity and devotion to duty as envisaged in Rule 21 of GDS (Conduct and Employment) Rules, 2001.

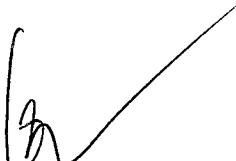
Article of charge III

That the said Shri R. Somasekharan Nair, while functioning as GDSSPM Kollad during the period from 06.04.96 to October 2004 has kept excess cash in excess of the authorized maximum at the office on 31.05.2004, 02.06.2004, 17.06.2004, 18.06.2004, 19.06.2004, 25.06.2004, 28.06.2004 and 02.07.2004 showing fictitious liabilities and violated the provisions of Rule 102 B of Postal Manual Volume VI Part III 6th Edition and failed to maintain absolute integrity and devotion to duty as envisaged in Rule 21 of GDS (Conduct and Employment) Rules, 2001."

2. The applicant denied the charges consequent to which an inquiry was ordered. The inquiry authority had given his report vide Annexure A-4 wherein the findings are as under:

"Therefore, on a proper evaluation of all the oral and documentary evidences adduced during the inquiry, I have come to the definite findings that:-

- (i) the Article of Charge No. I framed against Shri R. somasekharan Nair, GDSSPM, Kollad (UPOD) as contained in SSPOs, Kottayam Dn Memo No. F6/03/04-05 dated 26/05/05 is not conclusively proved;
- (ii) the Article of Charge No II framed against Shri R. Somasekharan Nair, GDSSPM, Kollad (UPOD) as contained in SSPOs, Kottayam Dn Memo No. F6/03/04-05 dated 26/05/05 is conclusively proved; and



(iii) the Article of Charge No III framed against Shri R. Somasekharan Nair, GDSSPM, Kollad (UPOD) as contained in SSPOs, Kottayam Dn Memo No. F6/03/04-05 dated 26/05/05 is partially proved."

3. Applicant has filed his representation against the inquiry report vide Annexure A-5. Vide Annexure A-6 the disciplinary authority has imposed penalty of removal from service. While doing so the disciplinary authority differed from the inquiry authority in respect of articles 1 and 3 and came to the conclusion that article 1 as well as article 3 also stands proved. Thus, according to disciplinary authority all the charges stood proved. The applicant preferred an appeal against the same vide Annexure A-7. The Appellate authority by Annexure A-8 order agreeing with the finding of the inquiry officer was of the conclusion that charge one is not proved and charge 3 is partially proved. However, as regards charge 2 that stood proved has been agreed to.

4. As to the quantum of punishment the appellate authority has agreed with the disciplinary authority that the gravity of the lapses found proved makes the appellant unfit to be retained in service. Financial integrity in the head of the EDSO is something that cannot brook any compromises. Retention of an official found having violated more than one rule in this regard would vitiate both financial discipline within the department and the public trust in the Post Office as a reliable custodian of their money. The penalty of removal from service was upheld by the appellate authority.

5. The applicant has preferred this OA on various grounds as contained

in paragraph 5 of the OA.

6. Respondents have contested the OA. According to them the applicant had made a statement whereby he had admitted his guilt and assured "I will not repeat such type of activities in future". He has also requested for pardon. The respondents stated that this admission by the applicant before conducting the inquiry was not contradicted later.

7. The applicant has filed his rejoinder annexing a copy of order dated 31st July, 2008 passed in OA No. 678 of 2006 whereby the matter was remanded to the revisional authority to consider quantum of penalty afresh and pass appropriate orders.

8. Counsel for the applicant argued that it is only charge No. 2 which stood proved by the inquiry authority, disciplinary authority as well as appellate authority. That relates to non-disbursement of three money orders amounting to Rs. 3,884/- which having been reflected as "paid". This money was in fact available on the relevant date. Even if it is assumed that the same was misappropriated that is simply a temporary misappropriation for which the penalty imposed is disproportionate to the proved misconduct. As such the decision of this Tribunal in OA No. 678 of 2006 should be applied.

9. Counsel for the respondents submitted that as per the statement by the applicant himself the misconduct has been admitted and he has requested

that he may be pardoned. The applicant could not surface any legal lacuna in the decision making process while conducting the inquiry. As such the OA deserves dismissal.

10. Arguments were heard and documents perused. The appellate authority has overruled the disciplinary authority's decision in respect of charges one and three. Charge 2 through out stood proved. A valid reason has been given as to how the order of removal from service has been found to be appropriate penalty in this case by the appellate authority, as already stated above. In so far as quantum of penalty is concerned, law is well settled. The Tribunal cannot interfere with the quantum of punishment. At best if it is shockingly disproportionate it will remit the matter back to the authorities concerned as done in the case of OA No. 678 of 2006. In that case the official concerned was proceeded against both departmentally as well as by the Criminal Court and the latter has acquitted him.

11. Compared to the above case in the instant case while re-appreciating the evidence the appellate authority in respect of article two has observed as under:

"Regarding Charge 2, the averment that the cash of Rs. 3884/- representing the value of the money orders in question was found at the office separately on 13.10.04 by PW-6 appears to be a distortion of PW-6 deposition that this amount was credited by the appellant on 13.10.04 under UCR. Deposition of PW-2 and inclusion of these MOs in paid list and SO daily account produced as documentary evidence substantiate the charge. The charge that the appellant charged 3 MOs as paid in the accounts of the office without actually effecting payment holds irrespective of whether or not the cash representing the value of these MOs was available at the office even before making good the remaining shortage and notwithstanding the appellant's contention that



the MOs were not fraudulently paid and, there was no case of payee not receiving the payments. The version that it was PW-6 who advised him to close the account showing the MOs with the delivery staff who were yet to arrive to tender their returns as paid is too far-fetched for belief. It is unlikely that any inspecting officer would issue such an instruction and there is no evidence brought forward to substantiate the story. Pressure of office inspection, counter work and hurried closing of mail bags cannot explain the showing of unpaid MOs as paid. Non-issue of ACG-67 receipt on the spot by the ASP does not weaken Charge 2 which is supported by substantial oral and documentary evidence as listed in the report of the Inquiring Authority. As I do not find Charge 1 proved, I do not accept the contention in the order appealed against that Charge 1 is strengthened by proving Charge 2. But I agree with the finding of the disciplinary authority that Charge 2 is proved."

12. The inconsistent and inconceivable stand taken by the applicant to justify his act of recording as "paid" in respect of three money orders which are actually not paid has made the applicant totally untrustworthy. The act of the applicant cannot be construed, therefore, as a mere act of temporary misappropriation. Further he had actually admitted the guilt against which he has not backed out though in the inquiry. The inquiry authority in this regard has observed as under:

"The argument of defence that there was no case that the MOs were fraudulently paid and there was no case that the payees did not get correct payment of the MOs is not agreeable as it is for the Department to investigate and bring out the truth when it smells something fishy. No complaint is required for initiating such inquiries. Another argument of CGDS is that there was excess cash to the extent of the value of three MOs and that excess cash of Rs. 3884/- was credited under UCR on 13/10/04. This argument also cannot be agreed to as the CGDS himself has admitted shortage in Ext P-20. Next argument of defence is that he has not misappropriated Rs. 3884/- being the value of the above mentioned three MOs. This argument also cannot be agreed to as the MOs in question were shown as paid and there was shortage of cash at the office at the time of vist of PW-6. Thus, all the evidences goes against the defence and also points to the hollowness of the argument."



13. We have also gone through the original records of the proceedings

made available by the respondents. We do not find any document which supports the case of the applicant. Consequently we have no option but to dismiss the OA as devoid of merits. OA is therefore, dismissed. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(K.B.S. RAJAN)
JUDICIAL MEMBER

"SA"