

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. No. 531 of 1996.

Thursday this the 13th day of August, 1998.

CORAM:

HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

C.M. Joshua,
Chempakasseril House,
Ex-Branch Post Master,
Kammana (P.O.), Mananthavady,
Wayanad District.

.. Applicant

(By Advocate Shri TA Shaji)

Vs..

1. The Superintendent of Post Offices,
Tellicherry Division,
Tellicherry 670 102.

2. The Director of Postal Services,
Northern Region, Calicut-11.

3. The Post Master General,
Northern Region, Calicut-673 011.

4. Union of India represented by the
Secretary, Ministry of Communications,
New Delhi. .. Respondents

(By Advocate Shri Govindh K. Bharathan, SCGSC)

The application having been heard on 13th August, 1998,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant while working as Branch Postmaster,
Kammana Post Office, was charged by A-1 order dated 15.12.91
with having irregularly handled an unregistered letter stated
to have been received in torn condition on 31.5.91, with having
absented himself from office during office hours on 1.6.91
and with having manipulated the office error book making
entries with back dates. The statement of imputation states
that the cover contained in addition to a letter, a Cheque
for 100 dollars sent by the nephew of the recipient from
United States of America. Applicant submitted his explanation
to the charge memo and after inquiry the applicant was removed

from service by order A-4 dated 31.8.94. Applicant preferred an appeal which was dismissed by A-5 order dated 17.5.95. Applicant thereupon approached the Tribunal in O.A. 1275/95 which was disposed of with a direction that the applicant may file a Review Petition before the competent authority. The Review Petition was rejected by A-7 order dated 20.12.95. Applicant submits that even if the entire charges against him are taken as proved the extreme penalty of removal from service is not warranted. As seen from A-8, the Rule 7 of the Extra Departmental Agents (Service and Conduct) Rules 1964 was amended and certain lesser penalties have also been included in Rule 7, and one of the lesser penalties should have been awarded to him, since the extreme penalty of removal from service is meant only for the most grievous kind of misconduct.

2. Applicant challenges A-4, A-5 and A-7 orders on the ground that Rule 61 of the Rules for Branch Offices stipulated that Branch Postmaster should, if necessary forward a torn article enclosed in envelopes to the offices of destination. In view of the above provision the action of the applicant in sending the torn letter received by him enclosed in an envelope cannot be considered as a misconduct attracting severe penalty. Applicant submits that Rule 36 dealing with maintenance of error book does not mandate that the entry in it should be made on the date on which the error is noted, and that making of an entry in the error book with back date could not be termed as a misconduct. His absence on 1.6.91 during working hours cannot be considered as misconduct since the applicant was constrained to leave the office in an emergency in connection with the marriage of his nephew. There is no provision for engaging a substitute for a part of the day. Since the emergency was unforeseen he could not inform the superior officers in advance.

3. Respondents have submitted that the applicant intercepted an article on 31.5.91 which contained 100 dollars and a letter of communication sent from United States of America by the nephew of one Shri P.S. Baby. He posted the said contents of the letter in another envelope at Sultan Battery Post Office on 1.6.1991 writing the address himself in Malayalam. A complaint was received from Shri P.S. Baby dated 8.6.91 and the complaint was enquired into. The enquiry revealed that the applicant had intercepted the unregistered letter during the course of its transmission and that he had falsified Post Office records to cover up his guilt. The applicant was, therefore, put off duty by the first respondent by order dated 30.7.91. The applicant was charge sheeted by the first respondent by order dated 15.12.91(A-1) and enquiries were held under Rule 8 of the Postal, Extra Departmental Agents(Conduct & Service) Rules, 1964. The inquiring authority held all the three charges levelled against the applicant as proved. The punishment of removal from service imposed by the disciplinary authority was also upheld in appeal and in review. Respondents submit that if an article was received in torn condition the applicant should have recorded a remark to that effect and it should have been sent out for delivery in a protected cover in accordance with the Rule 61 of the Rules for Branch Offices. The article was, however, reposted by the applicant on 1.6.91 at Sulthan Battery Post Office which is in Calicut Postal Division and was about 30 kilometres away from Kammana Branch Post Office. He has also failed to make an entry in the error book, maintenance of which is prescribed for recording day to day irregularities (if any) which occur on each working day. On 31.5.91 itself, if the article was received in torn condition, he should have made an entry to that effect in the error book, as required by Rule 36 of the Rules for Branch Offices.(R1-B). Instead of adopting such a correct procedure

he tried by making an antedated entry in the error book to cover up his guilt. The applicant has not pointed out any procedural flaws in the enquiry. Respondents submit that during the inquiry the applicant was afforded all opportunities to defend his case. Respondents also submit that the averment of the applicant that he had to leave the office in an emergency in connection with the marriage of his nephew is merely an afterthought, and that a marriage affair, will not emerge spontaneously warranting the applicant to leave the office. The applicant had unauthorisedly, absented from duty on 1.6.91 with the ulterior motive of reposting the article at Sultan Battery Post Office, in order to show that the said article was not handled by him earlier. Respondents also submit that the Supreme Court in Union of India Vs. Paramananda (AIR 1989 SC 1186) held that Tribunals cannot interfere with the punishment imposed on the ground that it is not commensurate with the delinquency of the employee.

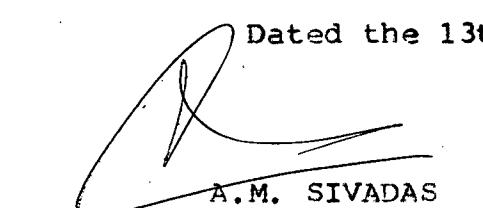
4. We find that the applicant had been given a reasonable opportunity to defend himself against the charges termed against him and he has no complaint in that regard. It is seen that the evidence on record itself bears out the charges. Applicant in his explanation A-2 to the charge memo has admitted that he had made an entry in the error book with back date. His contention that he is not aware of the Rule or that he thought that there was no harm in making entry with back date, cannot be accepted in view of the fact that the applicant had been in service for 7 years as seen from A-7 orders. Applicant has also been given opportunities to take up the orders of the disciplinary authority in appeal and in review. The reviewing authority

in his A-7 order has dealt with the matter in great detail and has considered all the arguments and contentions put forward by the applicant. The contention of the applicant that Rule 36 does not mandate that the entry noted should be made on the date on which the error is noted cannot also be accepted. It is obvious that, when an error book is prescribed for noting down and keeping a record of all irregularities, entry should be made at the time when the irregularities are noticed in the regular course of the day's work. The Reviewing Authority has also noticed that the Petitioner had made certain attempts to settle the complaint against him and had paid a sum of Rs.85/- to the Prosecution Witness-1 in a bid to get the public complaint against him withdrawn, and the petitioner himself had admitted this as a fact in Exhibit P7. If his hands were clean and motives were bonafide, he would not have tried to compound the issue through outside mediators. It is evident, therefore, that neither the disciplinary authority nor the authorities, who sat in appeal and review can be faulted for arriving at the conclusion that the charges are held proved. As regards the penalty, the reviewing authority has stated that the misconduct proved against the petitioner warranted nothing but the severest penalty of dismissal from service but the authority who decided his case at lower levels had already taken ^alenient view and ordered his removal from service which would not cast a permanent stigma on him for future employment. We do not consider this to be a fit case calling for judicial interference.

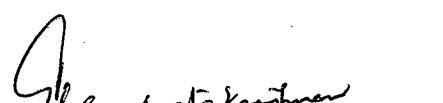
5. In the result, the application is dismissed.

No costs.

Dated the 13th August, 1998.



A.M. SIVADAS
JUDICIAL MEMBER



P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER