CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA NO. 518 of 2006.

Friday this the 25th day of April, 2008

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

K.John Victor S/o R. Kuttan Nadar
Gramin Dak Sevak Mail Deliverer
Kovalam PO,Thiruvananthapuram
residing at Victor Villa, Venganoor PO
Thiruvananthapuram. .Applicant

By Advocate Mr. V.Vinod, S. Sajju and Anju S. Nair

Vs.

1 Assistant Superintendent of Post Offices
East Sub Division,
Thiruvananthapuram.

2 Assistant Superintendent of Post Offices
(Outdoor) South Postal Division
Thiruvananthapuram.

3 Superintendent of Post Offices
South Postal Division
Thiruvananthapuram.

4 The Chief Postmaster General
Thiruvananthapuram.

5 Union of India represented by the
Secretary, Govt. of India
Department of Posts,
New Delhi. Respondents.

By Advocate Mr. M.M. Saidu Muhammed, ACGSC

ORDER

HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

The applicant in this OA who was working as a GDSMD, has challenged the order dated 22.10.2001 by which he was "put off" duty, the order dated 10.2.2005 by which he was removed from service and the order dated

26.10.2005 by which his appeal against the penalty of removal was rejected. He was charge sheeted by memo dated 10.12.2003. There were two articles of charge. One related to non-payment of money order for Rs.770 and the other related to non-delivery of 43 postal articles. An oral enquiry was conducted in which the first charge was held as proved and the second charge not proved. After considering the applicant's representation the disciplinary authority imposed the penalty of removal from service by order 10.2.2005. The appeal submitted by the applicant was rejected by order dated 26.10.2005.

2 In support of the prayer for quashing of the impugned orders, the applicant has contended that no reasonable opportunity was given to the applicant to defend his case. Though the payee of the money order was cited as the first witness he was not examined during the enquiry. The specimen thumb impression of the payee cannot be taken as evidence as it was obtained behind the back of the applicant. The specimen thumb impression of the payee was not confirmed in the enquiry as the payee did not depose before the enquiry officer. Other witnesses cannot be relied upon. The reasons adduced by the enquiry officer for arriving at the conclusions in respect of the two charges are contradictory. In the case of the second charge the enquiry officer held the charge as not proved on the ground that the relevant witness had not appeared before the enquiry. But in the case of the first charge the enquiry officer had concluded that the charge is proved even though the main witness, the payee of the money order did not depose. The applicant was denied the opportunity to peruse the preliminary investigation report. The statement given by the applicant during the preliminary investigation is not voluntary. It was taken under threat. The appellate order is not a speaking order. Legal aspects have not been considered by the appellate authority.

3 The respondents have contested the OA. In their reply they have contended that the charge proved against the applicant is a grave one. Deliberately treating a pension money order for a poor old man aged 68 years as 'paid' without actually paying it and fraudulently affixing the thumb impression of

another person is a serious offence. The applicant has cheated the department and the public. The applicant has also admitted his guilt in his statement before the Asst. Superintendent on 11.10.2001. There is no violation of natural justice. Full opportunity has been given the applicant to defend himself. The finger print expert has given clear opinion that the disputed thumb impression taken against the name of the payee is not made by the left thumb of the payee. The finger print expert also deposed before the enquiry officer.

4 We have heard the learned counsel for the applicant Shri V.Vinod and the learned counsel for the respondents Shri MM Saidu Muhammed ACGSC. We have also perused the documents on record carefully.

5 Following the judgments of the Hon'ble Supreme Court in Union of India and Another Vs. B.C. Chaturvedi (1995) 6 SCC 750) and High Court of Judicature at Bombay through its Registrar Vs. Shashikant S. Patil and Another (2000) 1 SCC 416), judicial review of disciplinary proceedings has to be limited to the examination of the following issues:

(a) whether there has been a violation of principles of natural justice

(b) whether the proceedings have been held in violation of statutory regulations

© whether extraneous considerations have influenced the Disciplinary authority.

(d) the conclusion made by the Disciplinary authority is prima facie arbitrary or capricious.

6 We have considered the pleadings in this OA keeping in mind the grounds for judicial review enumerated above. The main contention advanced on behalf of the applicant is that the payee of the money order was not examined by the enquiry officer, though he was cited as the first witness. We have perused the report of the enquiry officer. It is seen from the said report that the first charge was held as proved on the basis of the depositions of the finger print expert (PW2) as well as depositions of the other witnesses and the material produced as exhibits. The following extract from the report of the enquiry officer makes it very clear that the enquiry officer has discussed the available evidence and appreciated them properly before coming to the conclusion that the first charge is

proved,:

> "In the absence of the evidence of the payee the remaining evidence has to be scrutinized. The CGDS had in Ext. P-5 admitted that he had treated P-6 MO as paid without actually paying it to the real payee. But he has not confirmed before the IA in absolute terms what he had stated in Ext.P-5. As such it is not possible to take Ext. P-5 at its face value. The next piece of evidence to be assessed in the one given by PW-3. PW-3 has deposed before the IO that he had personally met Sri M. Appave Naidu the payee of P-6 M:O and obtained Ext. P-7. He has further stated that he had obtained the Left Hand Thumb impression of Shri M.Appave Naidu in Ext. P-7. The evidence given by PW-3 with regard to ext. P-7 is a straight one without any strings attached. Hence there is no reason not to take the said document as an authentic one. PW-2 has in Exts. P-8 in quite categorical terms stated that the thumb impressions appearing in Et. P-6 and Ext. P-7 have been made by different persons. PW- has also confirmed before the IA what has been stated in Ext. P-8. PW-2 is a fingerprint expert working in the Finger Print Bureau Trivandrum. The evidence given by him ought to find acceptance as one by dispassionate and disinterested witness. When viewed against the background of the evidence given by PW-2 and PW-3 the evidence given by PW-4 also assumes a significance all its own. PW-4 has deposed that a sum of Rs. 770 being the value of P-6 MO was credited at Vizhinjam post office on the basis of Ext. P-11 on 12.10.01. He has also identified Ext. P-12. Ext. P-12 is the receipt by which the sum of Rs. 770 was credited at Vaizhinjam PO on 12.10.01. The CGDS when questioned by the IA has also admitted that the said amount was credited by him. Nothing has been produced by the CGDS to challenge the validity of Exhibits P-7, P-8, P-11, P-12 and P-14 or the deposition is made by witnesses PW-2, PW-3 and PW-4. The CGDS has even failed to file a written brief. All the above said oral and documentary evidence point to the fact that the CGDS had treated P-6 MO as paid on 27.4.01 without actually paying the value of the MO to the real payee and without obtaining the thumb impression or signature of the payee in the MO form. In the circumstances I hold that the first charge framed against the CGDS stands proved beyond any doubt."

7 The applicant's contention that his initial statement was taken under threat is clearly an afterthought. If that was the case he should have reported about the matter to superior authorities. Though the applicant has contended that he is not given sufficient opportunity to defend his case we are unable to sustain this contention. It is seen from the material on record that full opportunity has been given to the applicant to defend his case. By any standard the charge No.1 which is proved in the enquiry is a serious misconduct. The respondent Department cannot be therefore faulted for imposing the severe penalty of removal. We do not find any procedural infirmity in the proceedings conducted against the applicant. We also do not find any arbitrariness or violation of the

principles of natural justice. **In B.C.Chaturvedi case** the Hon'ble Supreme Court has held:

> "Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review isl meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold enquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case."

8 In the context of the principles laid down by the Hon'ble Supreme Court in the case supra, we are satisfied that there are no grounds for interfering with the orders passed by the Disciplinary authority.

9 For the reasons stated above, we do not see any merit in the O.A. The O.A is therefore dismissed. No costs.

Dated 25th April, 2008.

DR. K.S. SUGATHAN
ADMINISTRATIVE MEMBER

GEORGE PARACKEN
JUDICIAL MEMBER

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