

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.515/02

Tuesday this the 24th day of August 2004

C O R A M :

**HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER**

P.Syamala Devi,
BPM (under dismissal),
W/o.late P.Somasekharan Nair,
Attukal B.O., Manacaud P.O.,
Thiruvananthapuram.
Residing at : Sopanam, Mele Adoor Veedu,
Karakulam Village, Thiruvananthapuram.

Applicant

(By Advocate Mr.Vishnu S Chempazhanthiyil)

Versus

1. Superintendent of Post Offices,
South Postal Division,
Thiruvananthapuram.
2. Director of Postal Services,
Head Quarters, O/o. the C.P.M.G.,
Thiruvananthapuram.
3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
4. Director General,
Postal Department, New Delhi.
5. Union of India represented by its
Secretary, Ministry of Communications,
New Delhi.

Respondents

(By Advocate Mr.C.Rajendran,SCGSC)

This application having been heard on 24th August 2004 the Tribunal on the same day delivered the following :

O R D E R

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

The challenge in this application filed under Section 19 of the Administrative Tribunals Act by P.Syamala Devi, Ex-ED BPM is against the legality of the order dated 15.3.2001 (Annexure A-5) of the 1st respondent imposing on her a penalty of dismissal from service as also to the order dated 31.1.2002 (Annexure A-7) of the 2nd respondent rejecting her appeal. The facts of the case are as follows :-

2. The applicant was served with a Memorandum of Charge dated 29.6.1998 containing three articles of charges, alleging that while working as BPM Attukal she failed to credit into Post Office Accounts a sum of Rs.300/- accepted by her on 5.8.1996 for depositing in SB Account No.445352 in the name of Smt.B.N.Narmada after receiving the amount entering in the pass book, that she received the sum of Rs.100/- on 10.9.1996 for deposit in the SB Account No.442976 but failed to account while it was entered in the pass book and that she after receiving a sum of Rs.50 on 5.8.1996 for deposit in the SB Account No.442674 failed to bring it to Post Office Accounts after making entry in the pass book and that she had, therefore, committed grave misconduct by violating Rule 17 of the P & T ED Agents (Conduct & Service) Rules 1964. She having denied the charge an enquiry was held. The enquiry officer submitted a report finding that the Articles of Charges have been proved and agreeing with the finding issued Annexure A-5 order imposing on the applicant a penalty of dismissal from service. The Appellate Authority by Annexure A-7 refused to interfere. Aggrieved the applicant has filed this application. It has been alleged in the application that the enquiry was not held in conformity with the rules, that the finding was perverse and the penalty imposed is grossly disproportionate.

3. Although various grounds have been raised in the application the learned counsel of the applicant argued only the following points (1) The enquiry has been held highly belatedly and this has caused prejudice to applicant's defence (2) As the finding that applicant is guilty was based mainly on the

u

statement of the applicant recorded under duress and the statement of witnesses made at the instance of the Inspector the same is preverse and vitiated and (3) The penalty of dismissal is grossly disproportionate to the misconduct.

4. We have heard Shri.Vishnu S Chempazhanthiyil learned counsel of the applicant and Shri.C.Rajendran,SCGSC learned counsel for the respondents and have perused with meticulous care all the pleadings and materials which are on record.

5. Shri.Vishnu S Chempazhanthiyil brought to our notice that charge sheet in the case was issued on 29.6.1998 while the date of occurrence was June 1996 and the enquiry was completed only in 2000 and this delay has caused prejudice to the applicant. Learned counsel for the respondents argued that the applicant has not subjected to any prejudice on account of the delay, that immediately on occurrence of the misconduct she was placed under suspension, was paid subsistence allowance and that the proceedings happened to take sometime as there was difficulty in securing the attendance of the witnesses.

6. We find that there has not been any inordinate and unexplained delay as contended by the applicant and that the delay has not in any way prejudiced the defence of the applicant because even in the O.A. the applicant has stated that there has been a failure on her part to bring into account the various sums received by her towards deposit and that it was on account of her mental tension owing to family problems. Therefore, virtually even in the application the allegations forming the basis of charge has not been disputed. Further the delay is seem to have

✓

been explained by the respondents. It is seen that investigation disclosed similar failure on the part of the applicant to credit amounts and that the further investigation caused delay in the matter. We find that the delay has not caused any prejudice to the applicant and that it has been properly explained.

7. Learned counsel of the applicant next argued that the finding that the applicant was guilty was based solely on the statement given by her under duress and basing on the testimony of witnesses given at the instance of the ASP. It is pertinent to mention that the applicant did not make any complaint to any higher authority that statement had been obtained from her under duress. Further even in the application the applicant has admitted non accounting of the amounts on time but only has attempted to explain that the non accounting at the proper time was on account of mental tension which very clearly shows that she has no dispute regarding the facts forming the basis of the charges. Further the witnesses B.N.Narmada, K.Nalini and S.Rajamma have clearly stated that they had paid the money and came to know that the amounts had not been brought to credit. We thus find that the finding that the applicant was guilty was arrived on the basis of convincing evidence.

8. The learned counsel next argued that the appellate order is not justiciable as the Appellate Authority has not given an opportunity of personal hearing to the applicant. We find that the applicant had not made any request for personal hearing and therefore there is no merit in this argument.

h/

9. The last limb of the argument of the learned counsel of the applicant is that the penalty of dismissal from service is grossly disproportionate. The misconduct committed by the applicant is not accounting for the money received by her as a public servant. This is a very grave misconduct and therefore, we do not find that the penalty is disproportionate.

10. In the light of what is stated above finding no merit in this application the same is dismissed leaving the parties to bear their costs.

(Dated the 24th day of August 2004)


H.P.DAS
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

asp