

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.NO.606/2003

WEDNESDAY...THIS THE 15<sup>th</sup> DAY OF MARCH, 2006

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HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN  
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

V.Ravi, aged 36 years  
Gramin Dak Sevak Branch Postmaster,  
Chowara PO, Balaramapuram,  
Trivandrum District. ....Applicant

(By Advocate Mr. Thomas Mathew)

V.

- 1 Superintendent of Post Offices,  
Trivandrum South Postal Division,  
Trivandrum.14.
- 2 The Director of Postal Services,  
Southern Region,  
Office of the Chief Postmaster General,  
Kerala Circle, Trivandrum.33.
- 3 Director General,  
Department of Posts, New Delhi.
- 4 Union of India, represented by its  
Secretary, Department of Posts,  
New Delhi. ....Respondents

(By Advocate Ms. Mini R. Menon )

The application having been heard on 6.3.2006, the Tribunal on 15.3.2006 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The Applicant, while working as Gramin Dak Sevak Branch Post Master (GS-BPM for short) Chowara had applied for leave without allowance for 61 days from 1.4.97 to 31.7.97 and he was sanctioned the

leave for 60 days from 14.97 to 30.5.97. He nominated his substitute Smt.P.Sreeja during this period. On 1.6.1997 he did not report for duty and remained absent thereafter. He was proceeded against under Rule 8 of the P&T E.D. Agents (Conduct and Service) Rules, 1964 for the alleged misconduct of unauthorized absence and leaving India without permission. He was served with a Charge Memo on 6.10.99 containing the following charge:

**Article I : That the said Sri V.Ravi, while working as BPM,Chowara remained unauthorizedly absent from duty from 1.6.1997. He also left India without permission from his employer and without furnishing his whereabouts. By the said act, Sri V.Ravi has failed to maintain devotion to duty as envisaged in Rule 17 of P&T E.D.Agents (Conduct and Service) Rules, 1964.**

The applicant has absented himself from the first five sittings of the inquiry and attended the remaining sittings. On completion of the inquiry, the Inquiry Authority submitted his report holding that part of the charge that the applicant remained unauthorizedly absent from duty from 1.6.97 onwards and thereby failed to maintain devotion to duty was proved but the other charge that he had left India without permission from his employer was not proved. The disciplinary authority considering the report of the Inquiry Authority and the representations of the applicant took a lenient view in the matter and imposed the penalty of "debarring him from appearing for any examination for a period of three years" vide his memo number BTC/Chowara dated 4.2.2003". Thereafter, on permitting him to rejoin duty, he reported for duty on 6.2.03 and still continuing in that post. Vide the impugned Annexure.A3 order dated 2.7.03 the Appellate Authority has held that the inquiry was held in consistent with Article 311 of the Constitution but the punishment was awarded by the disciplinary authority

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not one of the prescribed penalties under Rule 9 of the GDS (Conduct and Employment) Rules, 2001 and also the punishment is not adequate compared to the gravity of the misconduct. The appellate authority, has, therefore, proposed to enhance the penalty to that of removal from service in exercise of powers conferred upon him under Rule 19 of the GDS (Conduct & Employment) Rules, 201. The applicant was given an opportunity to show cause against the said proposal, if any, within fifteen days by making a representation. At this stage the applicant has approached this Tribunal with this OA and when the matter was listed on 23.7.03 by way of interim direction, the respondents were restrained from passing any further order in pursuance of Annexure. A3 notice dated 2.7.03. The applicant has sought a declaration that the Annexure A3 notice dated 2.7.03 issued by the second respondent is in violation of the principles of natural justice and besides being violative of Article 311 of the Constitution of India. The applicant has also contended that the proposed penalty being removal from service, the second respondent should have given adequate reasons in his memo as to why he disagreed with the findings of the disciplinary authority.

2 The respondents have submitted in their reply that even before the expiry of the leave, on 26.5.97 the applicant was directed to rejoin duty on due date but the said letter was received undelivered with the remarks of the postal authorities "left India". Again the applicant applied for extension of leave from 1.6.97 to 31.7.97 but he was directed to join duty immediately vide memo dated 21.7.97 which was also received back with the remarks "left India". The respondents have denied the allegation of the applicant that the Annexure A3 memo was illegal and the same was against the

principles of natural justice and he had filed the present OA without submitting a representation as required under the statutory rules. They have also submitted that the Annexure.A3 notice was in accordance with the provision contained in Rule 19 of the GDS (Conduct and Employment) Rules, 2001 and the same is valid and legal. They have submitted that the punishment imposed upon the applicant does not find a place under Rule 9 of the GDS (Conduct and Employment) Rules, 2001 and the punishments listed thereon are only the following:

"1. Censure

- ii. Debarring of a Sevak from appearing in the recruitment examination for the post of Postman and/or from being considered for recruitment as Postal Assistants/Sorting Assistants for a period of one year or two years or for a period not exceeding three years.
- iii. Debarring of a Sevak from being considered for recruitment to Group D for a period not exceeding three years.
- iv. Recovery from Time related Continuity Allowance of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders.
- v. Removal from reemployment which shall not be disqualification for future reemployment.
- vi. Dismissal from employment which shall ordinarily be disqualification for future employment."

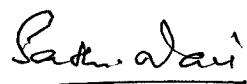
3 We have heard Shri Thomas Mathew for the applicant and the counsel Ms. Mini R.Menon, for the respondents. When the appellate authority has come to the conclusion that the punishment imposed upon the applicant was not in accordance with the rules, it is clear that there is a procedural lacuna in the inquiry proceedings. In such a situation, only option before the appellate authority was to remit the case back to the disciplinary authority and to pass an appropriate order in accordance with rules. Instead, the Appellate authority has chosen to enhance the punishment. The enhancement of punishment can be made only when there exists a validly imposed punishment. An invalid punishment cannot

be enhanced. We are, therefore, of the considered view that the Annexure.A3 notice dated 2.7.03 issued by the Appellate Authority lacks jurisdiction and therefore, the same is to be set aside.

4 Accordingly, we quash and set aside the said show cause notice dated 2.7.03 and direct the Appellate Authority to remit the case to the Disciplinary Authority and to proceed thereafter in the matter in accordance with the rules. The interim order passed on 23.7.03 is made absolute. The O.A is accordingly allowed. There is no order as to costs.

Dated this the <sup>15</sup> day of March, 2006

  
**GEORGE PARACKEN**  
**JUDICIAL MEMBER**

  
**SATHI NAIR**  
**VICE CHAIRMAN**

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