

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No.519 OF 2006

Monday this the 16th day of April, 2007

CORAM :

**HON'BLE Mrs. SATHI NAIR, VICE CHAIRMAN
HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER**

Sunil Kumar.P
Gramin Dak Sevak Mail Deliverer,
Edakkadu P.O., Kozhikode
Residing at : Punnassery House, Ramvilas
Edakkad, Edakkad PO, Kozhikode : **Applicant**

(By Advocate Mr.V.Vinod)

Versus

1. Sub Divisional Inspector of Posts
Kozhikode North Sub Division, Kozhikode
2. Sub Divisional Inspector of Posts
Kunnamangalam Sub Division, Kunnamangalam
3. Senior Superintendent of Post Offices
Kozhikode Division, Kozhikode
4. Chief Post Master General
Kerala Circle, Thiruvananthapuram
5. Union of India represented by the Secretary
Government of India, Department of Posts
New Delhi : **Respondents**

(By Advocate Mr. Thomas Mathew Nellimoottil)

ORDER

HON'BLE Mrs. SATHI NAIR, VICE CHAIRMAN

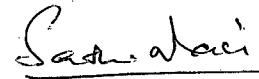
Ever since the OA was admitted, the applicant has appeared only on the first day. He was represented on subsequent occasions only to seek adjournments. On the last date of hearing, we have noted that the applicant's counsel was absent. Though time was granted to file rejoinder, the same has not been filed so far. Today, even after the second call the applicant was absent.

2. OA is dismissed for non prosecution. No costs.

Dated, the 16th April, 2007.



K.B.S.RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

VS

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. O. 519/2006

TUESDAY THIS THE 30th DAY OF OCTOBER, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

Sunil Kumar P. S/o late Ramadasan
Gramin Dak Sevak Mail Deliverer
Edakkadu PO, Kozhikode
Residing at Punnassery House, Ramvilas
Edakkad, Edakkad PO, Kozhikode.

..Applicant

By Advocates Mr V. Vinod, S. Sajju and Anu S. Nair

Vs.

- 1 Sub Divisional Inspector of Posts
Kozhikode North Sub Divisions, Kozhikode
- 2 Sub Divisional Inspector of Posts
Kunnamangalam Sub Division, Kunnamangalam.
- 3 Senior Superintendent of Post Offices
Kozhikode Division, Kozhikode
- 4 Chief Postmaster General, Kerala Circle
Thiruvananthapuram.
- 5 Union of India represented by the Secretary
Government of India, Department of Posts
New Delhi. ..Respondents

By Advocate Mr. Thomas Mathew Nellimoottil

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant while working as Gramin Dak Sevak Mail Deliverer at Edakkad Post Office, West Hill, Kozhikode, was put off duty and

disciplinary proceedings were initiated against him. In this Application he has challenged Annexure A-1 order dated 3.6.1999 putting him off duty, Annexure A-2 charge memo dated 2.2.2000, Annexure A-10 order dated 7.2.2005 imposing penalty of dismissal and Annexure A-14 appellate order dated 31.3.2006 confirming the penalty.

2 The main ground advanced by the applicant is that the entire enquiry proceeding is vitiated by malafide as no reasonable opportunity was given to him to defend the case and prove his innocence. Evidences were collected behind the back of the applicant as witnesses were examined ex parte. The long delay of six years in completing the enquiry shows latches on the part of the respondents which had vitiated the proceedings and violated the principles of natural justice. It is also submitted that the evidence produced were not proper and reliable particularly from witnesses SW-5 and SW-6. The applicant has also alleged bias and prejudice against the Inquiring Authority as he had rejected the submission of the applicant for assistance by a practicing Lawyer and even without contacting the Controlling authority rejected his request for deputing one Shri M.R. Nair, APM as Defence Assistant. It is further alleged that no subsistence allowance was paid to the applicant and this prevented the applicant from attending the proceedings. He has also challenged the Appellate order on the ground that there is prejudice on the part of the Appellate authority and the appeal was disposed of only after one year after repeated representations.

3 Per contra, the respondents in the reply statement have furnished the following factual position regarding the enquiry:-

The applicant was working as Gramin Dak Sevak Mail Deliverer Edakkad PO West Hill when he was placed under put off duty on 3.6.1999 by the Sub Divisional Inspector Calicut North Sub Division subsequent to the detection of money order frauds. As the SDI who is the normal disciplinary authority was a material witness in the case, the SDI(P) Kunnamangalam Sub Division was appointed as the Adhoc Appointing Authority (ADA for short). Chargesheet was issued by the ADA. The applicant denied the charges levelled against him. Therefore Rule 10 enquiry was ordered appointing Shri P. Gopinathan, Assistant Supdt. Of Post Offices, Calicut South Sub Division as the Inquiry Officer. The inquiry commenced on 29.3.2000. the applicant could not examine the listed documents as he failed to bring the Defence Assistant. Further sittings were also held. In the meanwhile the Presenting Officer expired and ASP(OS) office of the Sr. Supdt. Of Post Offices, Calicut Division was appointed as the Presenting Officer. Thereafter a bias petition was moved by the applicant against the Inquiring Authority. The bias petition was not allowed. However, the Inquiring Authority was transferred from the station and Smt. Mini Rajan, PO(System Manager) office of the PMG, Northern Region was appointed as the Inquiring Authority who held sitting on 28.5.2002. However, the Inquiring Authority expressed her inability to act as the Inquiring Authority due to her other busy official duties. Accordingly, C. Raghuthaman, Office Supdt. Office of the SRM Calicut was appointed as the Inquiring Authority. The applicant did not attend the sittings held on 9.12.2002 and 11.4.2003 but his Defence Assistant attended. Last sitting of the case was held on 29.5.2004 in which also the applicant remained absent. The Presenting Officer submitted his written brief on 13.8.2004 and the copy of the same was sent to the applicant on

18.8.2004. The applicant failed to submit his written brief till 3.9.2004. Accordingly the Inquiring Authority submitted his report on 1.10.2004. Copy of the Report also was sent to the applicant on 18.10.2004 with instructions to submit his representation if any against the Report within 15 days of its receipt. But the applicant requested for one month extension of time for submitting his representation which was permitted by the ADA. The applicant submitted his representation on 27.11.2004. In the meanwhile the DA was transferred. Hence the case was remitted to the normal DASDI(P) Calicut North Sub Division who issued proceedings dated 7.2.2005 dismissing the applicant from service.

4 The respondents therefore have argued that it is the applicant who did not co-operate with the enquiry proceedings and was adopting dilatory methods in the enquiry by one plea or other, there is absolutely no malafide intention on the part of the respondents and that the perusal of the daily proceedings of the enquiry from the very beginning will show that the applicant was given reasonable opportunity at all stages of the proceedings as per rules. As regards the issue regarding payment of ex gratia subsistence allowance it is submitted that it is a separate aspect which has nothing to do with the decision in the disciplinary proceedings. Therefore the contention of the applicant that the orders of the respondents are illegal and unjustified is without any basis.

5 We have heard the counsel appearing on both sides.

6 The applicant was chargesheeted and proceeded against by Annexure A-2 order dated 2.2.2000 and the following were the Article of

charges framed against him:

Article-I

That the said Shri P. Sunikumar while working as EDDA-II Edakkad West hill BO effected fraudulent payment of Wellington MO 2306 dated 31.3.99 Rs. 2000/- payable to Sylaja W/o 2577256X Hav. G. Sasidharan, Gopal Nivas, Edakkad PO on 3.4.99 by forging payee's signature violating Rule 10 of the Branch Offices Rules and thereby failed to maintain absolute integrity and devotion to duty as required under Rule 17 of the P&T ED Agents (Conduct and Service) Rules, 1984.

Article-II

That the said Shri P. Sunikumar while working as EDDA-II Edakkad West Hill BO effected fraudulent payment of Wellington MO 2307dtd. 3.3.99 Rs. 300/- payable to C.K. Thangamma M/o 2577256X Hav. G. Sasidharan, Gopal Nivas, Edakkad PO on 3.4.99 by forging payee's signature violating Rule 10 of the Branch Offices Rules and thereby failed to maintain absolute integrity and devotion to duty as required under Rule 17 of the P&T ED Agents (Conduct and Service) Rules, 1964.

Article III

That the said Shri P. Sunikumar while working as EDDA II Edakkad Westhill BO effected fraudulent payment of Bangalore GPO No. 8333 dtd. 12.3.99 Rs. 1000/- payable to Smt. P. Lathabai W/o 13885058N Nk Ashokan P. Kayanarankandi House, Vill. Puthiyangadi Edakkad PO on 15.3.99 by forging payee's signature violating Rule 10 of the Brnch Offices Rules and thereby failed to maintain absolute integrity and devotion to duty as required under Rule 17 of the P&T ED Agents (Conduct and Service)Rules, 1964.

7 Since the case of the applicant was that he was not given reasonable opportunity to defend himself, the file relating to the disciplinary proceedings was directed to be produced for our perusal. The record produced before us would show that the applicant was given notice of all the sittings in advance but he did not attend several sittings which were held in 2001, 2002, 2003 and 2004. The applicant sought

for assistance of a practicing Advocate. His request was addressed to the Inquiring Officer and the Inquiry Officer was not competent to agree to the request. However, the Disciplinary Authority has made available to the applicant the services of a Defence Assistant of the applicant's own choice. It is seen that three Inquiring Authorities have dealt with the proceeding, it cannot be the applicant's contention that all the three IAs were prejudiced against him. The reasons for attributing bias on the part of the IAs is also frivolous in as much as it is seen from the records that the applicant's grievance against the first IA was that he has summoned the witnesses more than once. There is nothing in the Rules barring a witness being called a second time if he has not attended the enquiry on summons. There is also no need to make available the assistance of an Advocate unless the other side is represented by a Lawyer. The objections of the applicant are found to be hyper-technical, however, the IA has dealt with them in the proper manner. On going through the proceedings of the inquiry we find force in the argument of the respondents that the delay in completion of the proceedings was only due to the dilatory tactics adopted by the applicant in the course of the inquiry by not attending to the sittings on various dates after receiving due notice.

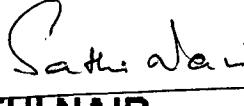
8 As regards the evidence it is seen that the applicant had not cross examined SW-5 and SW-6, the persons to whom the money orders were addressed. But this was only due to the reason that the applicant did not utilise the opportunity given to him to attend the enquiry on the dates when those witnesses were summoned. Hence at this stage the applicant cannot take the plea that the principle of natural justice have been violated, he failed to utilise the reasonable opportunity given to him.

His contention that the evidence rendered in the enquiry and relied upon by the authorities was not proper and valid is also not found to be factually correct. The payees to whom the money orders were addressed have stated that they have not received the amounts on the dates in which they were shown to have been disbursed and they have also disowned the signature on the money order. The specimen signatures were forwarded to the Director, office of the Government Examiner, Hyderabad and he has confirmed that the signatures do not belong to the payees. It is not mandatory that the Director is to be summoned in each case of this nature and the fact of non payment to the real addressees is corroborated from the depositions made by the witnesses in the enquiry. The IA has relied on these facts to hold the charges as proved.

9 The orders of the Disciplinary and Appellate Authorities were also speaking orders and the challenge to those orders is without any basis. On the whole on perusal of the proceedings of the enquiry, we do not find any merit in the argument of the applicant and the applicant himself is responsible for much of the delay which has taken place in the conclusion of the proceedings. We do not find any ground to interfere in the O.A. The OA is dismissed. No costs.

Dated 30.10.2007.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN