

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.590/2002

Dated Wednesday this the 29th day of October, 2003.

C O R A M

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

S.Ravindran
Extra Departmental Delivery Agent
Irinchayam P.O. (Removed from service)
Chirathalakkal House
Kolakkodu
Venkavila, Pazhakutty P.O.
Trivandrum District.

Applicant.

(By advocate Mr.Thomas Mathew)

Versus

1. Superintendent of Post Offices
(Appellate Authority) South Postal Division
Trivandrum - 695 014.
2. Sub Divisional Inspector of Post Offices
Neyyattinkara Sub Division
(Adhoc Disciplinary Authority)
Neyyattinkara - 695 121.
3. Assistant Superintendent of Post Offices
(O.S.) Office of the Superintendent of
Post Offices, Trivandrum South Division
(Inquiring Authority)
Trivandrum.
4. Sub Divisional inspector of Post Offices
Nedumangad Sub Division
Nedumangad.
5. Chief Postmaster General
Kerala Circle
Trivandrum.
6. Union of India represented by its
Secretary
Department of Posts
New Delhi.

Respondents.

(By advocate Mr.P.Vijayakumar, ACGSC)

The application having been heard on 29th October, 2003,
the Tribunal on the same day delivered the following:

O R D E R

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

The applicant, an ex-Extra Departmental Delivery Agent,
has filed this application, aggrieved by order dated 28.6.2001 of

the 2nd respondent removing him from service after an enquiry held under Rule 8 of P&T ED Agents (Conduct & Service) Rules, 1964 (Annexure A-9) which has been upheld by the 1st respondent rejecting the appeal by A-12 order.

2. The facts in brief are as follows:

The applicant while working as Extra Departmental Delivery Agent at Irinchayam Post Office failed to return Rs.2310/-, the money entrusted with him on account of money order which was not paid on 21.4.1999. He left office and thereafter he credited the money on 23.4.1999 and reported for duty when he was placed under put off duty by A-1 order which is also impugned. He was served with a memo of charges (Annexure A-3) which contained two articles of charge (i) that he failed to return on 21.4.99 a sum of Rs.2310 thereby violating Rule 121 (3) of Postal Manual Volume VI (Part-III) Sixth edition and failed to maintain absolute integrity and devotion to duty as envisaged in Rule 17 of P&T ED Agents (Conduct and Service) Rules, 1964 and (ii) he unauthorizedly absented from duty on 21.4.1999 to 23.4.99, thereby failing to maintain absolute integrity and devotion to duty. The applicant having denied the charges, an enquiry was held. The enquiry officer submitted A-8 enquiry report holding the charges established. The applicant was given an opportunity to make representation against the enquiry report. The disciplinary authority after consideration of the evidence, the enquiry report and the explanation accepted the finding that the applicant was guilty and imposed on the applicant the penalty of removal from service by A-9 order. Aggrieved by that the applicant submitted an appeal which was rejected by the appellate authority (Annexure A-12). It is aggrieved by that the applicant

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has filed this application seeking to set aside the impugned orders. The impugned orders are assailed mainly on the ground that the applicant was not present when the witnesses were examined, that there have been procedural lapses as after the closure of the evidence in support of the charge, the applicant was not required to enter on his defence as required under the provisions contained in sub Rules 16 to 18 of the Rule 14 of the CCS (CCA) Rules and that the penalty was imposed taking into account extraneous matters in as much as a previous put off duty of the applicant had been mentioned in the disciplinary authority's order when there was no such allegation in the memo of charges and that the penalty of removal from service at any rate is shockingly disproportionate to the minor misconduct of not returning the money for two days and for not being present in the office without leave application.

3. The respondents have filed a reply statement. We have carefully gone through the material placed on record and have heard Sh.Thomas Mathew, the learned counsel of the applicant. We did not have the privilege of hearing Sh.P.Vijayakumar, the Additional Central Government Standing Counsel for the respondents, as he was not present.

4. The learned counsel of the applicant argued that there was no evidence to establish the charge of misconduct levelled against the applicant. We have gone through the enquiry report very carefully. We have also perused the statement made by the applicant when questioned under Rule 8 of the CCS (CCA) Rules. We find that in the whole of the proceedings the applicant did not dispute the fact that on 21.4.99 he failed to return a sum of

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Rs.2310/-, the unpaid money of the money orders and that he left the office without informing the Postmaster and remained absent till 23.4.1999. The justification for the omission on his part is that the money was lost by him by a theft and that he did not attend the office as he was busy arranging money for making good the loss. Thus it is seen that the allegations that he did not return the money and that he did not report for duty and remained absent without being authorized to do so have been virtually admitted by the applicant. The witnesses examined in support of the charges also have testified to this effect. Therefore, we find little substance in the arguments of the learned counsel of the applicant that the finding that the applicant was guilty of the charges is perverse. From his statement when questioned under Rule 8, copy of which is available at A-6, it is evident that the applicant has admitted that he did not return Rs.2310/- on 21.4.1999 and that he did not apply for leave for 2 days i.e. 21st and 22nd April, 1999. Hence the finding that the applicant was guilty has been arrived at on the basis of clear and cogent evidence and therefore we do not find any reason to interfere with the finding. Coming to the question that there have been procedural lapses in holding the enquiry and therefore the order passed on the basis of such enquiry is invalid, we do not find any substance. It shows that after the evidence in support of the charge was recorded, the applicant was not called upon to enter on his defence but he was questioned as required under Sub Rule 18 of Rule 14 of CCS (CCA) Rules in detail and the applicant had clearly given his statement admitting that he did not return the money on 21.4.99 and remained absent. The applicant did not choose to examine any witness nor was he present at the time the witnesses in support of the charge were examined. It is seen

that after the ex parte enquiry, when the depositions were sent to the applicant when he appeared for questioning, he did not make any request for permission to recall and cross examine the witnesses. We find that no prejudice has been caused to the applicant during the proceeding of the enquiry. The learned counsel of the applicant argued that the penalty of removal from service is shockingly disproportionate to not returning a sum of Rs.2310/- for 2 days and not applying for leave of absence. We find little substance in this argument also. If actually the conduct of the applicant was so innocent and he had really lost the money by theft, normally he would have immediately reported the matter to the Branch Postmaster and also made a complaint to the police. He did not do so. It is very difficult to believe the self serving statement of the applicant that the money was lost and he was running around to collect money to make good the loss. The last limb of the argument of the learned counsel attacking the penalty is that extraneous matters had weighed with the disciplinary authority in deciding the quantum of the penalty because there was a mention in A-9 memo of a previous incidence of put off duty of the applicant for unauthorized absence and not returning money to the post office and that this having not been made a part of the memo of charge, the penalty imposed is illegal. We find absolutely no merit in this argument. The fact that there has been an earlier incidence of put off duty of the applicant under similar circumstances was not the basis for the penalty of removal from service. The penalty of removal from service was awarded to the applicant finding him guilty of a very grave misconduct of not returning a sum of Rs.2310 to the post office for 2 days and unauthorized absence. If misconducts of such nature are not treated as serious and if deterrent

punishments are not given in such cases, that is likely to send a wrong message and may also result in loss of confidence for the public in the postal department which is a public utility service. We therefore find no reason to interfere with the penalty imposed.

5. In the result, the application is dismissed without any order as to costs.

Dated 29th October, 2003.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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