CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.540/11

Friday this the 12th day of April 2013

C O R A M :

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER

P.Surendran,
Ex-GDS MD, Parandode,
Thiruvananthapuram North Postal Division,
Thiruvananthapuram. ...Applicant

(By Advocate Mr.Vishnu S Chempazhanthiyil)

V e r s u s

1. Inspector Posts,
Nedumungad Sub Division,
Nedumangad, Thiruvananthapuram – 12.

2. Senior Superintendent of Post Offices,
Thiruvananthapuram North Division,
Thiruvananthapuram – 1.

3. Union of India,
represented by Chief Post Master General,
Office of the CPMG, Kerala Circle,
Thiruvananthapuram – 1. ...Respondents

(By Advocate Mr.Millu Dandapani,ACGSC)

This application having been heard on 26th March 2013 this Tribunal on 12th April 2013 delivered the following :-

O R D E R

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

This is the second round of litigation in respect of imposition of penalty of removal from service. In the earlier OA No.583 of 2009, the Tribunal has given a direction to the CPMG to consider the Revision Petition though there had been an enormous delay. The operative portion of the order in the said OA reads as under :-

"6. In the above circumstances we feel that the O.A can be allowed by directing the third respondent to consider the revision petition filed by the applicant and take a decision in the matter on merits. Accordingly the O.A is allowed by directing the third respondent to reconsider the revision filed by the applicant and pass appropriate orders thereon on merits within sixty days from the date of receipt of a copy of the order."

2. The CPMG had, after duly considering the revision petition and after addressing all the grounds raised, and also recording the basic nature of service of the Postal Department, rejected the revision petition by a comprehensive order dated 07th Feb. 2011 vide Annexure A-3. The applicant has now challenged the aforesaid order along with the initial penalty order and appellate order on various grounds including the ground of bias and has sought for the following reliefs :-

1. Call for the records leading to the issue of Annexure A-1, A-2 and A-3 and set aside Annexure A-1, A-2 & A-3.

2. Direct the respondents to reinstate the applicant back into service with all consequential benefits.

3. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.

4. Award the cost of these proceedings.

3. Respondents have contested the OA and have justified the penalty imposed upon the applicant. They have traced out the past incidents leading to the put off duty of the applicant, and asserted that the enquiry conducted was strictly in accordance with the provisions of the Relevant Rules and the applicant was given all opportunities to present his case. The applicant did not raise any complaint or objection regarding the conduct of the inquiry before the authorities. All the allegations raised in the instant OA are, therefore, just an afterthought, which are liable only to

be discarded. Though the applicant alleged that adequate time was not granted to represent against the inquiry report, according to the respondents, 16 days time had been granted and as per the time granted by the Tribunal in OA No.861/2002, the proceedings were to be completed within a time bound schedule. It was on account of the attempt to drag on the matter that the applicant sought for further time, which had been rightly refused. Reference to various Apex Court judgments have also been given to hammer home the legal point that judicial interference is warranted only if there be infraction of either the rules or principles of natural justice and these two not being present in the present case, there may not be any judicial interference.

4. Counsel for the parties, on the date of hearing on 26-03-2013 agreed to file written arguments but the same has not so far been filed by either side. Nevertheless, on the basis of the pleadings the case has been considered.

5. The charge levelled against the applicant is as under :-

Article I

MO No.2073-34 of Aryanad PO dated 16.3.2000 for Rs.330/- (Rs.Three Hundred and Thirty Only) payable to Sri.R.Sukumaran, Konamvila Thadatharikathu Veedu, Ayithi, Parandode PO, which was entrusted to him with required cash for payment on 18.3.2000. The said money order was entrusted with required cash to Sri.P.Surendran, EDDA for effecting payment to the money order from the BPM, Parandode BO under acquittance in the BO journal and returned the paid voucher of the above said MO to the BPM, Parandode BO shown as paid on the same day and duly entered in the postman book.

On receipt of a letter of complaint dated 2.5.2000 from the payee, Sri.R.Sukumaran of the above said money order alleging the delay in payment of the said money order, IPO (PG), Trivandrum South Division made a detailed enquiry on the complaint. Sri.R.Sukumaran in his statement dated 25.7.2000 before the IPO (PG), Trivandrum South Division submitted that the payment of the said money order was given to him only on 28.3.2000. He further submitted that his new house address is Nellivila Colony, Pottenchira, Parandode PO.

Sri.P.Surendran, GDSMD (POD) stated in his statement dated 23.10.2000 before the SDI (P), Nedumangad Sub Division that the said money order was paid by him to actual payee on 18.3.2000. The finger impression taken against the column 'signature of payee' in the paid voucher of the Aryanad MO No.2073-34 dated 16.3.2000 for Rs.330/- payable to Sri.R.Sukumaran was subjected to expert scrutiny and the finger print expert opined vide Letter No.X3-850/FPB/2001 dated 26.3.2002 that it was identical with the left hand thumb impression of P.Surendran, GDSMD (POD), Parandode PO.

By the above said act, Sri.P.Surendran, GDSMD (POD), Parandode PO has violated Rule 127 (1) of Postal Manual Volume VI Part III sixth edition and thereby failed to maintain absolute integrity and devotion to duty as envisaged in Rule 21 of Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules, 2001.

6. One of the grounds raised by the applicant is that the finger print expert's opinion should be corroborated and that by itself cannot be conclusive evidence. Ground No. P refers. In this regard, reference is invited to the decision of the Apex Court in the case of **Murari Lal vs State of M.P. (1980) 1 SCC 704**

In *Ram Chandra v. U.P. State, Jagannadhadas, J. observed :*

"It may be that normally it is not safe to treat expert evidence as to handwriting as sufficient basis for conviction" (emphasis ours). "May" and "normally" make our point about the absence of an inflexible rule. In Ishwari Prasad Misra v. Mohammad Isa Gajendragadkar, J. observed: "Evidence given by experts can never be conclusive, because after all it is opinion-evidence", a statement which carries us

nowhere on the question now under consideration. Nor, can the statement be disputed because it is not so provided by the Evidence Act and, on the contrary, Section 46 expressly makes opinion-evidence challengeable by facts, otherwise irrelevant. And as Lord President Cooper observed in Davis v. Edinburgh Magistrate: "The parties have invoked the decision of a judicial tribunal and not an oracular pronouncement by an expert."

8. In Shashi Kumar v. Subodh Kumar Wanchoo, J., after noticing various features of the opinion of the expert said :

"We do not consider in the circumstances of this case that the evidence of the expert is conclusive and can falsify the evidence of the attesting witnesses and also the circumstances which go to show that this will must have been signed in 1943 as it purports to be. Besides it is necessary to observe that expert's evidence as to handwriting is opinion-evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence. In the present case the probabilities are against the expert's opinion and the direct testimony of the two attesting witnesses which we accept is wholly inconsistent with it."

So, there was acceptable direct testimony which was destructive of the expert's opinion; there were other features also which made the expert's opinion unreliable. The observations regarding corroboration must be read in that context and it is worthy of note that even so the expression used was "it is usual" and not "it is necessary".

9. In Fakhruddin v. State of M.P. Hidayatullah, said :

"Both under Section 45 and Section 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become an handwriting expert but to verify the premises of the expert in the one case and to appraise the value of the opinion in the other case. This comparison depends on an analysis of the characteristics in the admitted or proved writings and the finding of the same characteristics in large measure

in the disputed writing. In this way the opinion of the deponent whether expert or other is subjected to scrutiny and although relevant to start with becomes probative. Where an expert's opinion is given, the court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the court may accept the fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness."

These observations lend no support to any requirement as to corroboration of expert testimony. On the other hand, the facts show that the Court ultimately did act upon the uncorroborated testimony of the expert though these Judges took the precaution of comparing the writings themselves.

10. Finally, we come to Magan Bihari Lal v. State of Punjab upon which Shri R.C. Kohli, learned counsel, placed great reliance. It was said by this Court:

"... but we think it would be extremely hazardous to condemn the appellant merely on the strength of opinion-evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in Ram Chandra v. State of U.P. that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in Ishwari Prasad v. Mohammad Isa that expert evidence of handwriting can never be conclusive because it is, after all, opinion-evidence, and this view was reiterated in Shashi Kumar v. Subodh Kumar where it was pointed out by this Court that expert's evidence as to handwriting being opinion-evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in Fakhruddin v. State of M.P. and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the

> evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial."

The above extracted passage, undoubtedly, contains some sweeping general observations. But we do not think that the observations were meant to be observations of general application or as laying down any legal principle. It was plainly intended to be a rule of caution and not a rule of law as is clear from the statement "it has almost become a rule of law". "Almost", we presume, means "not quite". It was said by the Court there was a "profusion of precedential authority" which insisted upon corroboration and reference was made to Ram Chandra v. State of U.P. Ishwari Prasad v. Mohammad Isa, Shashi Kumar v. Subodh Kumar and Fakhruddin v. State of M.P.. We have already discussed these cases and observed that none of them supports the proposition that corroboration must invariably be sought before opinion-evidence can be accepted. There appears to be some mistake in the last sentence of the above-extracted passage because we are unable to find in Fakhruddin v. State of M.P. any statement such as the one attributed. In fact, in that case, the learned Judges acted upon the sole testimony of the expert after satisfying themselves about the correctness of the opinion by comparing the writings themselves. We do think that the observations in Magan Bihari Lal v. State of Punjab must be understood as referring to the facts of the particular case.

11. **We are firmly of the opinion that there is no rule of law, nor any rule of prudence which has crystallised into a rule of law, that opinion-evidence of a handwriting expert must never be acted upon, unless substantially corroborated.** But, having due regard to the imperfect nature of the science of identification of handwriting, the approach, as we indicated earlier, should be one of caution. Reasons for the opinion must be carefully probed and examined. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. **In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted**. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight. We have said so much because this is an argument frequently met with in subordinate courts and sentences torn out of context from the judgments of this Court are often flaunted. (Emphasis supplied)

7. Paragraph 11 of the above judgment was relied upon by the Apex Court in the case of **Ravichandran vs State (2010) 11 SCC 120**.

8. In the instant case, the finger print expert held that the Left Hand Thumb Impression was not of the payee of the Money Order but of the applicant himself. Thus, the applicant has played a fraud not only upon the payee of the Money Order by not paying him the amount due to him but also on the Organization. That the amount was later paid might satisfy the said payee of the Money Order, but the act of the applicant certainly would have left an indelible dent in the credibility of the Organization in the eyes of the general public and keeping in view the fact that earlier too the applicant was involved in such a practice reduces the credibility of the applicant in the eyes of the respondents.

9. Though bias had been levelled against the respondents the same has not been proved. Respondents are right in asserting that there is no bias against the applicant.

10. No illegality in the penalty order or the appellate order could be discerned as the principles of natural justice has been fully met with and as the case stood proved against the applicant with that standard of proof required for holding departmental inquiry.

11. The revision application had been filed after about five years and it is in pursuance of the order of the Tribunal that the Chief Post Master General had considered. The well considered revision order keeps in view

the importance of Money Order, the sanguine expectation of the general public in respect of service undertaken by the Postal Department, the circumstances under which the victim was placed (blind, against whom the applicant had played fraud), the need to maintain honesty and integrity etc., Such an order cannot but be upheld. Rule 14 of the CCS (CC & A) Rules, which the applicant frequently referred to is not applicable to the facts of the case as the rules governing the service of the applicant contemplate only complying with the principles of natural justice and perusal of the entire pleadings clearly go to show that there is no infraction of principles of natural justice.

12. In view of the above, the OA is devoid of any merits and is, therefore, dismissed. No cost.

(Dated this the 12th day of April 2013)

K.NOORJEHAN
ADMINISTRATIVE MEMBER

Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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