

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 586 of 2004

Friday, this the 30th day of March, 2007

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

J. Jayachandran,
S/o. Joshua, Ex-EDDA,
Plamoottukada,
Under Neyyattinkara Sub Division,
Trivandrum South Division,
Residing at Planthottathil Puthen Veedu,
Kulathur, Uchakkada P.O.,
Neyyattinkara, Trivandrum District,
Pin Code : 695 506

... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India represented by
The Secretary, Ministry of Communications,
New Delhi.
 2. The Chief Postmaster General,
Kerala Circle, Trivandrum.
 3. The Superintendent of post Offices,
Trivandrum South Division, Trivandrum.
 4. The Assistant Superintendent of Post Offices,
and Ad hoc Appointing Authority,
Trivandrum South Division, Trivandrum.
- Respondents.

...

(By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC)

(The Original Application having been heard on 12.1.07, this
Tribunal on 30.03.07 delivered the following):



O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER


The applicant, while functioning as GDS MD, Plamoottukada EDSO was served with a charge sheet with the following Articles of Charge vide Annexure A-4 Memorandum dated 30-06-2000.

"ARTICLE - I

That the said Shri J Jayachandran, while working as EDDA II, Plamoottukada EDSO was entrusted with Trivandrum-24 RL No. 40421 addressed to the Headmaster, St. Joseph's UPS, Plamoottukada, on 10.12.1998, for delivery to the addressee. Shri J. Jayachandran, EDDA - II, showed the said RL delivered to the addressee on 10.12.98 without actually delivering the said article to the correct addressee. By the above said act, Shri J. Jayachandran, EDDA II (Put-off duty), Plamoottukada P.O. Violated Rule 127 (1) of Postal Manual Vol. IV Part III (Sixth Edition) and thereby failed to maintain absolute integrity and devotion to duty under the provisions of Rule 17 of P&T ED Agents (Conduct & Service) Rules, 1964".

"ARTICLE - II

That the said Shri J Jayachandran, while working as EDDA II, Plamoottukada EDSO was entrusted with Trivandrum-24 RL No. 46734 and 46934 addressed to the Headmaster, St. Joseph's UPS, Plamoottukada, on 1.1.99, for delivery to the addressee. Shri J. Jayachandran, EDDA - II, showed the said RLs delivered to the addressee on 1.1.99 without actually delivering the said articles to the correct addressee. By the



above act, Shri J. Jayachandran, EDDA II, Put-off duty, Plamoottukada EDSO Violated Rule 127 (1) of Postal Manual Vol. IV Part III (Sixth Edition) and thereby failed to maintain absolute integrity and devotion to duty under the provisions of Rule 17 of P&T ED Agents (Conduct & Service) Rules, 1964".

2. Inquiry officer was appointed, who had conducted the inquiry as per the prescribed procedure and held that the charges against the applicant have been found to be proved, vide Annexure A-11 Inquiry Report. Applicant was given opportunity to represent against the Inquiry Report and he had accordingly submitted Annexure A-12 representation. By Annexure A-1 Order dated 27.09.2002, the Disciplinary authority had, after considering the inquiry report and the representation of the applicant against the same, awarded the penalty of removal from service. Against the said order of removal from service, the applicant had filed Annexure A-13 appeal before the Appellate Authority, which was rejected by the Appellate authority vide Annexure A-2 order dated 04.08.2003. This order of the Appellate Authority was challenged by Annexure A-14 revision petition dated 28-10-2003. This had been considered but rejected by the Revisional Authority, vide Annexure A-3 order dated 12.03.2004. It is the three orders of the Disciplinary, Appellate and Revisional Authorities, that have been under challenge in this O.A. The following are the main grounds:-

- (a) Required documents were not furnished to the applicant to defend his case properly. This amounts to violation of Principles of Natural Justice.




(b) Ex. P-13 (Annexure A-8) is the opinion of the Government Examiner of the Questioned Documents and the same had been relied upon by the Inquiry Authority onwards upto the Revisional Authority, though the same had not been either admitted by the applicant or proved by duly examining and cross examining the author of the same. This goes to the root of the proceedings and makes the entire proceedings right from the stage of inquiry vitiated.

(c) The Disciplinary Authority being incompetent to pass the order of penalty of removal, he being only an ad hoc appointing authority, the proceedings get vitiated.

(d) Appellate Order has not considered the grounds taken in the appeal. Hence, the same too is illegal. Opportunity of being heard was also not given.

(e) So is the case of the Revisional Authority's order, which has not taken into account various grounds raised in the Revision Petition.

3. Respondents have contested the O.A. According to them, since the disciplinary authority happened to be a material witness in the inquiry, necessity arose to appoint an ad hoc appointing authority and accordingly, the A.S.P. was appointed as the ad hoc appointing authority, who is not lower in rank than the appointing authority. Hence, the same was legal. It has also been submitted that the non supply of documents was on account of circumstances stated in the proceedings as contained in Annexure R-2 communication. As regards non examination of the Government Examiner of



Questioned Documents, the same was due to the fact that there was a time stipulation calendared by the Tribunal in its (Annexure A-7) order dated 26-06-2002 in OA 337/2002 filed by the applicant coupled with the fact that the defence assistant had objected to further opportunity to the CEQD to appear before the Inquiry Authority. In any event, Annexure A-8 alone was not relied to prove the charge. It has further been contended that the appellate order was passed after a detailed discussion and opportunity of being heard is one of discretion which cannot be challenged. Specific mention was made in the counter that Shri Sathyaraj (PW 3) used to receive only ordinary postal articles in the absence of the Headmaster and the Headmaster of the school deposed before the I.A. that he had not specifically stated that in his absence registered letters could be delivered to Sathyaraj. Sathyaraj had denied the receipt of the Registered letters stated to have been delivered to him by the applicant.

4. Rejoinder had been filed by the applicant, wherein he had maintained that Shri Sathyaraj did not state that he used to receive only ordinary postal articles. The question asked to him was "you used to receive letters. HM himself has admitted this. Do you deny this?" and his answer was in negative.

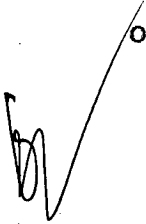
5. In their additional reply, the respondents, in order to prove their stand about the said Sathyaraj not having admitted that he used to accept registered letters addressed to the Headmaster, furnished an English version of the cross examination by the defence assistant of the said Sathyaraj (PW 3), vide Annexure R-4.



6. Counsel for the applicant submitted that the procedure prescribed for holding inquiry had not been followed as contained in the Grounds in the O.A. He has emphasized that the authorities ought not have taken into confidence of Annexure A-8, the opinion of the Government Examiner of Questioned Documents, without examining him and without giving an opportunity to the applicant to cross examine him. Thus, according to him the entire proceedings are liable to be declared as illegal and hence they should be quashed and set aside and the relief as claimed for granted.

7. Counsel for respondents, however, maintained their stand as contained in their counter and the additional reply.

8. Arguments were heard and documents perused. The disciplinary authority has in his order at Annexure A-1 held, ***"Non-delivery of a registered letter to its correct addressees and showing the articles as delivered by putting false signature certainly has fraudulent motive and also by this act the integrity of the GDS is doubtful."*** It is true that the registered letters were not delivered to the correct addressee. Hence, the first part of the above observation is true. The applicant cannot escape from this part of the finding even by referring to Q. No. 12 put to Shri Sathyaraj, for, Annexure R-4 clearly goes to prove that the said Sathyaraj has stated that he had been authorized to receive only ordinary letters. Delivery to a person other than the exact addressee without due authorization is a clear violation of



the relevant Rules and the applicant has to suffer for the same. But as to the second part, "**showing the articles as delivered by putting false signature**", no proof has been there. The only document to deal with this part is Annexure A-8 which is the opinion of the Government Examiner of the Questioned Document. Admittedly the author of the same had not been examined. In the case of **Cholan Roadways Ltd. Vs. G. Thirugnana Sambandom (2005) 3 SCC 241**, the Apex Court has held -

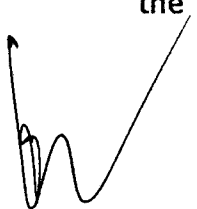
.. "If a letter or other document is produced to establish some fact which is relevant to the inquiry, the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is in accord with the Principles of natural justice as also according to the procedure Code and Evidence Act both of which incorporate these general principles."

9. In the event of the Government Examiner of Questioned Documents not being able to be examined or cross examined, the least that was required was to have his affidavit obtained and opportunity afforded to the applicant to react against the same. This has, admittedly, not been done. Hence, it cannot be held as proved beyond doubt or even by preponderance of probability that the applicant had forged the signature of Shri Sathyaraj, though the said Sathyaraj had denied he having received the registered letters signed the documents in question. Possible that for any reason whatsoever, despite having received, the said Sathyaraj could have denied receipt of the same. His words cannot be taken as a gospel truth. For, if he had admitted that he had received the registered letter, perhaps he would have been in for certain



disciplinary proceedings and thus to avoid such a situation he could have denied receipt of the registered letters. Thus, there has certainly been a dispute in regard to receipt or otherwise of the registered letters by the said Sathyaraj. To prove as to who has stated the truth, the applicant or the said Sathyaraj, the only document that could be relied upon is Annexure A-8, which had not been admitted by the applicant nor duly proved by the respondents. As such, the decision arrived at by the disciplinary authority that the applicant has put in false signature and the same has fraudulent motive is one without any support of admissible evidence. Thus, there has been a legal lacuna in the order of the disciplinary authority.

10. The applicant to the extent possible tried to highlight the legal lacuna in the disciplinary authority's order in his comprehensive appeal, by referring to a number of decisions of the Higher Courts to hammer home the point that any document not having been proved by examining the author of the same cannot be legally admissible. The appellant was referring to Exhibit P-13, whose author, the Government Examiner of Questioned Documents had not been examined. But the appellate authority's reaction to the same was, that the witness did not show up and that there had been a time stipulation by the Tribunal. The appellate authority further held, "**Further other documentary and oral evidence had established that the charges stood proved.**" This would go to show that what stood proved is only non delivery of the articles to the correct addressee but not the one which related to the "Integrity" part of the applicant. Almost an identical stand has been taken by the Revisional



Authority as well. Thus, consistency has been maintained by the three authorities in making identical error. The applicant is the sufferer.

11. Punishment commensurates with gravity of the misconduct. Here, while non delivery to the correct addressee does warrant penalty, the penalty of removal from service awarded to the applicant was not merely on the ground of non delivery to the proper addressee but the above decision of "fraudulent motive" touching the "Integrity" of the applicant had played its influence. This is evident from the observation of the disciplinary authority, ***"The charged GDS has not only violated the departmental rules in connection with the delivery of registered articles but also committed an offence which may cause dangerous for the security of the nation as the registered letters were sent by Passport Office Trivandrum. The offence committed by the charged GDS is very grave in nature and therefore he deserves extreme penalty."*** If only non delivery of the articles to the correct addressee is taken as the only misconduct, depending upon the fact whether the same was without or with an ulterior motive, the quantum of penalty would vary. Ulterior motive cannot be presumed.

12. The above would prove that the authorities have committed a manifest and patent error in holding that the applicant had played fraud in the delivery of the two Registered Letters referred to in Articles I and II of the Annexure A-4 charge sheet. The conclusion arrived at by the authorities in this regard is without the alleged misconduct duly proved. But since the penalty imposed



was taking into account to the other part of the charge i.e. touching integrity, the finding in respect of which is not legally sustainable as discussed above, the penalty of removal from service is to be reviewed by the authorities concerned. For, penalty of removal from service for the misconduct of wrong delivery, without any mala fide motive, is shockingly disproportionate. It has been held by the Apex Court, after considering a number of precedents, in the case of **Union of India v. K.G. Soni, (2006) 6 SCC 794**, as under:-

"14. The common thread running through in all these decisions is that the court should not interfere with the administrators decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.

15. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed."

13. Keeping the above law laid down by the Apex Court in view, we are of the considered opinion that the case has to be remitted to the disciplinary authority for reconsideration either to make available the Government Examiner for Questioned Documents for examination and cross examination or



at least to obtain an affidavit from him in regard to his opinion, and permit the applicant to react to the same and thereafter to take further action or leaving that part of the charge as not pursued, by reviewing the penalty awarded, keeping in view that all that has been proved in this case is that the applicant had not delivered the registered letter to the correct addressee which amounted to dereliction of duties and (and not as to integrity) and suitably modify the penalty order. **The OA is thus allowed to the extent that the impugned orders are hereby quashed and set aside and the applicant be deemed to be in put off till such time the disciplinary authority takes a decision as stated above. Decision in this regard shall be taken by the authorities within a period of four months from the date of communication of this order. If no decision is taken within the stipulated period, respondents may, for justifiable reasons, seek extension of time, but before the expiry of the said time scheduled, through proper application, indicating grounds for seeking extension of time and also reflecting in the application, the extent of action taken and time required to complete the remaining part of the action so that consideration could be given to extend the time limit. No costs.**

(Dated, the 30th March, 2007)



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



Dr. K B S RAJAN
JUDICIAL MEMBER

cvr.