

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 529/97

THURSDAY, THIS THE 13TH DAY OF JANUARY, 2000.

C O R A M:

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

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

T. Premkumar

Former Extra Departmental Mail Carrier

Chilakur P.O.

Varkala.

..Applicant

By Advocate Mr. M.L. Sureshkumar

Vs.

1. Union of India represented by its Secretary
Ministry of Communications,
Department of Post, Dak Bhavan,
New Delhi.
 2. The Chief Post Master General,
Kerala Circle,
Thiruvananthapuram.
 3. The Senior Superintendent of Post Offices
North Division, Thiruvananthapuram.
 4. Assistant Superintendent of Post Offices,
Trivandrum Central
Trivandrum Sub Division.
 5. The Sub Divisional Inspector of Post Offices
Trivandrum Central Sub Division,
Trivandrum.
- ..Respondents

By Advocate Mr. T. C. Krishnan, ACGSC

The application having been heard on 17.12.99, the
Tribunal delivered the following on 13.1.2000.

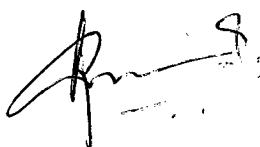
O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER


Applicant in this O.A. who was an Extra Departmental Mail Carrier (EDMC for short) Chilakur Branch Post Office at Varkala has filed this O.A. aggrieved by A2 order dated 30.10.93 issued by the 4th respondent (ad hoc disciplinary authority), A4 order dated 2.8.94 issued by the 3rd respondent (appellate authority) and A7 order dated 22.11.96 issued by the 2nd respondent

(Revisional authority).


2. Applicant while working as EDMC, Chilakur Branch Post Office at Varkala was charge-sheeted under Rule 17 of the Post & Telegraph Extra Departmental Agents (Conduct & Service) Rules, 1964. The allegation of charges were that on 10.11.89 the applicant unauthorisedly accepted some ordinary letters from one Shri R. Ajayakumar, Theeram Punnamoodu, Varkala at Varkala Post Office when Sri R. Ajayakumar and his friend Sri N. Rajeev, Ragom, Punnamoodu, Varkala visited Varkala Post Office on 10.11.89 for the purpose of posting those ordinary letters and that the applicant unauthorisedly obtained some ordinary letters from the said Ajayakumar came along with his friend Rajeev at Varkala Post Office when they visited Varkala Post Office for posting these ordinary letters and the applicant did not post those ordinary letters. According to the applicant, the charges were framed on the basis of an inquiry made through Sub Divisional Inspector, Attingal Sub Division conducted in pursuance of a complaint dated 23.4.90 made by Sri Ajayakumar. Applicant submitted that he was innocent of the charges levelled against him and that the allegation of charges were incorrect, untrue and was made on the basis of a frivolous complaint. On the basis of A1 enquiry report submitted by Sri P. C. Geevarghese, Circle Vigilance Officer (Inquiry Authority) in which it was held that the charge against the applicant was proved by preponderance of probability. The applicant was removed from service by 4th respondent who was the ad hoc disciplinary authority. Applicant aggrieved by A2 order filed A3 appeal dated 24.1.94 to the 3rd respondent, the appellate authority. The 3rd respondent by A4 order dated 2.8.94 rejected the appeal. A5 Revision application dated 15.3.95 under Rule 16 of the P & T E.D. Agents Conduct and Service Rules was filed by the applicant before the second



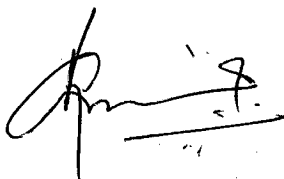
respondent-Revisionary authority. His review application was not considered by the authority for a long time. Applicant approached this Tribunal by filing O.A. 1354/96 with a prayer for a direction to consider and pass appropriate orders on A5. However, while the O.A. was pending, A7 order dated 22.11.96 was passed by the Revisionary Authority. In view of this development, O.A. 1354/96 was withdrawn by the applicant. By A7 order the review application was rejected by the Revisionary authority. According to the applicant A7 order was incorrect, illegal and unsustainable and hence liable to be set aside. Similarly, A2 and A4 orders issued by the disciplinary and appellate authorities respectively were also stated as illegal, incorrect and violative of the principles of natural justice. Applicant claimed that he had not accepted any such letters as alleged in the charge memo. He further submitted that if at all there was such acceptance of ordinary letters by him it was beyond the purview of his duty and did not constitute any violation of any Postal Rule and ^{as} such no damage was caused to anybody and hence the punishment awarded was exorbitant when he had not violated any of the provisions of the Conduct Rules. Applicant submitted that the finding of the enquiry authority was that the allegation levelled against the charged E.D. Agent had been proved not by concrete proof, evidences but by preponderance of probabilities. It was basing on this enquiry report the disciplinary proceedings had ended with awarding major penalty of 'removal from service' which was upheld by the appellate and revisional authorities. According to applicant the impugned orders were unsustainable and unreasonable and had been passed without any concrete proof or evidence. According to the applicant, even though A1 enquiry report was passed on 23.7.93, the same had not been served on the applicant till 27.9.93. The enquiry report was served on the applicant on 27.9.93 asking him



to submit representation within 10 days. On 15.10.93, the applicant requested for extension of time upto 30.10.93 for submitting a detailed representation. Applicant on 30.10.93 made a detailed report before the 4th respondent as reply to the enquiry report. However, on 25.10.93 the 4th respondent proceeded with the case and passed final order. Thus while passing A2 order imposing punishment of removal the 4th respondent has not considered the representation or granted an opportunity to the applicant to defend his case. The impugned order A2 awarding major penalty without affording an opportunity to applicant was a clear violation of the principles of natural justice. The applicant relied on the judgments of the Hon'ble Supreme Court in Gopalakrishna Naidu Vs. State of Madhya Pradesh (AIR 1968 SC 240) and B. D. Gupta Vs. State of Haryana (AIR 1972 SC 2472) which held that justice and fair play demanded that the Government should give the employee concerned a reasonable opportunity. The Inquiry Report stated that the charges against the applicant had been proved not by concrete proof or evidence but by preponderance of probability. However, the disciplinary authority came to the conclusion that the charges levelled against the applicant had been proved beyond any doubt in the enquiry and hence awarded the major penalty of removing the applicant from service with immediate effect. Hence the punishment imposed based on the Inquiry Report alone was incorrect and was illegal. The Disciplinary authority should have analysed the evidence so as to award punishment. Thus, the disciplinary authority failed in his jurisdiction while passing the impugned order. He also submitted that he was not given any opportunity of personal hearing. The appellate authority failed to exercise its jurisdiction properly and no reason had been given by either the disciplinary or appellate authorities so as to arrive at a conclusion that the charges levelled against the applicant had been proved beyond any doubt in the enquiry. The applicant submitted that the appellate authority went wrong in holding that there was no lacuna in the findings of the



disciplinary authority. Further according to applicant, the appellate authority instead of confirming the technicality in not receiving the representation, he could have assessed the case independently with the available document. According to the applicant it was mandatory that before imposing the punishment, the disciplinary authority ought to have considered the representation made by the applicant. The imposing of penalty without considering the representation is a clear violation of Rule 8 of Extra Departmental Agents Conduct Rules and Article 311(2) of the Constitution. The appellate authority ought to have remanded the matter along with the representation, before the disciplinary authority. The applicant further took the plea that the punishment was not imposed by the appointing authority; the 4th respondent was not the disciplinary authority but only an ad hoc disciplinary authority and there was no procedural law which permitted such ad hoc disciplinary authority to conduct such a disciplinary proceeding and award punishment. The applicant had been charge sheeted under Rule 17, a general provision to say that every employee shall at all times maintain absolute integrity and devotion to duty. According to the applicant this provision would be a weapon in the hands of higher authority to punish innocent employees. Applicant was an Extra Delivery Mail Carrier. His duty was to carry mail bags from post offices to post offices. Even if it is assumed for arguments' sake that he accepted letters from Sri R. Ajayakumar which had not been posted, the said act would not amount to any violation of his integrity and devotion to duty. The Appellate authority and Revisional authority failed to appreciate this aspect without any logical reason. The allegation was that the applicant accepted ordinary letters on 10.11.89 and failed to post them and



the other allegation was the letters contained a cheque of Rs. 2,000/- which had been misappropriated. This allegation prima facie could not be proved and there was no such charge. Applicant made a plea that the proceedings initiated was on the basis of a complaint made by Sri Ajayakumar on 23.4.90. There was no complaint from any corner regarding this incident This itself negate the bonafides of the complaint. The Revisionary authority ought to have appreciated the contentions of the applicant while passing the revisionary order. The revisionary order was also affected by the infirmity in not considering the various contentions raised in the O.A. and hence liable to be set aside. The applicant sought the following reliefs:

(i) to call for the records leading to Annexures A2, A4 and A7 and to set aside the same as illegal, incorrect and unjust,

(ii) to declare that the entire proceedings initiated by the respondents in pursuance to the alleged charges against the applicant is incorrect and the applicant is innocent of the charges levelled against him;

(iii) to declare that the punishment imposed is highly excessive and is grossly disproportionate and hence it to be set aside.

(iv) to direct the respondents to reinstate the applicant in service with effect from 31.10.93 with full service benefits, including arrears of salary and other allowances, by setting aside the impugned orders Annexure A2, A3 and A7 and

(v) to issue such other reliefs which this Hon'ble Tribunal deemed fit, proper and just in the circumstances of the case."

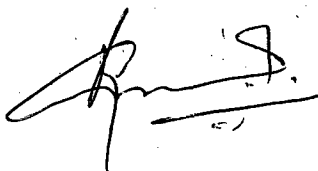
3. Respondents filed reply statement resisting the claim of the applicant. According to the respondents action against the applicant was initiated not under Rule 17 but under Rule 8 of the Extra Departmental Agents (Conduct and Service) Rules. They submitted that the charges levelled against the applicant was proved in the enquiry and the charges were not frivolous. They also submitted that the applicant was offered a reasonable opportunity to defend his case and if he had any allegation of bias against the enquiring authority he should have raised in the enquiry then and there. They submitted that the representation



submitted by the applicant was fully considered before passing the final order. Regarding the delay in disposing of the revision petition dated 15.3.95 (on 22.11.96) they submitted that the collection and verification of records etc. in respect of the case took some time and was disposed of on 22.11.96. A copy of the order of the CPMG was sent to the Sub Divisional Inspector of Post Offices Attingal on 28.11.96 for serving it to the applicant. He visited Chilakur on 13.12.96. His enquires revealed that the applicant was then residing at Sreenivasapuram. After enquiries at various places the SDI traced him finally at Varkala and served the order to him on 20.1.97. The delay in serving the order was purely due to the applicant's moving from place to place without giving clear intimation regarding change of his residence at the concerned Post Office. According to respondents the applicant accepted postal articles from Sri R. Ajayakumar on 10.1.89 and failed to post the letters. The articles unauthorisedly accepted by him contained even cheques and it turned out later that one of the cheques had been fraudulently encashed at a bank at Thiruvvarppu. They submitted that the offence committed by the applicant deserved maximum punishment. They submitted that the complainant Sri R. Ajayakumar had categorically stated in the deposition given by him on 16.5.90 before the Sub Divisional Inspector, Attingal that while he had been to Varkala Post Office on 10.11.89 to have some letters sent both under registered and ordinary posts, the applicant introduced himself to be an acquaintance of Sri Ajayakumar's brother and informed him that the letter box had already been cleared, the letters could be handed over to him. They submitted R3 (A) and R3(B) in support of their above version. R3(C) a copy of the original complaint dated 23.4.90 with English translation thereof R3(D) was also filed by them. According to the respondents the applicant could not claim by



projecting the mail timing etc. of the Post Office that he had not accepted the letters from Sri Ajayakumar. They submitted that accepting postal articles from public and not posting them was a very serious offence. The applicant was not empowered to accept such articles from members of the public. By such an action he made immense damage to the interest of the innocent customer and added disrepute to the department. They submitted that the charges against the applicant was proved by the deposition of witnesses. The preponderance of probabilities in this case only lead to the conclusion that the applicant had accepted the letters but had not posted them. The enquiry report could not be held in any way as biased. Applicant's contention that copy of the inquiry report was not given to him was a misrepresentation of facts. Copy of inquiry report was received by him on 27.9.93. The applicant requested for extension of time upto 30.10.93 and extension upto 25.10.93 was granted. But the applicant did not make the representation in time. Final order was passed on 30.10.93. All reasonable opportunity was given to the applicant to defend his case. No principles of natural justice had been violated. They also submitted that the applicant did not make any request for personal hearing till the final order was passed. They submitted that the appellate authority considered the points raised by the applicant in his appeal and he did not find any lacuna in the disciplinary authority's order and any reason to interfere with the punishment order. Hence, the appeal was rejected. They submitted that as Sub Divisional Inspector, Attingal who was the appointing authority of the applicant was a material witness in the case. The Chief Postmaster General, Kerala being the Head of the Postal Circle empowered the Sub Divisional Inspector of Post Offices, Trivandrum, Central Sub Division to function as the appointing



authority of the applicant. There was nothing illegal in it. Copy of the order passed by the Chief PMG dated 15.1.91 was produced as R3(F). They submitted that accepting articles from public unauthorisedly and not posting them was clear violation of Rule 17 of the P & T Extra Departmental Agents (Conduct & Service) Rules, 1964 which stipulated that every employee should at all times maintain absolute integrity and devotion to duty. They submitted that the violation of the provisions which have been proved in the case of the applicant could not be left unnoticed. According to the respondents the O.A. was without any merit and the same was liable to be rejected.

4. Heard learned counsel for the parties.

5. We have given careful consideration to the submissions made by the learned counsel for the parties as well as the rival pleadings and have perused the documents brought on record.

6. The applicant was issued with the charge sheet under Rule 8 of the P & T Extra Departmental Agents (Conduct & Service) Rules, 1964 on 22.8.91. The articles of charge against the applicant was as follows:

"Article I

The Shri T. Premkumar while working as EDMC Chilakur BO a/w Varkala SO on 10.11.1989 unauthorisedly obtained some xx ordinary letters from Shri R. Ajayakumar, 'Theeram', Punnamoodu, Varkala on 10.11.1989 at Varkala Post Office when Shri R. Ajayakumar and his friend Shri N. Rajeev, 'Ragam' Punnamoodu, Varkala visited post office on 10.11.1989 for the purpose of posting those ordinary letters in the letter box positioned in front of Varkala Post Office. By the above said act, it is imputed that Shri T. Premkumar, EDMC Chilakur violated the provisions of Rule 17 of P&T^{ED} Agents (Conduct & Service) Rules, 1964.



Article II

"That Shri T. Premkumar while working as EDMC, Chilakur BO a/w Varkala SO on 10.11.1989 unauthorisedly obtained some ordinary letters from Shri R. Ajayakumar, 'Theeram' Punnamoodu, Varkala on 10.11.1989 at Varkala Post Office when Shri R. Ajayakumar and his friend Shri N. Rajeev Ragam, Punnamoodu, Varkala visited Varkala Post Office on 10.11.1989 for the purpose of posting those letters in the letter box in front of Varkala Post Office and Shri T. Premkumar did not post those ordinary letters unauthorisedly obtained by him from Shri R. Ajayakumar on 10.11.1989. By the above said acts, it is imputed that Shri T. Premkumar EDMC, Chilakur SO violated the provisions of Rule 17 of P&T ED Agents conduct and service Rules 1964. "

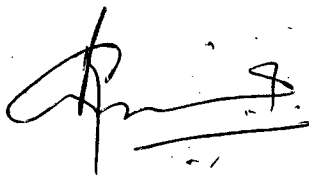
The statement of imputation of misconduct or misbehaviour in support of the article of charge framed against the applicant was given in Annexure II to the charge sheet and the same is reproduced below:

Annexure-II

Statement of imputation of misconduct or misbehaviour in support of the article of charge framed against Shri T. Premkumar, EDMC Chilakur SO.

Article-I.

On receipt of a letter of complaint dated 23.4.90 from Shri Ajayakumar, 'Theeram' Punnamoodu, Varkala addressed to the Post Master, Varkala, alleging unauthorised acceptance of some ordinary letters by Shri T. Premkumar, EDMC, Chilakur SO when Shri Ajayakumar visited Varkala Post Office on 10.11.1989 for posting those letters in the letter box in front of Varkala Post Office, inquiries were made through SDI Attingal Sub Division. Inquiries made by SDI Attungal Sub Division revealed the following:



Shri.R. Ajayakumar, 'Theeram' Punnamoodu, Varkala, the complainant visited Varkala Post Office on 10-11-1989 along with his friend Shri.N.Rajeev, Ragam, Punnamoodu, Varkala for registration of some letters and for posting some ordinary letters which were entrusted to Shri.R. Ajayakumar by his brother (the brother of Shri.R.Ajayakumar is working in Gulf countries). Shri.R. Ajayakumar called at Varkala Post Office on 10-11-1989 along with his friend Shri.N. Rajeev, 'Ragam', Punnamoodu, Varkala. The registered articles were not booked by the complainant when Shri.T. Premkumar EDMC Chilakur approached them and introduced himself by saying that he was the friend of Shri.Ajayakumar's ~~bro~~ brother. They had a chit-chat for a while. Thereafter, Shri.Ajayakumar moved towards the letter box in front of the post office for posting the ordinary letters which were in his custody, when Shri.T. Premkumar, EDMC Chilakur told them that the clearance time was over and asked them to give these letters to Shri.T.Premkumar so that he would despatch the letters the same day. Accordingly, Shri.R.Ajayakumar handed over all the ordinary letters to Shri.T.Premkumar, EDMC Chilakur in the presence of Shri.Rajeev, Ragam, Varkala, Shri.R.Ajayakumar in his statement dated 16-5-90 given before the SDI Attungal Sub Division has interalia reiterated that he had handed over the ordinary letters to Shri.T.Premkumar, EDMC Chilakur, Shri.N.Rajeev, Ragam, Varkala who accompanied the complainant to Varkala Post Office on 10-11-1989 has, in his statement given before the SDI Attungal Sub Division on 16-5-1990, reiterated the points contained in the letter of complaint dt. 23-4-90. He has also admitted in his statement *ibid* that it was in his presence that Shri. Premkumar EDMC Chilakur accepted the ordinary letters from Shri.R.Ajayakumar on 10-11-1989. In his statement dt. 18-5-90 before the SDI Attungal Sub Division, Shri. Ramaswamy Achary, SPM Varkala has among other things stated that the complainant has called at the post office on 23-4-90 and had discussed the aspects contained in the letter of complaint dt. 23.4.90 preferred by Shri.R.Ajayakumar, Shri. J.Ramaswamy Achary in his statement *ibid* has also stated that Shri.T.Premkumar had admitted having received the letters from Shri.R.Ajayakumar




on 10-11-1989. He has also stated that he had forwarded the letter of complaint dt. 23-4-90 of Shri.R.Ajayakumar along with a photo copy of ~~the~~ a cover addressed to P. Appukuttan Pillai, to the Sr.Suptd. of Post Offices, Trivandrum North Division, Shri.T.Premkumar, EDMC Chilakur in his statement dt. 16-5-90 before the SDI Attungal sub Division has admitted that he had accepted the ordinary letters from Shri.R.Ajayakumar, Theeram, Punnamoodu Varkala on 10-11-1989 at Varkala Post Office. In her statement dt. 18-5-90, given before the Mail Overseas, Attungal Sub Division, Shri.N. Visalakshy, SPM Chilakur has stated that Shri.T. Premkumar EDMC Chilakur was on duty on 10-11-1989.

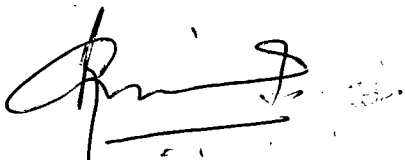
By the above said acts, it is imputed that Shri. T.Premkumar, EDMC Chilakur has violated the provisions contained in Rule 17 of P & T ED Agents Conduct & Services Rules 1964.

ARTICLE- II

ON receipt of a letter of complaint dt. 23-4-90 from Shri. R. Ajayakumar, Theeram, Punnamoodu, Varkala addressed to the Postmaster, Varkala, alleging unauthorised acceptances of some ordinary letters by Shri.T.Premkumar EDMC Chilakur when Shri.R. Ajayakumar visited Varkala Post Office on 10-11-1989, for posting those letters in the letter box in front of Varkala Post Office, inquiries were made through SDI Attungal Sub Division. Inquiries revealed that Shri. T.Premkumar, EDMC Chilakur did not post the ordinary letters on 10-11-1989 which he had unauthorisedly accepted from Shri.R. Ajayakumar, Theeram Punnamoodu, Varkala on 10-11-89. Inquiries made by SDI Attungal Sub Division further showed that, of the ordinary letters received by Shri.T. Premkumar EDMC Chilakur from Shri. R. Ajayakumar, there were two letters which contained cash cheques, one is addressed to shri. Sarathchandran, Staff of Kottayam Head Post Office and the other is to Malappuram. After some months a complaint was received from Shri. Sarathchandran about the non-receipt of the



letter and cheque. Accordingly Shri.R. Ajayakumar visited Varkala Post Office and called on the SPM Varkala. The SPM Varkala called all the staff on duty and Shri. Ajayakumar identified Shri.T.Premkumar EDMC Chilakur as the person who had obtained the letters from Shri.Ajayakumar on 10-11-89. Shri.T.Premkumar also had ~~xx~~ admitted having received some letters from Shri.R. Ajayakumar on 10-11-1989 for posting. Accordingly, Shri.R.Ajayakumar has preferred a complaint dtd. 23-4-90 to Postmaster Varkala. In his letter of complaint dt. 23-4-90 ibid Shri.R.Ajayakumar has stated that he attended Varkala Post Office on 10-11-1989 at 10.00 AM that Shri.T. Premkumar accepted all the ordinary letters from him stating that the clearance time of the letter box was over, that of the ordinary letters entrusted to Shri. T.Premkumar, two letters contained cash cheques for Rs. 2000/- and Rs. 1000/-, one letter which contained cheque for Rs. 2000/- was addressed to Shri. Sarathchandran staff of Kottayam Head Post Office (now at Athirampuzha PO) and the other letter which contained cheque for Rs. 1000/- was addressed to Kottayam and that somebody other than Shri. Sarathchandran had encashed the cheque for Rs. 2000/- on 13-11-89 etc.. in his statement dated 26-5-90 before the SDI Attungal Sub Division, Shri.R. Ajayakumar apart from reiterating the contents of his letter of complaint dt. 23-4-98 has pleaded ignorance that the letters which contained cheques must be sent only by registered post. Shri.N. Rajeev Ragam, Punnamoodu, Varkala in his statement dt. 16-5-90 given before the SDI Attungal Sub Division has admitted that it was in his presence that Shri.R. Ajayakumar entrusted the ordinary letters to Shri.T.Premkumar on 10-11-1989 in front of the post office. Shri.J. Ramaswamy Achary, SPM Varkala in his statement dt. 18-5-90 before the SDI Attungal has stated that Shri. R. Ajayakumar had met him on 23-4-90 and discussed the points contained in his complaint dt. 23-4-90. Shri.J. Ramaswamy ~~Axx~~ Achary, SPM, Varkala has further stated that he had received the letter of complaint dt. 23.4.90 with a photo copy of a cover addressed to Shri.P. Appukuttan Pillai and he had



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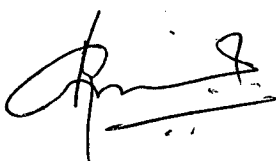
forwarded those ^{of} to SSP Trivandrum North Division for further disposal/Shri.No. Visalakshy BPM Chilakur in her statement dt. 18-5-90 before the Mail Oversear Attungal Sub Division that Shri. T. Premkumar EDMC Chilakur was on 10-11-1989 and 11-11-89. Smt. S. Omana Amma, Gr. D Varkala in her statement dt. 18-5-90 before the Mail Oversear Attungal Sub Division has stated that Shri.T.Premkumar had not brought any letters to Mails Branch for posting on 10-11-89. Shri.K. Sivadasan, SDPA Varkala in his statement dt. 18-5-90 before the SDI Attungal has stated that he was the mail Clerk of Varkala on 10-11-1989, that he was present in the office throughout his duty time, that Shri.T.Premkumar was on duty on 10-11-89 and that Shri.T.Premkumar had not brought any letters to Mail Branch for posting. In his statement dt. 12-9-90 given before the SDI Kottayam west Sub Division Shri. V.N. Sarathchandran has among other things stated that he had not received the cheque etc..

By the above said acts, it is imputed that Shri. T.Premkumar, EDMC Chilakur has violated Rule 17 of P & T ED Agents conduct & Service Rules 1964."

Annexure III and IV gave the list of documents and witnesses respectively by whom and by which the charges were proposed to be sustained.

7. Enquiry was held under Rule 8 of the P&T EDA (Conduct & Service) Rules and by A2 order the applicant was removed from service. By A4 and A7, the appeal and revision petition were rejected respectively. The applicant has assailed all these orders on a number of grounds which have been detailed earlier.

8. At the outset, we find that this is a very peculiar case. From the statement of imputation as reproduced above, it is evident that the charges were proposed to be proved basically on the basis of an alleged admission made by the applicant during the preliminary enquiry held on 16.5.90 and the complaint dated



23.4.90 made by Sri Ajayakumar. From the complaint dated 23.4.90 which had been produced as R3(C) and R3(D) (English translation) it would appear that there was an enquiry even prior to this date. It had been stated in R3(D) that the applicant had admitted before the Postmaster that he (applicant) accepted the ordinary letters in his hands from the complainant. The statement of the applicant dated 16.5.90 was a relied upon document stated in the charge-sheet. However, the conclusion arrived at by the enquiry officer in A1 enquiry report reads as follows:

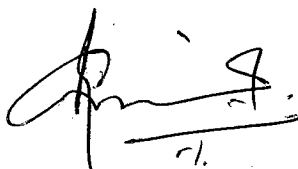
"8. From the observations made in the foregoing paras, I cannot but come to the conclusion that the allegations levelled against the charged ED Agent have been proved, though not by concrete proofs, evidences, at least by preponderance of probability. Accordingly, I hold that the two articles of charge against Shri T. Premkumar, EDMC, Chilakur, as contained in Memo No. SDI/DA/1/91 dated 22.8.91 of SDI Trivandrum Central Sub Division stand proved during the Inquiry."

9. Para 5, 6 & 7 of A1 Inquiry Report reads as under:

"5. The points for consideration in this inquiry are (1) whether Shri T. Premkumar accepted ordinary letters from Shri R. Ajayakumar on 10.11.1989 and (2) whether Shri Premkumar failed to post those letters on 10.11.1989.

6. Ex. P1 letter of complaint and Ex. P2 statement of PW1 have been identified and accepted by him in the inquiry. According to these documents, PW1 had entrusted some letters to the charged ED Agent on 10.11.1989 on the belief that the charged ED agent would see to their inclusion in the day's despatch of mails. This version of

PW1 has been corroborated by Ex P9 statement of PW9 who had identified and accepted the document in the Inquiry. Ex P3 and P4 documents are the receipts granted by Varkala Post Office on 10.11.1989 for two RLs booked there. These documents have been produced by PW1 to prove the fact that he had actually visited Varkala P.O. on 10.11.89. Exs P5 wrapper shows that it was posted at Varkala on 11.11.89, as is evident from the post mark



appearing on it. PW1 has stated that Ex.P5 was one of the letters handed over to charged ED Agent by him on 10.11.89. This document has been produced to show that the charged E.D. Agent had not posted the letters accepted by him on 10.11.1989, on the same date. Ex P10 and P15 statements have been identified and accepted by their authors viz. PW 10 and PW7. These statement show that the charged ED Agent had not brought any letters to the Mail Branch on 10.11.1989. Ex P8 statement of PW2 has been identified and accepted by him during the Inquiry. This documents speaks of the admission of the charged ED Agent regarding acceptance of letters from PW1 on 10.11.1989, when he was confronted with PW1 in the presence of PW2. The charged ED agent has also admitted in the Ex P11 statement given by him before PW3, that he had accepted letters from PW1 on 10.11.1989.

7. At the time of questioning by IA, the charged ED Agent has detracted from Ex P11 statement. He has also alleged that Ex P11 statement was obtained by PW3 under compulsion. He has also flatly denied having accepted letters from PW1. He has also denied having confessed before PW2 of the acceptance of letters from PW1. During the cross examination of witnesses PW1, PW2 & PW9, the charged ED Agent could not bring out anything to contradict their statements. PW3 about whom allegations are made was not even cross examined by the charge ED Agent. Having thus failed to dispute the versions of the witnesses of the veracity of the documents during the Inquiry, the charged ED Agent has come up with flat denials and allegations at the end of the Inquiry. These denials and allegations fail to carry conviction."

It is not clear from the above as to what are the probabilities based on whose preponderance the enquiry authority had come to the conclusion that the allegations against the applicant had been proved. In a recent decision in the case of Bank of India Vs. Degala Suryanarayana (AIR 1999 SC 2427) Hon'ble Supreme Court held "It is an accepted fact that in a departmental enquiry strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings." (Supra)

10. It is stated in the statement of imputation that the charged employee had admitted having received some letters



from Sri R. Ajayakumar for posting, in his statement dated 16.5.90 before the Sub Divisional Inspektor, Attingal and this is shown as Sl. No. 7 of list of documents in support of the article of charges. In the enquiry report perhaps this document had been referred to as ext. P-11 statement. If ext. P-11 statement dated 16.5.90 is categorical then, the question of preponderance of probabilities should not arise for arriving at the conclusions in the Inquiry Report. Thus, in the face of the above there appears to be strength in the specific case of the applicant that he had not accepted any such letters. Thus, we are of the view that by the inquiry report itself it would appear to be a case of "no evidence". Moreover, the statement dated 16.5.90 had not been produced along with the reply statement.

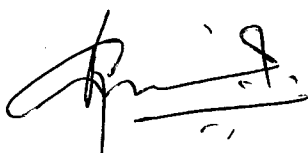
11. The disciplinary authority's A2 order repeats the charge memo and the annexures thereof in detail. Then he states as follows: "I have carefully gone through the inquiry report and all other connected records of the case. I fully agree with the findings of the inquiring authority. The charges against Sri T. Premkumar, EDMC, Chilakur BO that he unauthorisedly obtained some ordinary letters brought by Sri R. Ajayakumar, 'Theeram' Punnamoodu Varkala on 10.11.89 and he did not post those letters on 10.11.89 stand proved beyond any doubt in the inquiry. The charged ED Agent did not make any representation against the inquiry report." Further, it is stated that "As the E.D. Agent is found guilty of the charges levelled against him by the evidences the only thing left to me is to decide the penalty of the offence." In the enquiry report it had been clearly stated by the enquiry officer as extracted by us earlier that there were no "concrete proofs, evidences" against the applicant. The disciplinary authority without any analysis of the enquiry proceedings and enquiry report, came to the conclusion that the charges against the applicant "stand proved beyond any doubt in



the enquiry" and " the E.D. Agent is found guilty of the charges levelled against him by the evidences". This leads us to conclude that A2 order had been passed by the fourth respondent without application of mind and agree with the applicant's plea that the disciplinary authority failed in his jurisdiction while passing the impugned A2 order.

12. One of the grounds advanced by the applicant in the appeal was that his representation dated 30.10.93 had not been taken into account by the disciplinary authority while coming to the conclusion as included in A2 order. Though the appellate authority stated that he had gone through the representation dated 30.10.93 of the appellant, he had dealt with the same as follows in para 4 of A4 order:

"....However, I have gone through the representation dated 30.10.93 of the appellant and found that the very outset it challenges the extend of Rule 17 of P & T ED Agents (conduct and service) Rules, 1964 as far as the incumbent of the EDMC, Chilakur is concerned. This argument itself shows that the appellant is not a fit person to engage as a public servant to be governed by the P & T E.D. agents (conduct and service) Rules, 1964. The other points put forth in the representations are nothing but those required to have been got cleared at the appropriate stages of the Rule 8 enquiry. The representation contains nothing to incline the disciplinary authority to take a lenient view. The appellant as well as the Disciplinary authority is governed by the Rules and Regulations of the department. The Appellant is not vest with any right to allege that the DA is a malafactor on the basis of fictitious grounds. I do not find any good reasons to intervene on behalf of the appellant. The penalty of removal from service imposed on him vide the memo cited at (i) under reference is hereby confirmed. The appeal is therefore rejected."



13. It is evident from the above that the applicant's representation dated 30.10.93 had not received proper consideration even from the appellate authority. Moreover, the appeal had not been decided on merits as is evident from the portion extracted above. It would appear to be an outburst against the applicant.

14. It is now well settled law that reasonable opportunity envisaged to be afforded by Article 311(2) would be satisfied only when all the material including the enquiry officer's report on the basis of which the Disciplinary Authority is required to come to the conclusion in regard to the guilt or otherwise of the charged officer is made available to the charged officer and he is afforded an opportunity to make his representation. In this case, there is no dispute that the Inquiry Report dated 23.7.93 was sent to the applicant and was received by him on 27.9.93 and he requested for extension of time for replying to the same by 30.10.93. According to the respondents by R3(E) dated 19.10.93, extension of time upto 25.10.93 was granted but the applicant did not make the representation in time and final order was passed on 30.10.93. When the respondents could take more than two months to send the enquiry report to the applicant and when the applicant had asked for time upto 30.10.93, and his representation had been received by the Disciplinary Authority before his orders were despatched to the applicant (on 18.11.93) we are of the view that the Disciplinary Authority had passed the order without taking into account the submission of the applicant -the charged officer -thus denying him the constitutional guarantees. Thus we hold that this plea of the applicant against A2 order has validity.

15. In the light of the above we are of the view that A2 Disciplinary Authority's order and A4 Appellate Authority's order

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cannot be sustained and are liable to be set aside.

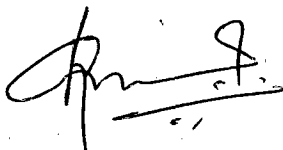
16. From A7 Revisionary Authority's order one may get an impression that he had dealt with the Revision Petition of the applicant in very great detail. But we find it not to be so. In A5 Revision Petition one of the issues raised by the applicant is that the Disciplinary Authority's A2 order not being a reasoned one and hence ab initio void. This had been dealt with by the Revisionay Authority as follows:

"17. Yet another argument of the petitioner is that the order of removing hm is "abinitio void" as the adhoc Disciplinary Authority had not put forth his own conclusions for ordering his removal from service. This argument is also not correct as the ADA had carefully gone through the inquiry report and all other connected records to decide the case and accordingly he recorded his observation in clear terms in the punishment order."

17. We find from the above that the Revisionary Authority had also not examined the issue properly before passing A7 order. The Revisionary Authority had only upheld A2 and A4 orders but had not independently evaluated the evidence on record and recorded any conclusion. In view of our findings of 'no evidence' and infirmities in A2 and A4 orders we cannot sustain A7 order.

18. The applicant had also raised the rational of charge sheeting him for violation of Rule 17 of the P&T EDAs (Conduct & Service) Rules as one of the grounds. This had also been raised by him in the Revision petition. Applicant raised tdhe issue as one of the grounds as follows:

"M. The applicant has been chargesheeted under Rule 17, a general provision to say that every employee shall at all

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times maintain absolute integrity and devotion to duty. Probably, the provision would be a weapon in the hands of the higher authority to implicate innocent employees of the Department. A general reading of the provision would be to say that an employee should have absolute integrity and devotion to his duty particularly. The applicant is an Extra Departmental carrier. His duty is to carry mail bags from post offices to post offices. Assume for arguments sake that he had accepted the letters from one R. Ajayakumar, which had not been posted. The said act, will not amount to any violation of his integrity and devotion to duty. Hence, it is clear that the act alleged to be done is out of the purview of Rule 17. The appellate authority and the revisional authority failed to appreciate this aspect without giving any logical reason."

19. Respondents have stated as follows in the reply statement replying to ground 'M' stated as follows:

"..It is submitted that accepting articles from public unauthorisedly and not posting them is a clear violation of Rule 17. of ED Agents (Conduct & Service) Rules. Here, the circumstances in which the ordinary letters including the ones containing cheques were handed over to the applicant are well revealed by the statement given by Shri Ajayakumar. It remains a fact that the addressee of one of the letters which contained a draft and cheque did not receive it. The non-posting of the letters accepted from sri Ajayakumar showed that the applicant had violated the provisions of Rule 17 of the Post and Telegraph Extra Departmental Agents (Conduct & Service) Rules, 1964 which stipulates that every employee should at all times maintain absolute integrity and devotion to duty. Violation of the provisions which has been proved in the case of the applicant herein, cannot be left unnoticed."

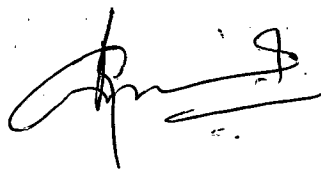


20. On considering the above rival pleadings, we find strength in the applicant's pleadings. Rule 17 of EDA (Conduct & Service) Rules is reproduced below:

17. General

" Every employee shall at all times maintain absolute integrity and devotion to duty."

21. Respondents have not denied the duty of Mail Carrier as described by the applicant. In fact in A7 order this duty has been confirmed in para 20. When this is the case, any receipt of letter by him from a member of the public is not part of his duty. When it is not part of his duty how can such receiving of the letter be treated as "lack of devotion to duty" unless such receipt had affected his normal duty of carrying mail bags between Varkala P.O. and Chilakur BPO. Further, posting of letters is also not part of the duties of the applicant-an E.D.M.C. Therefore, non-posting of letters cannot also be taken a lack of devotion to duty. Nothing had been brought out by the respondents as to how the above will constitute lack of integrity. Question of lack of integrity can arise only if any financial irregularity had been committed by the applicant. There is nothing in the articles of charges to this effect. At the same time the respondents had included in the statement of imputations the fraudulent encashment of a cheque enclosed in a letter allegedly handed over to the applicant. However, when the applicant wanted certain witnesses to be called in that connection, that was denied to him and same had been justified in A7 order. Thus, we are of the view that the charge-sheet itself is a misconceived one in that the receipt of letters from Ajayakumar and non-posting them cannot constitute violation of the provisions of Rule 17 of the EDA (Conduct & Service) Rules. In spite of issuing such a charge sheet the applicant was denied



opportunity of witnesses requested for his defence.

22. In view of the detailed analysis given in the foregoing paras we cannot sustain A2, A4 and A7 orders and they are liable to be set aside and quashed. Accordingly, we set aside A2, A4 and A7 orders and quash the same. We direct the respondents to reinstate the applicant in service with effect from the date of his removal with all consequential benefits including payment of arrears of salary and allowances. Respondents shall implement the above directions within a period of three months from the date of receipt of a copy of this order.

23. The O.A. stands allowed as above with no order as to costs.

Dated the 13th January, 2000.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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List of Annexures referred in this Order

- A2 True copy of the proceedings No. ASP/DA/1/91 dated 30.10.93 issued by the 4th respondent.
- A4 True copy of the Order No.B2/AP/1/94-95 dated 2.8.94 issued by the 3rd respondent.
- A7 True copy of the Order No. SD/MV-1/96 dated 22.11.96 issued by the 2nd respondent.
- R3(A) True copy of the statement of Ajayakumar to the Sub Divisional Inspector, Postal, Attingal.
- R3(B) True copy of the English Translation of the statement dated 16.5.90 of Ajayakumar to the SDI, Postal, Attingal.
- R3(C) True copy of the original complaint dated 23.4.90 from Ajayakumar to the Postmaster, Post Office, Varkala.
- R3(D) True copy of the English translation of the original complaint dated 23.4.90 from Ajayakumar to the Postmaster, Post Office, Varkala.
- A1 True copy of the Inquiry Report dated 23.7.93, issued by the Inquiring Authority.
- A3 True copy of Appeal Memorandum dated 24.1.94 filed by the applicant before the 3rd respondent.
- A5 True copy of the Review dated 15.3.95 filed by the applicant before the 2nd respondent.