

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 612/2004

Thursday this the 12th day of October, 2006

CORAM

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

Smt.K.Anandavally
Ex-Branch Post Mistress,
Alathur,
Thrissur.

.... Applicant

By Advocate Mr.O.D.Sivadas

V/s.

1. Union of India, represented by
its Secretary, Ministry of Communications,
Department of Posts, New Delhi.
2. Superintendent,
Postal Stores Department,
Stores Depot, Thrissur.
3. Director of Postal Services,
O/o. the Post Master General
Central Region, Kochi-16.
4. Chief Postmaster General,
Department of Posts,
Thiruvananthapuram.

.... Respondents

By Advocate Mr.TPM I Khan SCGSC
represented by Mrs.Mariam Mathai

The application having been heard on 12.10.2006 the Tribunal delivered
the following:

O R D E R

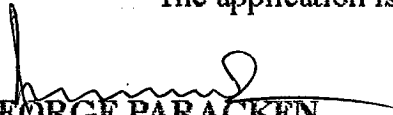
Hon'ble Mr. N.Ramakrishnan Administrative Member

On perusal of the past record, it shows that during the last four
occasions, the applicant absent was absent during three of them. This is indicative



of the lack of diligence on the part of the applicant to pursue this case.

The application is dismissed for want of prosecution. No costs.


GEORGE PARACKEN
JUDICIAL MEMBER


N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

abp

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 612/2003

WEDNESDAY THIS THE 10th DAY OF JANUARY, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER**

Smt. K. Anandavally
Ex Branch Post Mistress
Alathur, Thrissur.

.. Applicant

By Advocate Mr. O.D. Sivadas

Vs.

1 Union of India represented by
its Secretary, Ministry of Communications
Department of Posts, New Delhi.

2 Superintendent
Postal Stores Department
Stores Depot,
Thrissur.

3 Director of Postal Services
O/o the Postmaster General
Central Region, Kochi-16

4 Chief Postmaster General
Department of Posts.
Thiruvananthapuram.

.. Respondents.

By Advocate Mr. TPM Ibrahim Khan, SCGSC

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This O.A. is filed against Annexure A-6 order dated 5.9.2003
passed by the 4th respondent rejecting the revision petition filed by
the applicant.

2 The facts as narrated in the Application are as under:- The applicant was an Extra Departmental Branch Postmaster (EDBPM) Alathur Post Office from 2.6.1983 to 10.1.1997. A chargesheet was issued to her under Rule 8 of P&T ED Agents (Conduct & Service) Rules, 1964 by charge Memo No. F1/Adhoc/80 dated 15.1.1998. The three articles of charge against her are described below:

i) That Smt. K. Anandavally while functioning as EDBPM, Alathur Trichur Branch Office during the period from 2.6.1983 to 10.1.1997 accepted a sum of Rs. 200/- on 25.5.96 from Sri M.R. Johnson, Manikathuparambil House, Meladur PO holder of RD account NO. 20005 standing opened at Alathur Trichur BO for a denomination of Rs. 200/- as monthly instalment for the month of May, 1996, but failed to credit the amount into post office accounts on the same day and credited the amount on 30.5.1996 only.

(ii) That Smt. Anandavally, had accepted a sum of Rs. 300/- on 22.10.1996 from Smt. Shyama Devassy, Chakkalakkal House, Keezhadoor PO Meladur holder of RD account NO. 18986 standing opened at Alathur Trichur BO for a denomination of Rs. 150/- as monthly instalments for the months of October, 1996 and November 1996, made entries in the pass book duly date stamped, but failed to credit the amount into post office accounts on the same day and credited on 20.12.1996 only.

(iii) That Smt. Anandavally failed to bring into post office accounts an amount of RS. 513/60 which she received as monthly instalments for the months of April, 1996 to November, 1996 from Smt. K.M. Indira, Thirunallurmana, Keezhadur PO Meladur holder of RD account NO. 19210 standing opened at Alathur Trichur BO for deposit in the said RD account on 11.11.1996. It was alleged that by the above said acts, the petitioner failed to maintain absolute integrity and devotion to duty violating Rule 17 of P & T ED Agents (Conduct & Service) Rules, 1964.

3 The adhoc Disciplinary authority passed Annexure A-1 order removing the applicant from service. The applicant then filed a statutory appeal before the third respondent but it was rejected. The

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applicant submitted a representation before the 4th respondent alleging that the punishment imposed is disproportionate to the charges levelled against her and pointed out that the criminal case which was registered against her ended in her acquittal by judgment dated 30.5.2003 (Annexure A-3). The applicant also filed O.A. 205/2000 before the Tribunal which was disposed of with a direction to the applicant to approach the 4th respondent by filing a revision petition against the appellate order. Now the Revision petition has been disposed of by Annexure A-6 which is the impugned order in this O.A. The following are the grounds relied on by the applicant:

- (i) The enquiry was conducted ex-parte and permission to engage a defence assistant was not granted.
- (ii) The Enquiry report and the documents relied on and the disposition of the witnesses were not furnished to the applicant.
- (iv) The applicant was honorably acquitted in the criminal case and this fact has not been taken note of in the disciplinary proceedings.
- (v) The punishment imposed is too harsh
- (vi) There is no misappropriation of funds, No monetary loss is caused to the department
- (vii) The Appellate and Disciplinary authorities failed to appreciate the evidences which resulted in miscarriage of justice.

4 The respondents have filed a reply statement. They have stated that the applicant was working as ED BPM at the Alathur Branch Post Office. While working so, it was noticed that she had

committed 34 Recurring Deposit frauds by temporary misappropriation and non-crediting of such deposits, amounting to Rs. 23,125.80. The applicant was therefore placed under "put off" duty with effect from 10.1.1997 for committing RD frauds and she was issued with a charge sheet under Rule 8 of the P&T ED Agents (Conduct & Service) Rules, 1964 by the 2nd respondent and after due enquiry was removed from service. After careful consideration of the appeal and other connected documents, the third respondent had come to the conclusion that the punishment awarded was commensurate with the gravity of the offence and rejected the appeal. The applicant had submitted Annexure R-5 revision petition in accordance with the direction of the Tribunal in O.A. 205/2000 before the 4th respondent who did not find any reason to interfere with the order of the Disciplinary authority. The applicant was permitted to avail the service of a Defence Assistant as per rules. A legal practitioner is to be provided only if the Presenting Officer appointed by the Disciplinary authority is a legal practitioner. The enquiry was held strictly in conformity with Article 311 of the Constitution of India and opportunity was granted to the applicant at all stages of the enquiry. The enquiry report was forwarded to the applicant on 17.9.1998 as per Registered Letter with AD No. F1/Adhoc/BO and the same was delivered at to the applicant, duly acknowledged by her. The punishment awarded is commensurate with the gravity of the offense. The charges in the criminal case No. 135/1998 referred to by the applicant is relating to non-crediting of deposit in RD

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Account Nos 17924, 18595 and 18663 whereas in the present case the charge relates to non-credit of different set of RD accounts with NOs. 2005⁰, 18986 and 19210. Hence it is incorrect to state that the same charges in the criminal case had been alleged against the applicant in the Departmental proceedings. That there was misappropriation of Government money has been proved by evidence adduced in the departmental enquiry. For the above reasons the respondents have submitted that application is devoid of any merit.

5 The Original Application was filed on 6.8.2004, the reply statement was filed on 16.12.2004 before the OA was admitted. After the OA was admitted on 21.12.2004, though several chances were given to the respondents they have not filed any additional reply. On various dates of hearing there was no representation on behalf of the applicant nor any rejoinder filed by the applicant. On 12.10.2006 the Application was dismissed for want of prosecution. The applicant then filed M.A. 1084/2006 for restoration of the O.A. which was allowed on 28.11.2006 and two weeks time was granted to file a rejoinder and the case was listed on 15.12.2006. The applicant did not choose to file any rejoinder nor was there any representation on his behalf. Therefore, the O.A. was heard on 18.12.2006 and the learned counsel for the applicant had been permitted to file written argument within a week. No argument note has been filed.

6 We have perused the records. It is to be noted that the the applicant has challenged only the order of the Revisional authority at Annexure A-6. Though at the time of admission the applicant sought time to amend the OA incorporating challenge to the disciplinary authority's order as well as the appellate authority's order, no such amendment was filed. Later a M.A. was filed for accepting the documents at Annexures A-7 and A-8 which are the penalty advice and the appellate order.

7 Apart from other prayers the main challenge is two fold, firstly that the enquiry has not been conducted in an impartial manner and secondly that the proceedings on the same set of charges has ended in the acquittal of the applicant. A perusal of the records would reveal that these contentions do not appear to be correct. As far as the alleged procedural lapses in the enquiry are concerned the applicant has contended that the enquiry was an ex parte procedure whereas from the records it is obvious that a regular enquiry was conducted on the three charges mentioned in the charge memorandum that the applicant participated in the enquiry and the Defence Assistant was an Accountant at the Thrissur Head Office. The sittings were held on different dates on and between 16.3.98 to 10.8.98. On the prosecution side 35 documents and 9 witnesses were examined. The charged official was given opportunity to list out the documents and witnesses if any to be examined on her behalf. She did not submit any list. No documents or witnesses were examined on behalf of the charged employee. All the witnesses

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except Witness No. 7 were examined, cross examined and examined in chief by prosecution and ~~defendent~~ side. The Enquiry Officer submitted his report which was sent to the applicant by registered post and it was acknowledged by the applicant. Therefore the enquiry could by no stretch of imagination be treated as ex parte and factually the charged employee had participated in the enquiry, service of the Defence assistant was also made available and hence the enquiry was in accordance with the Rules. None of the grounds raised against the enquiry ~~were~~ put forth by the applicant during the enquiry which facts then could have been taken note of by the competent authority. Hence we do not find any reason to conclude that there has been violation of principle of natural justice to vitiate the enquiry proceedings.

8 Regarding the acquittal by the criminal court referred to by the applicant it is evident from the reply statement of the respondents that the charges in the criminal case were in respect of misappropriation related to a different set of accounts, though the nature of the charge related to non-credit of deposits in both the cases. Therefore the judgment in the criminal case relating to a different set of deposits cannot have any bearing in the departmental proceedings initiated relating to RDs other than the one involved in the criminal case as the facts and circumstances could be different in respect of each account.

9 The applicant has also alleged that the Appellate and Revisional authorities have not taken note of the submissions made

by the applicant in the representations and that the orders are without application of mind. On the contrary we find that the orders of the Appellate and Revisional authorities are very elaborate and have discussed all the submissions of the applicant with reference to the records of enquiry and findings as well as the penalty imposed had taken note of the submissions of the applicant or that the punishment was disproportionate and recorded the reasons for considering that the applicant deserved a deterrent punishment for removal from service. The respondents have taken note of the fact that lakh of customers especially poor villagers are dependent on the Department and believe and trust that their money is safe with the organisation and acts like that of the applicant constitute a serious breach of trust and therefore cannot be viewed lightly and do not deserve any sympathy. Moreover, we find that the applicant has not strongly disputed the charge that she has not deposited the money into the accounts on receipt but had credited the amount only after the fraud was detected and has only pleaded that she could not attend to the timely credit because of the workload in office was heavy and that she was otherwise occupied with the marriage of her daughter etc. These are not circumstances which could be taken into account in determining the culpability of the applicant as far as her dealings in the monetary transactions as a part of her official responsibility especially when that involved poor villagers who had deposited faith in the department. Therefore, considering the gravity of the charges and fact that the enquiry was conducted in a proper

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manner and no serious lacunae or procedural irregularities have been brought to notice, we do not see any reason to interfere with the punishment. The OA is dismissed. No costs.

Dated 10.1.2007



Dr. K.B.S. RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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