

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 62 of 2008

Friday, this the 24th day of October, 2008

C O R A M :

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

K.M. Hamza,
S/o. Mohammed,
Ex-GDSMD, Pappinippura P.O.,
Residing at Valthodi House,
Pappinippura P.O., Manjeri. ... Applicant.

(By Advocate Mr. P.C. Sebastian)

v e r s u s

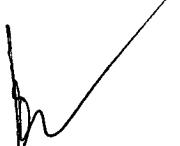
1. Superintendent of Post Offices,
Manjeri Division, Manjeri – 676 121
(Appellate Authority)
2. The Asstt. Superintendent of Post Offices,
Perinthalmanna Sub Division,
Perinthalmanna : 679 322 (Disciplinary Authority)
3. Inspector Post & Inquiring Authority,
Malappuram Sub Division, Malappuram : 676 505
(Inquiring Authority)
4. The Union of India, represented by Secretary to
Government of India, Ministry of Communications,
Department of Posts, New Delhi ... Respondents

(By Advocate Mr. M V S Nampoothiri, ACGSC)

(The Original Application having been heard on 24.10.08, this Tribunal on the
same day delivered the following)

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

The applicant has challenged the following orders:



- (a) Annexure A/10 order dated 14.07.05 dismissing applicant's application for change of inquiry officer on the basis of bias;
- (b) Annexure A/12 inquiry report dated 30.06.06 of the inquiring authority;
- (c) Annexure A/14 order dated 30.08.06 of the disciplinary authority removing the applicant from service; and
- (d) Annexure A/16 order dated 31.01.07 of the appellate authority rejecting the appeal of the applicant.

2. Briefly stated, the applicant who was working as Gramin Dak Sevak Mail Deliverer (GDS MD, for short) Pappinippara P.O. in Manjeri Sub Division of Manjeri Postal Division, was put off duty vide Annexure A/1 order dated 22.07.03. The applicant has moved a representation dated 30.07.03 for his reinstatement, but the request was not acceded to. Vide Annexure A/4 memorandum dated 18.12.2003, the Postmaster General, Northern Region, Calicut, empowered the Assistant Superintendent of Post Offices, Perinthalmanna Sub Division to function as appointing authority of the applicant since, in this case, Assistant Superintendent of Post Offices, Manjeri Sub Division, who was the regular appointing authority of the applicant was to be a material witness in the proceedings against the applicant. Vide Office Memorandum dated 18.11.2004 (Annexure A/5), the applicant was served with a charge sheet containing following three articles of charges :

ARTICLE – 1 : That the said Shri K.M. Hamza while working as GDS MD, Pappinippara on 29.12.1999 failed to deliver Calicut HPO RL K.7982 addressed to Shri Aboobacker Kuyyadiyil, S/o: Moideen Kuyyadiyil, Kuyyadiyil, P.O.

Pappinippara, sent by Passport Officer, Calicut, and containing a Passport, to its addressee; but showed it as correctly delivered to the said addressee, in contravention of Rule 10(1) of the Rules for Branch Offices (Seventh Edition) and thereby exhibited lack of integrity and devotion to duty required of him vide Rule 21 of Gramin Dak Sevaks (Conduct and Employment) Rules, 2001.

ARTICLE – II : That the said Shri K.M. Hamza while working as GDS MD, Pappinippara on 6.1.2000 failed to deliver Calicut HPO RL P. 943 addressed to Shri Basheer Kanhirala, S/o. Ubaidulla, Kanhirala House, P.O. Pappinippara, sent by Passport Officer, Calicut, and containing a Passport, to its addressee; but showed it as correctly delivered to the said addressee, in contravention of Rule 10(1) of the Rules for Branch Offices (Seventh Edition) and thereby exhibited lack of integrity and devotion to duty required of him vide Rule 21 of Gramin Dak Sevaks (Conduct and Employment) Rules, 2001.

ARTICLE – III : That the said Shri k.M. Hamza while working as GDS MD, Pappinippara on 12.1.2000 failed to deliver Calicut HPO RL p.3914 addressed to Shri Shamsudheen Nadukandi, S/o. Ahammad Nadukandi, P.O. Pappinippara, sent by Passport Officer, Calicut, and containing a Passport, to its addressee; but showed it as correctly delivered to the said addressee, in contravention of Rule 10(1) of the Rules for Branch Offices (Seventh Edition) and thereby exhibited lack of integrity and devotion to duty required of him vide Rule 21 of Gramin Dak Sevaks (Conduct and Employment) Rules, 2001.

3. Applicant denied the charges vide Annexure A/6 communication dated 27.11.04. The applicant has also asked for the following documents to prove his innocence.

- (a) Inquiry file (with ASP) relating to delivery of Registered letter No. Nil of Calicut HPO addressed to one Shri Abdul Latheef, Cholayil house, Pappinipara (containing applicant's statement regarding delivery of certain letters etc.);
- (b) Applicant's representation to SP, Manjeri, dated 30.07.03 intimating applicant's innocence in the case of delivery of Registered letter cited above.

4. Vide Annexure A/8 communication dated 15.04.05, the request for production of inquiry file relating to delivery of registered letter and other documents were held to be irrelevant and hence permission refused.

5. The applicant vide Annexure A/9 dated 10.05.2005 appealed against the order of inquiring authority, but the same has been rejected by Annexure A/10 order dated 14.07.05.

6. The Inquiring Authority has submitted its report vide Annexure A/12 dated 30.06.06. According to the inquiry report at Annexure A/12, the applicant did not participate in the inquiry proceedings; as such inquiry was conducted *ex parte*. When a copy of the inquiry report was sent to the applicant, he filed his objections to it. The disciplinary authority considered the inquiry report as well as the applicant's response thereto and passed Annexure A/14 penalty order dated 30.08.06 removing the applicant from service. The Annexure A/14 order of the disciplinary authority was challenged vide Annexure A/15 appeal dated 30.09.06. This has also been rejected vide Annexure A/16 order dated 31.01.07.

7. The applicant has preferred this O.A. challenging the above orders on the ground that the CCS (CCA) Rules have been violated.

8. The respondents have contested the O.A. They have stated that the O.A. is liable to be dismissed as the point raised by the applicant has no legal base. According to the respondents, as per



Annexure R1(a), DGP&T letter dated 16.1.1980, the Department has considered the case not under 14 of CCS (CCA) Rules, 1965, but only followed the the spirit thereof and this provision has been complied with. It has also been submitted that where an application has been preferred against the disciplinary proceedings and a request is made for change of inquiry officer, the proceeding should be stayed and a decision has to be taken by the appellate authority. DGP&T letter dated 19.03.1973 refers (Annexure R1(b)).

9. Counsel for the applicant argued that the respondents have committed a grave error in not complying with the principles of natural justice. According to him, when certain documents were called for to prove the innocence of the applicant, the respondents being the custodian of that records, ought to have been made available such documents. Again, rejection of the applicant's request for change of inquiry officer is not proper. It has further been submitted that the proceedings were initiated and the inquiry was conducted ex parte. He has also submitted that the appellate authority has not given the applicant an opportunity of being heard. He has further submitted that the appellate authority has not taken into account all the points raised in the appeal. Thus, the entire proceedings are vitiated.

10. Counsel for the respondents argued that the applicant chose not to attend the inquiry proceedings. At all stages, he was kept informed and given opportunity to defend his case. There is no legal lacuna in the

decision making process. The inquiry officer held the charges as having been proved and hence the disciplinary authority had rightly passed the impugned removal order. As regards appellate authority's order, the counsel submitted that all the grounds of appeal have been duly reflected in the appellate order and the appellate authority has duly applied his mind. Thus, no interference is called for.

11. The respondents have also made available the original records of the proceedings.

12. Arguments were heard and documents perused. The disciplinary proceedings file has also been analyzed. A perusal of the disciplinary proceedings indicate that the inquiry officer has been very meticulous in informing the applicant on all the dates of hearing and the intimations were sent in advance. Thus, in so far as the inquiry officer is concerned, no legal flaw could be discerned. As regards the disciplinary authority, he has also applied his mind and passed a comprehensive penalty order. In passing the order of removal from service, he has taken into account the gravity of misconduct.

13. The appellate authority too, has followed the procedure and his order is also comprehensive itemizing all the grounds of appeal and his conclusion confirms that he has applied his mind.

14. Reliance placed by the counsel for the applicant on the provision

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of CCS (CCA) Rules, 1965, does not assist the applicant as in so far as GDS Employees are concerned, the said rules have been specifically excluded vide Government of India instructions dated 28.02.57 appended to Rule 3.

15. Counsel for the applicant referred to a decision dated 12.01.2007 of this Tribunal in the case of Sibi Sonny in O.A. No. 204/2005 wherein on the basis of following decisions, the O.A. was allowed :

- (a) Ram Chander vs. Union of India - (1986) 3 SCC 103
- (b) R.P. Bhatt vs. Union of India - (1986) 2 SCC 651
- (c) State Bank of Patiala vs. S.K. Sharma – (1996) 3 SCC 364
- (d) Narinder Mohan Arya vs. United India Insurance Co. Ltd. (2006) 4 SCC 713
- (e) Prem Babu vs. Union of India - (1987) 4 ATC 727

16. The reliance placed by the applicant's counsel does not apply to the facts of the present case. In the above case, rejection of the request for change of inquiry officer was made without any reason and the rejection was by an incompetent authority. In the instant case, the rejection of the applicant's request for change of inquiry officer was processed by the Superintendent of Post Offices, Manjeri Division, who is the appellate authority and the said appellate authority has spelt out every cogent reasons while rejecting the request of the applicant. As regards the appellate order, in para 33 of the judgement in the case of **Narinder Mohan Arya vs. United India Insurance Co.Ltd.**, (2006) 4 SCC 713, it has been stated that "an appellate order if it is an

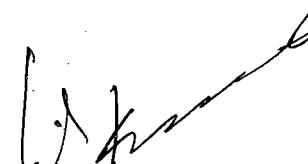
agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regards the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules." This requirement is found to be fully complied with in the case of the applicant.

17. In view of the above, we have no hesitation to uphold all the impugned orders cited in para 1 above and accordingly, the O.A. is dismissed being devoid of merits. No costs.

(Dated, the 24th October, 2008)



(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.