

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No.595/2004

Tuesday this the... 27. th day of March, 2007.

CORAM:

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

P. Appukuttan Nair,
(Postman Attingal P.O., (Under Suspension)
Asha Bhavan, Avanavanchery,
Trivandrum. Applicant

(By Advocate Shri S.M.Prasanth)

VS

1. The Union of India,
represented by Secretary to Government of India,
Department of Posts, New Delhi.
2. The Director of Postal Services,
Trivandrum,
Southern Region, Trivandrum – 695 011.
3. The Superintendent of Post Offices,
Trivandrum North Division,
Trivandrum. Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC)

ORDER

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

The applicant, while serving as Postman was issued with charge sheet dated 20.9.2000 and the charges framed against him are as under:

Article.I

That the said Shri P.Appukuttan Nair, while working as Postman of Beat No.IV, Attingal H.O. on 26.4.1997 intentionally (with dishonest motive) and fraudulently delivered registered letter No.19491 of Trivandrum Pettah sent by the Passport Officer, Trivandrum 24 and addressed to Shri Yahiya Khalid, C.P.House, Palace Road, Attingal PO on 26.4.1998 to an unknown person, violating Rule 127(1) of Postal Manual Vol.VI,Part III and Clause 60 (1) of Post Office Guide part I instead of returning the article to the

sender with remark "No such addressee in my beat".

It is imputed that by the above act, Shri P.Appukuttan Nair, Postman, Attingal HO failed to maintain absolute integrity and devotion to duty and behaved in a manner unbecoming of a Govt. servant violating Rule 3.1(i), 3.1(ii) and 3.1(iii) of CCS (Conduct) Rules, 1964.

Article -II

That the said Shri P.Appukuttan Nair, while working as Postman of beat No.IV of Attingal HO on 10.4.1997 intentionally (with dishonest motive) and fraudulently delivered registered letter No.15894 of Trivandrum Pettah sent by the Passport Officer, Trivandrum 24 and addressed to Smt. Jaseena Ramlathu Beevi, Thundathil House, Palace Road, Attingal HO on 10.4.1997 to an unknown person, violating Rule 127(1) of Postal Manual Vol.VI, Part III and clause 60(1) of Post Office Guide Part I instead of returning the article to the sender with remark "no such addressee in my beat."

It is imputed that by the above act, Shri P.Appukuttan Nair, Postman, Attingal, H.O failed to maintain absolute integrity and devotion to duty and behaved in a manner unbecoming of a Govt. Servant, violating Rule 3.1(i), 3.1(ii) and 3.1(iii) of CCS (Conduct) Rules, 1964.

Article III

That the said Shri P.Appukuttan Nair, while working as Postman of beat No.IV of Attingal HO on 10.4.1997 intentionally (with dishonest motive) and fraudulently delivered registered letter No.P-48051 of Trivandrum Pettah sent by the Passport Officer, Trivandrum 24 and addressed to Shri Navaz Kollezhathu Mammu, Kollezhathu Manzil, Palace Road, Attingal HO on 20.1.1998 to an unknown person, violating Rule 127(1) of Postal Manual Vol.VI, Part III and clause 60(1) of Post Office Guide Part I instead of returning the article to the sender with remark "no such addressee in my beat."

It is imputed that by the above act, Shri P.Appukuttan Nair, Postman, Attingal, H.O failed to maintain absolute integrity and devotion to duty and behaved in a manner unbecoming of a Govt. Servant, violating Rule 3.1(i), 3.1(ii) and 3.1(iii) of CCS (Conduct) Rules, 1964.

2: The applicant participated in the enquiry and the Enquiry Officer rendered his findings stamping that the charges stand proved. After completing other formalities, the disciplinary authority by A-1 order dated 20.6.2002 imposed the penalty of compulsory retirement upon the applicant. The applicant had filed Appeal dated 27.9.2003 (A3) which was rejected by A-2 order dated 6.4.2004.



The applicant has challenged A-1 and A-2 orders in this O.A.

The main grounds of challenge are as under:-

- a) Fair and reasonable opportunity to defend the charges have not been afforded to the applicant and this vitiates the inquiry proceedings.
- b) Solely on the basis of the depositions of PW-2, PW3 and PW4 who had allegedly conducted the preliminary enquiry, the Enquiry Officer has arrived at his finding, which is illegal.
- c) The statement obtained at the time of preliminary inquiry from the applicant was under duress and the same cannot be relied upon or used against the applicant.
- d) There has been no complaint whatsoever from the sender or the addressees.
- e) The appellate authority failed to appreciate the contentions raised in the Appeal.

3. The respondents have contested the O.A. According to them the charges stand proved and as such, the orders passed by the disciplinary authority may not be interfered with.

4. The applicant has filed a rejoinder reiterating his earlier stand and also annexing a copy of the charge sheet on various depositions. In the additional reply filed by the respondents they have produced a copy of the order dated 21.6.06 in O.A.1036/03 in support of their case.

5. Counsel for the applicant submitted that the case of the respondents is one of no evidence. On the same set of charges the Sr. Superintendent of Post Offices filed a Criminal Complaint vide C.C.No.557/02 which was decided by Judicial Ist Class Magistrate – II, Attingal (A4). The Criminal Court has acquitted the applicant herein on merit vide para 15 and 16 of the judgement at A-4.. In addition, it has also been stated therein that, Section 51 of the Post Office Act is

attracted in this case and as such, for any action according to the said Act of Criminal Court has not passed (as it confirmed). Counsel for the applicant submitted that the Criminal Court has taken into consideration the admitted fact that the addressees were examined. He has further contended that, the entire finding of the Enquiry Officer was based on the preliminary enquiry report, a copy of which was not made available to the applicant even on requisition. The Enquiry Officer had gone thoroughly wrong when he held that since as per Exbt.P-7, 8 and P.9 the applicant had admitted that the addressees were not available in the respective addresses and on the basis of a statement made by the receiver of the letters showing the same file Nos. as in the Passport Offices, the delivery had taken place, the same is a clear admission by the applicant of the non-availability of the respective addressees. According to the counsel, this is a case of no-evidence since in the absence of preliminary enquiry report, the mere statement of PW-2, PW-3 & PW-4 cannot be relied upon. Again it is submitted that PW-2, PW-3 & PW-4 did not take care to make proper enquiries by getting Voters' List. Thus according to the counsel for applicant the entire enquiry was farce. He has also submitted that the appellate authority has not applied his mind at all. Thus on the above grounds according to the counsel, the entire proceedings are liable to be struck down.

6. Counsel for respondents submitted that, on the basis of the enquiry report the disciplinary authority has passed the order of penalty, which was upheld by the appellate authority. As such, the same be not interfered with.

7. Arguments were heard and documents perused. The allegation against the applicant is that he had failed to deliver three Registered letters from Passport office to the addressees in accordance with law. Prior to issue of Charge Sheet

under Rule 14(3) the enquiry was preceded by a preliminary enquiry authority and the preliminary enquiry authority sought some statements from the applicant, which were given by him. According to this statement, the applicant is stated to have considered that there were no such addressees as given in the concerned registered letters and the applicant has admitted that he had delivered the registered letters to some persons who approached him with the file No. of Passport Office. Though the applicant had retracted from the above statements and stated before the enquiry authority that those statements were taken from him under duress, the same cannot be relied upon. It was on the above finding that the enquiry authority held that the charges remained proved. The applicant, true, did not ask for a copy of the preliminary enquiry report at the beginning, but he had asked for the said documents at the time of cross examination of a witness. However, the enquiry authority rejected the claim of the applicant.

8. As per the enquiry report, on the basis of a statement of (PW-2 to PW-4) and the applicant's statement at the time of preliminary enquiry report, the findings that the charges stand proved, were arrived at. Admittedly, preliminary enquiry report has not been made available to the applicant. If so, the enquiry authority was precluded from relying upon the preliminary enquiry report. At the time of preliminary enquiry the statement given by the applicant have been stated to be under duress. Enquiry authority disregarded the same. Unless the same is admitted as voluntarily, no reliance can be placed upon that statement. It has been held in the case of Delhi Transport Corporation Vs. Shyamlal (2004 (8) SCC 88) that:

“it is fairly settled position in law that admission is the best piece of evidence against a person making the admission. It is however, open to the person making the admission to show why the admission is not to be acted upon”. The decision of the Enquiry Authority is not in conformity with the above observations of the Apex Court.

9. In the case of Jagdish Prasad Saxena Vs. The State of Madhya Bharat (now Madhya Pradesh) (AIR 1961 SC 1070(V 48 C 180) the question that was considered by a Constitution Bench was, whether a regular enquiry can be dispensed with on the basis of admissions made in the preliminary enquiry, the Apex court answered in negative. This means that there is no presumption of guilt on admission during the preliminary enquiry. Since the Inquiry Officer's report relies upon the so called admission at the time of preliminary hearing, the Inquiry report stands vitiated. The Disciplinary Authority too fell into patent error when he had relied upon the alleged admission in the preliminary investigation stage. Thus, the order of Disciplinary authority also is vitiated.

10. The Appellate authority in his order vide Annexure A-2, no doubt, dealt with the grounds in the appeal elaborately but the reason given in rejecting the appeal does not meet the specific points raised by the applicant in the appeal. Paragraph 4 of the appeal reads as under:

“It is also submitted that the appellant has been found guilty of charges in violation of principles of natural justice. The fact of non-existence of the addresses was arrived at after a preliminary enquiry conducted by the department. The appellant had requested for an opportunity to peruse the same the disciplinary authority declined the said request on the ground that the enquiry would be prolonged. It was not produced in the enquiry. It is upon the basis of this preliminary enquiry that PW4 deposed in the enquiry that no such addressee could be found out. His deposition was totally based upon the enquiry he conducted for this purpose. This document was not produced during the enquiry. At least the disciplinary authority ought to have permitted the appellant to peruse the same. It is submitted that the non-production of the said report of preliminary enquiry is fatal to the disciplinary proceedings and for that reason the proceedings culminated in punishing the appellant is in violation of principles of natural justice. Therefore, it is submitted that findings arrived at on the basis of such an enquiry is not legally sustainable and is liable to be set aside.”

11. Thus, the vital grounds go into the root of the subject matter. Taking into

account the decision of the Apex Court as cited above, it is to be held that the proceedings have not been conducted in accordance with law, and thus, the impugned orders are liable to be set aside. Consequently, the impugned orders A-1 and A-2 are quashed and set aside. Respondents shall reinstate the applicant and the applicant is entitled to the consequential benefits viz., arrears of pay and allowances, annual increments etc. including the seniority as available to him before the impugned orders were passed. If the applicant had been paid the terminal benefits in the wake of compulsory retirement, the same shall be repaid by the applicant to the respondents after reinstatement.

12. O.A. is allowed to the above extent. These orders are to be complied with within a period of three months from the date of communication of this order.'

No costs.

Dated the 27th March 2007.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



Dr.K.B.S.RAJAN
JUDICIAL MEMBER