

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.544/2003.

Tuesday this the 7th day of December 2004.

CORAM:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.S.K.HAJRA, ADMINISTRATIVE MEMBER

(By Advocate Shri O.V.Radhakrishnan)

vs.

1. The Senior Superintendent of Post Offices, Calicut Division, Calicut and Adhoc disciplinary authority.
2. Superintendent, RMS 'CT' Division, Calicut-32.
3. K.P.Valsan, Inquiry Authority and Senior Superintendent of Post Offices, , Virudhachalam Postal Division, Virudhachalam, Tamil Nadu.
4. The Director of Postal Services, Office of the Postmaster General, Central Region, Kochi-16.
5. Union of India represented by its Secretary, Ministry of Communications, New Delhi. Respondents

(By Advocate Mr.TPM Ibrahim Khan, SCGSC)

The application having been heard on 7.12.2004, the Tribunal on the same day delivered the following:

ORDER

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

The applicant while working as Cashier in SRO, Palakkad was placed under suspension by order dated 2.11.1995. Thereafter he was served with a Memorandum of Charge dated 13.6.1996 of the Ist respondent containing three Article of Charges which reads as follows:

Article-I:

That Shri M. Prasannakumar while working as Cashier in SRO Palakkad on 31.10.95 failed to ensure correctness of the cash balance of Rs.1,32,460/55 at the time when the amount was kept in the cash chest of SRO Palakkad and locked the cash chest at the close of the office on 31.10.95. In his capacity as joint custodian of cash he also failed to keep the said amount of Rs.1,32,460/55 in the cash chest in the physical presence of the custodian of the cash viz. SRO Palakkad. He further failed to open the cash chest in the physical presence of SRO Palakkad on 1/11/95 at the commencement of the working of the office. Further even on noticing the loss of Rs. One lakh from the cash chest of SRO Palakkad on 1/11/95 morning Shri M. Prasannakumar, Cashier continued disbursement of amount to various persons, thereby frustrated police/departmental enquiries. By the above acts Shri M. Prasannakumar exhibited grave negligence in discharging his duties which resulted in the loss of Rs. One lakh of government money from the cash chest of SRO, Palakkad.

It is imputed that Shri M. Prasannakumar while functioning as Cashier in SRO Palakkad on 31.10.95 and 1/11/95 exhibited grave misconduct and utter negligence which caused loss of Rs. One lakh of govt. money from the cash chest of SRO, Palakkad thereby violated Rule 3(1) (i), 3(1) (ii) and 3 (1) (iii) of CCS(Conduct) Rules 1964.

Article-II:

That the said Shri M. Prasannakumar while functioning as Cashier, SRO Palakkad on 31/10/95 and 1/11/95 entrusted the key-bunch of SRO Palakkad to Smt. M. Devakiamma, Malayanchathan, Vadakumthara, Thamarakulam (Sweeper of Sub Record Officer, Palakkad) on 1/11/95 morning so as to give the keys to SRO Palakkad. The key-bunch contained Cashier's key of cash chest of SRO Palakkad. Shri M. Prasannakumar failed to keep the key to remain in his proper custody. The negligence on his part to keep the key in his proper custody resulted in the loss of Rs. One lakh of Govt. money from the cash chest of SRO Palakkad which was noticed by him at 10.00 AM on 1/11/95.

It is, therefore, imputed that Shri M. Prasannakumar while functioning as Cashier SRO Palakkad on 31/10/95 and 1/11/95 exhibited gross negligence and grave misconduct resulting in the loss of Rs. One lakh of Govt. money; thereby violated Rule 19(6) of Postal Manual Vol. VII (Eighth Edition corrected upto 1/4/86) and Rule 3(1) (ii) and (iii) of the CCS(Conduct) Rules 1964.

Article -III:

That Shri M. Prasannakumar, Cashier (under suspension) of SRO Palakkad was called upon to give a statement before the SRM 'CT' Division on 7/12/95 in connection with the further investigation of the loss of Rs. One lakh of SRO Palakkad. Shri Prasannakumar did not give a statement to the SRM 'CT' Division as demanded, but refused to give the statement in writing and thus he did not co-operate in the departmental investigation.

It is therefore imputed that the said Shri M.Prasannakumar exhibited grave misconduct contravening the provisions of Rule 3(1) (ii) and Rule 3(1) (iii) of CCS(Conduct) Rules 1964.

2. The applicant denied all the charges. An enquiry was held. The Enquiry Officer submitted A-19 Enquiry Report and held that the applicant was partly guilty of all the charges. The disciplinary authority who considered the representation submitted by the applicant concurred with the findings of the Enquiry Authority by A-21 order and found that the applicant was partly guilty of all the charges and imposed on him the penalty of reduction in pay by four stages from Rs.4400 to 4000 in the time scale of pay of Rs.4000-100-6000 for a period of 4 years with effect from 1.5.1998, that the applicant would not earn the increment of pay during the period of reduction and that on expiry of the period the reduction would have the effect of postponing the future increments. Aggrieved by that the applicant filed an Appeal to the 4th respondent. The 4th respondent issued Annexure A-23 proceedings dated 19.2.1999 proposing to enhance the penalty to that of dismissal from service. Aggrieved by that the applicant filed O.A.307/99 which was disposed of by A-24 order dated 21.8.2001 by this Bench of the Tribunal setting aside the notice and directing the respondents to dispose of Appeal A-22 in accordance with law. However, an order dated 15.2.2002 was issued imposing on the applicant a penalty of compulsory retirement. The applicant filed a Contempt Petition (Civil) No.28/2002. This Bench of the Tribunal directed the 4th respondent to comply with the directions contained in the order of the Tribunal in O.A.307/99 within a period of four weeks. Thereafter, the 4th respondent issued A-26 order in appeal holding that the order of compulsory retirement passed was void and inoperative and confirming the penalty of reduction of pay by four stages imposed by the

Disciplinary Authority by A-21 order dated 27.4.98. The applicant was reinstated in service. The applicant was also served with notice dated 19.3.2003 proposing to treat the period during which the applicant was kept out of service as of leave of any kind due, to which the applicant submitted Annexure A-33 representation. Rejecting the explanation of the proposal contained in A-32 order confirmed by A-34 order dated 3.7.2003 against which the applicant submitted A-35 appeal which is pending. Under these circumstances aggrieved by the penalty imposed and the treating of the period of leave of any kind during which the applicant was kept out of service, the applicant has filed this O.A.. seeking the following reliefs:

- i. to call for the records relating to Annexure A-19, A-21, A-26 and A-32 and to set aside the same.
- ii. to issue appropriate direction or order directing the respondents to treat the period during which the applicant was kept out of service from 30.3.2002 to 25.7.2002, the date on which he was re-instated in service as duty for all purposes and to pay to the applicant full pay and allowances due to him but for the illegal compulsory retirement imposed on him as per Annexure A-23 which has been declared as void in Annexure A-26 order of the appellate authority;
- iii. to issue appropriate direction or order directing the respondents to regularise the period of suspension from 2.11.1995 to 4.8.1997 by treating it as period spent on duty for all purposes and to grant him arrears of pay and allowances for the above period deducting the subsistence allowance already paid to him with interest.

3. It has been alleged in the application that the applicant having been not nominated as co-custodian in terms of Sub Rule 5 & 6 of the Rule 19 of the Postal Manual Volume VII, the finding that the applicant was guilty and the penalty imposed on him is wholly unsustainable. It has further alleged in the O.A. that the enquiry was not in conformity with the rules as the relevant documents were not made available unjustly though demanded by him. The applicant has also contended that the penalty imposed



on the applicant is grossly disproportionate especially when the Sub Record Officer who was the Chief custodian of the cash chest, has been left off with a minor penalty of reduction of pay by six stages for a period of six months without cumulative effect.

4. The respondents have filed a detailed reply statement refuting all the allegations.

5. We have very carefully gone through the entire pleadings and all the materials placed on record and have heard Shri O.V.Radhakrishnan, learned counsel appearing for the applicant and Shri TPM Ibrahim Khan, SCGSC appearing for the respondents at considerable length. Shri Radhakrishnan, learned counsel for the applicant invited our attention to Rule 19 and sub Rule 4 & 5 of Rule 19 of the Postal Manual Volume VII which read as follows:

"19. Custody of Government money.--(1) Government money and all other articles and documents which are required by the rules to be kept in the office safe, should be locked up in the cash safe or cash chest supplied to the office. For this purpose, each Head Record Office will be supplied with an office safe. Each Record or Sub-Record Office will be supplied with either a cash safe or cash chest at the discretion of the Head of the Circle. No private money, property belonging to any person may be kept in the safe or chest.

(3) ~~xxxxxxxx~~ ~~xxxx~~ ~~xxxxxxxxxx~~

(4) In Head Record Office one key of the safe will be retained in the custody of the Head Record Officer and other in that of the accountant. In Record and Sub Record offices with one or more sorting assistant in addition to the Record Officer or Sub Record Officer, the key of one of the locks should be retained by the Record officer or the Sub Record Officer and S.R.M. as the joint custodian. In single handed Record or Sub Record Offices the keys, of both the locks will be retained in the custody of the Record or Sub Record officer.

(5) During the working hours of the office, the safe or chest may be secured with only one lock--the key of which is in the custody of the Accountant in the Head Record office and the Sub-Record officer or Record officer in other offices."

6. It is argued by the counsel of the applicant that, the applicant, a Cashier, not being nominated by Sub Record Officer, was not responsible for the custody of cash or for locking the cash chest and therefore the disciplinary proceedings initiated against the applicant and the penalty imposed on him are unsustainable. The counsel argued that since, in any case, the Sub Record Officer being the Chief Custodian of cash chest, while he was left out with a penalty of reduction of pay by six stages for a period of six months without cumulative effect, the penalty of reduction of pay by four stages for a period of four years with cumulative effect in the case of the applicant is arbitrary, irrational and violative of Article 14 of the constitution and of Wednesbury principles.

7. Learned counsel of the respondents on the other hand argued that even though the applicant was not nominated as co-custodian, the facts of the case undisputedly disclose that the applicant had acted as co-custodian of cash, the applicant cannot escape from the responsibility in its entirety. He further argued that since the case of the Sub Record Officer was considered by a different appellate authority and that was at a different point of time, the appellate order confirming the penalty imposed on the applicant cannot be faulted, as there was no intention to show any hostile discrimination in the case of the applicant.

8. We find substance in the argument of the learned counsel of the respondents that having acted as a custodian of cash chest the applicant cannot disown completely the responsibility for

verifying that the cash was ~~carefully~~ kept and locked and therefore the finding of guilt in part cannot be faulted. We however find considerable force in the argument of the learned counsel of the applicant that the applicant has been discriminated against in as much as he has been awarded a more severe major penalty while for the same lapse the SRO, who was primarily and more responsible for safety of cash and chest has been let off with a minor penalty of reduction of pay for a period of 6 months without cumulative effect. Although the authorities who considered the case of the SRO and of the applicant were different in effect it has happened that for the identical lapse, the applicant (whose level of responsibility is undoubtedly lower than that of the SRO has been awarded a more severe penalty which is opposed to the Wednesbury principles. We are of the view that the appellate authority should have considered the fact that the SRO has been awarded a minor penalty, and that under such circumstances, the penalty awarded to the applicant is unduly harsh. Therefore we are of the view that A-26 appellate order should be set aside and the matter should be remitted to the 4th respondent for a fresh disposal of the appeal in view of what is stated above. Regarding the treatment of the period during which the applicant was kept out of service counsel agree that the 1st respondent may be directed to consider and dispose of A-35 appeal within a time frame.

9. In the light of what is stated above, the application is disposed of with the following observations and directions.

A-26 order of the 4th respondent is set aside and the 4th respondent is directed to dispose of the appeal keeping in view the observations contained in the forgoing paragraphs regarding the proportionality of penalty and

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issue an appropriate order duly taking note of the fact that Sub Record Officer has got primary responsibility of the cash chest in view of the Rule 4 & 5 of Rule 19 of the Postal 'Manual Vol.VII and to issue appropriate order within a period of two months from the date of receipt of a copy of this order. Regarding the treatment of the period during which the applicant was kept out of service, the Ist respondent is directed to have the A-35 appeal pending before the Director of Postal Services, Northern Region, Calicut considered and disposed of taking note of the observations contained in this order as also the facts and circumstances within a period of two months from the date of receipt of a copy of this order. No costs.

Dated the 7th December, 2004.


S.K.HAJRA
ADMINISTRATIVE MEMBER


A.V.HARIDASAN
VICE CHAIRMAN

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