

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 591/2003

~~Thursday~~ this the 6th day of April, 2006

C O R A M :

**HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

P. Mohandas,
S/o. Kesavan Kutty,
Extra Departmental Branch Postmaster
(removed from service),
Konott, Kunnamangalam,
Calicut Division, Residing at
Peralayil House, Konott P.O.,
Kunnamangalam, Kozhikode.

... Applicant.

(By Advocate Mr. P.A. Kumaran for Mr. M.R. Hariraj)

v e r s u s

1. The Assistant Postmaster General (PLI),
Office of the CPMG, Kerala Circle,
Trivandrum – 695 033
2. The Director Postal Services (SR),
Office of the Chief Postmaster General,
Kerala Circle, Trivandrum : 695 033
3. The Chief Postmaster General,
Kerala Circle, Trivandrum : 695 033
4. Union of India represented by the
Secretary to Government of India,
Ministry of Communications,
Department of Posts, New Delhi.

... Respondents.

(By Advocate Mrs. K. Girija, ACGSC)



(The Original Application having been heard on 16.3.06, this Tribunal on 6-4-06 delivered the following):

O R D E R

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by the Annexure A/1 order of the first respondent dated 31/1/2002 by which he was removed from service and Annexure A/2 order of the second respondent dated 27.3.2003 by which his appeal against the aforesaid A/1 order of the first respondent was rejected.

2. The charges against the applicant were the following:

“Article – I :

That the said Shri P. Mohandas while functioning as BPM Konott during the period from 12.10.81 to 17.04.97 failed to produce the entire office cash balance before the inspecting officer at the time of annual inspection of the BO on 17.4.97, violating the provisions of Rule 11 of Rules for Branch Offices and thereby failed to maintain absolute integrity and devotion to duty as required by Rule 17 of the P&T ED Agents (Conduct & Service) Rules, 1964.

Article – II :

That during the aforesaid period and while functioning in the aforesaid post, Shri P. Mohandas took payment of value of premature closure of RD A/c. No. 109022 in respect of Shri V.P. Balaraman, Valiyaparambil House, Konott sanctioned from Calicut Civil Station H.O., by forging the signature of depositor in the receipt side of warrant of payment on 17.4.97 violating Rule 136(3)

2

of Rules for Branch Offices 6th Edition read with Rule 134(iv) *ibid* and thereby failed to maintain absolute integrity and devotion to duty required of him by Rule 17 of the P&T ED Agents (Conduct & Service) Rules, 1964.

Article – III :

That during the aforesaid period and while functioning in the aforesaid post, the said Shri P. Mohandas failed to bring into account a deposit of Rs. 2140/- dated 4.4.97 accepted by him, from Smt. K. Subaida, Kunchangal House, P.O. Konott, depositor of Konott SB A/c. No. 940865 violating Rule 131(3) of Rules for Branch Offices (6th Edition) and thereby failed to maintain absolute integrity and devotion to duty as required by Rule 17 of P&T ED Agents (Conduct & Service) Rules, 1964.”

3. The applicant was proceeded against under Rule 8 of the then existing P&T ED Agents (Conduct & Service) Rules, 1964. Vide Annexure A/5 enquiry report dated 20.2.2001, the enquiry officer found that the aforesaid charges have been proved against the applicant beyond doubt. A copy of the report was forwarded to the applicant on 22.10.2001 asking him to submit the representation, if any, and he did it on 9.11.2001. Thereafter, vide Annexure A/1 order dated 31.1.2002, the disciplinary authority imposed the penalty of removal from service with immediate effect on the applicant and the same was upheld by the appellate authority vide Annexure A/2 order dated 27.3.2003. Hence, this O.A. was filed by the applicant.

2

4. The applicant has sought the reliefs to quash and set aside Annexures A/1 and A/2 orders and to direct the respondents to reinstate the applicant in service with all consequential benefits. While challenging the aforesaid impugned orders A/1 and A/2, the applicant has taken the following grounds:

(i) There is no evidence much less legal evidence warranting the penalty of removal from service and therefore, the finding of the enquiry officer was perverse.

(ii) The disciplinary authority and the appellate authority have not considered the relevant facts before passing the impugned orders A/1 and A/2, rather they have relied upon irrelevant and extraneous matters while passing the said orders.

(iii) The penalty of removal from service imposed on the applicant was disproportionate to the charges levelled against him.

(iv) The statement dated 17.4.97 was taken from him under threat and the same was used against him as evidence to prove the charges.

(v) There was procedural irregularity in conducting the enquiry inasmuch as the prosecution witnesses 7 and 8 were examined on 23.8.2000 in the absence of the applicant despite his request for adjournment of the sitting on medical ground.

5. In support of the aforementioned grounds taken in the O.A., the applicant's counsel has relied upon the following judgements:



- (i) AIR 1963 SC 1914 (Sur Enamel & Stamping Works Limited vs. The Workmen)
- (ii) (1986) 2 SCC 651 (R.P. Bhatt vs. Union of India & Ors.)
- (iii) AIR 1986 SC 1173 (Ram Chander vs. Union of India & Ors.)
- (iv) AIR 1986 SC 1183 (Ex. Capt. A.S. Parmar and Ors. vs. State of Haryana and Ors.)
- (v) 1994 Supp. (2) SCC 518 (Union of India & Ors. vs. I.S. Singh)

6. In the case of Sur Enamel and Stamping Works Ltd. (supra), the Apex Court was considering the question whether an enquiry had been properly held, wherein it observed as under:

“An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined ordinarily in the presence of the employee in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report. In the present case the persons whose statements made behind the back of the employees were used by the enquiring authority were not made available for cross examination but it would appear that they were not even present at the enquiry. It does not even appear that these reports were made available to the employee at any time before the enquiry was held. Even if the persons who made the reports had been present and the employee given an opportunity to cross-examine them, it would have been difficult to say in these circumstances that that was a fair and sufficient opportunity. But in this case it appears that the persons who made the reports did not attend the enquiry at all. From whatever aspect the matter is examined it is clear that there was no enquiry worth the name and the Tribunal was justified in entirely ignoring the conclusion reached by the domestic Tribunal.”

7. In R.P. Bhatt's case (supra), the Apex Court was specifically considering whether the order of the appellate authority was in accordance with the provisions contained in Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Para 4 of the said judgement reads as follows:

"4. The word 'consider' in Rule 27(2) implies 'due application of mind'. It is clear upon the terms of Rules 27 (2) that the appellate authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the appellate authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof."

8. In Ram Chander's case (supra), the Apex Court has emphasised the need for passing reasoned orders by the authorities concerned and grant of opportunity of personal hearing, wherein it was held :

"24. It is not necessary for our purposes to go into the vexed question whether a post-decisional hearing is a substitute of the denial of a right of hearing at the initial stage or the observance of the rules of natural justice since the majority in Tulsiram Patel's case (AIR 1985 SC 1416) unequivocally lays down that the only stage at which a Government servant gets a reasonable opportunity of showing cause against the action proposed to be taken in regard to him i.e. an opportunity to exonerate himself from the charge by showing that the evidence adduced at the enquiry is not worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the

extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in this case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by the Tribunal, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair-play and justice also require that such a personal hearing should be given."


9. In the case of Union of India and Ors. vs. I.S. Singh (supra), the Apex Court was considering the case of a delinquent who requested for postponement of the enquiry on the ground of illness. The Apex Court held that :

"2. When notices were issued in the second enquiry, they could not be served on the respondent. On a later date, the respondent sent an application stating that he is suffering from unsoundness of mind and that the enquiry may be postponed till he regains his mental health. The respondent also states that he sent his medical certificate along with his application. (Indeed, according to him, he sent not one but three letters to the said effect). The report of the Enquiry Officer, however, does not show that he paid any attention to these letters. If, indeed, the letters were not accompanied by medical certificates, as is now asserted by Shri Mahajan, learned counsel for the appellants, the proper course for the Enquiry Officer was to have called upon the respondent either to produce a medical certificate or to direct him to be examined by a medical officer specified by him. The inquiry report does not even refer to the request



contained in the said application nor does it mention why and for what reasons did he ignore the said plea of the respondent. The Enquiry Officer proceeded ex-parte, inspite of the said letters and made his recommendation on the basis of which the aforesaid penalty was imposed. It is evident from the facts stated above that the Enquiry Officer has not only conducted the enquiry in a manner contrary to the procedure prescribed by Rule 14 (2) of CCS (CCA) Rules but also in violation of the principles of natural justice.....”

10. The respondents have filed a reply statement denying all the grounds taken by the applicant in the O.A. They have submitted that the enquiring authority after analysing all the points adduced in the enquiry, held that the charges levelled against the applicant stood proved. They have also submitted that the standard of proof required to be maintained in a departmental enquiry is not that of the one to be maintained in the criminal proceedings and preponderance of probability is sufficient to arrive at a conclusion. They further submitted that the Annexure A/1 and A/2 orders are well reasoned and speaking ones and the applicant was removed from service since his retention would affect the credibility of the department. They have also justified the punishment awarded to the applicant which was commensurate with the charges levelled against him and proved in the enquiry proceedings. The respondents have also denied that there was any threat on the applicant and his allegation was disproved during the enquiry by the statement of SW2. As regards the absence of the applicant in the



enquiry when SW 7 and 8 were examined, there was no explanation forthcoming from him. His Defence Assistant who was present during the proceedings could have cross-examined them. The applicant has also not availed himself the opportunity to recall those witnesses for re-examination.

11. The applicant has also filed a rejoinder reiterating the submissions made in the O.A. An additional reply statement was filed on behalf of the respondents.

12. We have heard Mr. P.A. Kumaran for Mr. M.R. Hariraj, learned counsel for the applicant and Mrs. K. Girija, ACGSC, for the respondents. We have considered the various grounds taken by the applicant to challenge the impugned orders imposing the penalty of removal from service and the appellate authority's order confirming the same. We have noticed that the charges against the applicant has rightly been dealt with by the Enquiry Officer on the following points:

- (i) Whether the CEDA had produced the entire office cash balance of Rs.3483.05 before the Inspecting Officer on 17.4.97 ?
- (ii) Whether the CEDA had taken payment of Rs. 1925.55 being the premature closure value of RD A/c. No.109022 of Shri V.P. Balaraman (SW-2) by forging the signature of the depositor ?
- (iii) Whether the CEDA had brought into account of a deposit of Rs.2140/- on 4.4.97 accepted by him from Smt. K. Subaida (SW-7),

2

depositor of SB A/c. No. 940865 ?

As regards the allegation of 'no evidence' made by the applicant is concerned, we have further noticed that eight witnesses on behalf of the Disciplinary Authority were examined during the enquiry. Out of the two witnesses furnished by the applicant, one witness Shri Abdurahiman did not respond to the notice, but the other witness Shri T. Mohammed appeared and he was examined. All the prosecution witnesses have deposed before the enquiry officer gave evidence in support of the charges. However, the DWs has deposed in support of the applicant. SW1 has deposed that the applicant had admitted before him that a sum of Rs. 1456.40 was found short at the office and he had utilised it for his personal purpose. The applicant has stated this fact in the statement made by him in the Exhibit S.1 also. The Enquiry Officer also considered the argument of the applicant before him that the Exhibit S.1 was obtained from him under duress and he was compelled to give it to avoid any arrest by the Police. The Enquiry Officer, after assessing the evidence from both sides, concluded that the applicant has fraudulently took the amount of Rs. 1925.55 being the premature closure value of RD A/c. No. 109022 of one Shri V.P. Balaraman, who was SW-2 and the deposit of Rs. 2140/- was not brought into accounts of the Konnot BO on 4.4.97 or thereafter. The said amount was accepted by him from Smt. K. Subaida (SW-7), depositor of S.B. A/c. No. 940865. The applicant has also

2

not substantiated his grounds that the disciplinary authority and the appellate authority have not considered the relevant facts before passing the impugned orders. He has also not produced any supporting documents for his submission that the documents relied upon by the disciplinary authority and the appellate authority were irrelevant.

13. As regards the proportionality of the punishment is concerned, it has to be seen against the gravity of the charges which have been proved in the enquiry proceedings. As seen from the Article of charges, the allegations against the applicant were of extremely serious nature of misappropriation of money and the same has been proved in the enquiry proceedings. It is a matter of the respondents reposing confidence to the applicant to do a public duty assigned to him. Once the confidence has been shattered, there is no question of retaining such an employee in the Organisation. Therefore, the punishment of removal from service imposed on the applicant is no way shocking or disproportionate. We, therefore, reject this contention of the applicant. It is also seen that the applicant was absent in enquiry proceedings on 23.8.2000 without any valid reasons when the witnesses 7 and 8 were examined. If any prejudices were caused to him, he should have asked for calling back those witnesses for re-examination. The applicant has not done so. Even otherwise, from the enquiry proceedings, it

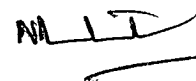


is seen that the evidence adduced against him from the submissions of other witnesses are sufficient to hold the applicant guilty of charges levelled against him.

14. In the light of the aforesaid discussion, we do not find any merit in the present O.A. It is accordingly dismissed with no order as to costs.

(Dated, the 6th April, 2006)


GEORGE PARACKEN
JUDICIAL MEMBER


N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

CVR.