

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.70/2001

Friday, this the 10th day of January, 2003

C O R A M

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

C.Y. Ouseph, Ex-E.D. Messenger,
Son of Yohannan, aged 40 years,
Chakkalakkal House, East Angadi,
Angamali.

..Applicant

[By Advocate Mr. P.S. Biju.]

v e r s u s

1. The Union of India represented by
the Director General, Department of Posts,
Dak Bhawan, New Delhi - 110 001.
2. Postmaster General, Central Region,
Kochi.
3. Senior Superintendent of Post Offices,
Aluva, Aluva - 683 101.
4. Sub Divisional Inspector (Postal),
Paravur Sub Division - 683 513.

Respondents

[By Advocate Mr. R. Madanan Pillai, ACGSC.]

O R D E R
HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

Applicant while working as Extra Departmental Messenger, Angamally, during the period from 11.06.96 to 16.06.96. He was entrusted with Money Order No. 39030 dated 12.06.96 for Rs. 200/payable to one Mrs.. P.J. Babu, Angamally. According to the applicant, he correctly paid the said M.O. and returned the voucher to the Postmaster. Subsequently, the applicant was served with a Memo of charges (Annexure A/1) dated 31.03.98 by the 4th respondent. The applicant sent his reply to the charges vide Annexure A/2 dated 22.02.99. Not satisfied by Annexure A/2 reply, the 4th respondent conducted an enquiry and Annexure A/3 dated 26.03.99 is the enquiry report. Based on that report, the



4th respondent passed the impugned order Annexure A/4 dated 15.07.98. Applicant preferred an appeal dated 23.08.99 (Annexure A/5) against Annexure A/4 order, which was rejected by the 3rd respondent vide Annexure A/6 dated 18.01.2000. Aggrieved by the orders annexed as A/4 and A/6, the applicant has filed this O.A. seeking following reliefs:

- "(i) Set aside Annexure A/4 and A/6 orders;
- (ii) Declare that the applicant is entitled to be reinstated in service as Extra Departmental Messenger, Angamally;
- (iii) Grant the applicant such other reliefs as are deemed just and necessary in the facts and circumstances of the case."

2. The respondents have filed a detailed reply statement contending that the M.O. for Rs. 200/- payable to one Mrs. P.J. Babu, Padayattil House, Near Railway Station, Angamally, was entrusted to the applicant with adequate cash alongwith four other M.Os for effecting payment to the payees. The said M.O. was shown as paid on the same day by the applicant without actually paying the value of the said Money Order to the payee and without obtaining signature of the payee in the M.O. form. The Sub Postmaster, Angamally Post Office, as an appointing authority happened to be a material witness in the proposed enquiry, the Chief Postmaster General, Thiruvananthapuram, has issued an order dated 12.09.97 in pursuance of Rule 3 of the P&T ED Agents (Conduct and Service) Rules, 1964 (EDA Rules, for short), empowering the then SDI (P), Paravur Sub Division, to function as the ad hoc disciplinary authority of the applicant with powers to impose all the penalties specified in Rule 7 of the EDA Rules. After conclusion of the enquiry, the enquiring authority held the charges as proved and after perusing the enquiry report and other material on record, the ad hoc disciplinary authority issued an order dated 15.07.99 removing the applicant from service. The appeal submitted by the

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applicant was also considered and rejected. This O.A. is filed by the applicant challenging the orders issued by the ad hoc disciplinary authority and the appellate authority. In the appeal, the applicant only challenged the provision under which the ad hoc disciplinary authority was appointed. Rule 3A is part of Rule 3 and hence, the appeal was rejected. It is further averred that the charges levelled against the applicant is of very grave nature. Without obtaining the signature of the payee in the M.O. form and without actually paying the value of M.O. to the payee, the M.O. was shown as paid and thereby the applicant failed to maintain absolute integrity and devotion to duty. There is no merit in the O.A. and it deserves to be dismissed.

3. We have heard Mr. P.S. Biju, learned counsel for the applicant and Mr. R. Madhan Pillai, Additional Central Government Standing Counsel, learned counsel for the respondents. They have taken us to the facts of the case and argued the matter with reference to the respective pleadings in the O.A. and that of the reply statement thereon.

4. We have given due consideration to the pleadings, evidence and material placed on record.

5. Learned counsel for the applicant submitted that the conclusion of the appellate authority that Rule 3(A) is part of Rule 3 is a wrong interpretation since no disciplinary powers could be delegated to any authority invoking the provision of Rule 3 of EDA Rules. Therefore, the order of the appellate authority is devoid of authority and merit. Learned counsel for the respondents, on the other hand, submitted that Rule 3A of EDA Rules deals with the appointment of ad hoc disciplinary authority when the powers of the appointing authority shown in the said

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schedule in the matter of awarding penalty cannot be exercised by the normal appointing authority. Hence, Rule 3(A) is an integral part of Rule 3 and not a separate rule.

6. The charge against the applicant was that while functioning as officiating Postman, Angamally SO during the period from 11.06.96 to 15.06.96 showed Mavelikkara M.O. No. 3930 dated 12.06.96 for Rs. 200/- payable to Mrs. P.J. Babu, Padayattil House, Angamally, as paid to the payee on 13.06.96 without obtaining the signature of the payee, without paying the amount to her and took the amount by himself violating Rule 121(3) and 127(1) of Postal Manual Volume VI (Part III) Sixth edition thereby failed to maintain absolute integrity and devotion to duty contravening the provisions of Rule 17 of P&T ED Agents (Conduct and Service) Rules, 1964.

The statement of imputation of misconduct or misbehaviour in support of article of charges reads as follows:-

" Article - 1

That the said Sri C.Y. Ouseph was working as ED Messenger, Angamally SO. He officiated as Postman, Angamally S.O. from 11.06.96 to 15.06.96 while Shri V.K. Ramann, Postman, Angamally, was on leave. Mavelikkara Money Order No. 3930 dated 12.06.96 for Rs. 200/- payable to Mrs. P.J. Babu, Padayattil House, Near Railway Station, Angamally P.O. was received for payment at Angamally so as 13.06.96. It was entrusted with the said Shri C.Y. Ouseph on 13.06.96 for payment, duly entered in the register of money orders received for payment together with 4 other money orders for a total amount of Rs. 325.00 on 13.06.96. He gave acquittance to the money orders and to the amount in the register of money orders received for payment. He treated the said money orders as paid to the payees on 13.06.96 and rendered returns accordingly.

The Superintendent of Post Offices, Mavelikkara Division, in his letter No. CR8/191/96-97 dated 20.12.96 addressed to the Superintendent of Post Offices, Aluva Division, requested an enquiry into the matter. Shri Hariharan C.K., the IPO (PG), the Superintendent of Post Offices, Aluva Division, made enquiries into the case.

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Mrs. P.J. Babu in her statement dated 13.01.97 before IPO (PG), Aluva Division, stated that the amount of Rs. 200/- remitted by Shri G.B. Nair from Mavelikkara on 12.06.96 was not received by her upto 13.01.97.

Shri V.E.Ouseph, Sub Postmaster, Angamally SO stated before the IPO (PG) in his statement dated 02.04.97 that on 13.06.96 he had entrusted 5 money orders for Rs. 325/- to Shri C.Y. Ouseph, ED Messenger, who was acting as substitute to Sri V.K. Raman. Shri K.M. Ayyappan, Postal Assistant, Angamally SO in his statement dated 2.4.97 before the IPO (PG), Aluva Division, stated that on 13.06.95 the paid vouchers were handed over to him by the EDM Sri C.Y. Ouseph.

It is, therefore, imputed that Shri C.Y. Ouseph while officiating as Postman Angamally during the period from 11.06.96 to 15.06.96 showed Mavelikkara M.O. No. 3930 dated 12.06.96 for Rs. 200/- payable to Mrs. P.J. Babu, Padayattil House, Angamally, as paid on 13.06.96 to the payee without actually obtaining the signature of payee, without paying the amount to her and took the amount by himself. Violating Rule 121(2) and 127(1) of Postal Manual Volume VI (Part III) sixth edition thereby failed to maintain absolute integrity and devotion to duty contravening the provisions of Rule 17 of P&T ED Agents (Conduct and Service) Rules, 1964."

7. The case of the applicant is that of "no evidence". The material placed before us and going through the deposition/statement of witnesses in which the de facto complainant Smt. P.J. Babu, said to have made an endorsement in the letter addressed to her, to the Aluva Postal Superintendent. It is alleged to have not produced the D-1 statement for defence. The applicant contended that the de facto complainant has endorsed as having received the M.O. If the D-1 statement received by the enquiring authority being produced in time, the charges against the applicant would have been dropped and the article of charge is not sustainable. The presenting officer intimated the enquiring authority that the fifth witness in the list of witnesses in Annexure IV to the charge sheet, who is the complainant and important witness for defence, is dropped. The non-production of complainant's statement dated 27.01.97 (D-1) is an adverse effect as far as applicant is concerned.

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8. We are fully aware that on a question of judicial review, the Courts/Tribunals are not supposed to go into the details of evidence in the given case. But in the instant case, we find that the contention of the applicant that it is a case of "no evidence" supported by suppression of material document by the inquiring authority, has got some force and, therefore, we are of the view that the proceedings Annexure A/4 is not in consonance with law and natural justice.

9. Another limb of argument challenging Annexure A/6 appellate order is on the question of interpretation of Rule 3(A) of EDA Rules. In the appeal Annexure A/5 dated 23.08.99, only the ground that has been alleged by the appellant (applicant) is that Rule 3(A) of the EDA Rules is void and prayed for quashing of Annexure A/4 proceedings.

10. Since the SPM, Angamally, who is the normal appointing authority of the said EDA being the material witness in this case will not and cannot be in a position to exercise the disciplinary powers of the appointing authority. The contention of the applicant that empowering of SDI, Paravur to function as ad hoc disciplinary authority under Rule 3 is not valid and it should have been under Rule 3(A). For better elucidation, Rule 3 and Rule 3(A) of EDA Rules are reproduced as under:-

Rule 3: Appointing Authority:

- (1) The appointing authority in respect of each category of employees shall be as shown in the schedule annexed to these rules.
- (2) If any doubt arises as to who is the appropriate appointing authority in any case, the matter shall be referred to the Government, whose decision thereon shall be final.

Rule 3(A): :

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The powers of the appointing authority in the matter of awarding any of the penalties specified in Rule 7 may be exercised by an authority which has been shown in the Schedule annexed to these rules or by any other authority empowered in this behalf by a special order of the Head of Circles under circumstances to be recorded in writing -

Provided that in no case the authority so appointed shall be lower in rank than the authority who originally appointed the ED Agent.'

11. Rule 3 is concerning about the appointing authority. The ad hoc disciplinary authority appointed in this case is not the original/normal appointing authority. But if it is to be exercised by any other authority empowered in this behalf, it must be under Rule 3A for which a separate order of the Head of the Circle appointing an authority of equal rank that of the original appointing authority should be issued by recording it in writing. It seems that this procedure has not been adopted in the present case and therefore, we are of the view that while passing the order Annexure A/6, the appellate authority did not consider the above aspect and it is faulted. Apart from that it may be noted that the applicant has been functioning as Postman for a short period of 6 days from 11.06.96 to 16.06.96 on officiating arrangement. It is an admitted fact that the applicant has put in about 9 years of service in the department with an unblemished service record. The accepted legal dictum in such cases that "one act of omission or error would not amount to misconduct" has to be given due consideration in this case as well. Apart from that we find that just for a single incident the applicant was removed from service which in our opinion, is not justified.

12. Considering the noncompliance of natural justice, theory of 'no evidence', interpretation of Rule 3 as discussed above and the single act of omission, we are of the view that the punishment of removal from service is disproportionate which

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touches the conscience of this Court. Accordingly, for all the reasons as stated above, we set aside the order No. SDI(P)PRR/INQ/Rule 8/4/97 dated 15.07.99 (Annexure A/4) and the appellate order No. Appeal-2/99 dated 18.01.2000 (Annexure A/6) with a direction to the respondents to reinstate the applicant in service. He will not be entitled to any back wages/arrears for the period of dismissal to his reinstatement. However, he will not loose his seniority in the department. The above exercise shall be completed within one month from the date of receipt of a copy of this order.

13. The O.A. is allowed as above with no order as to costs.

(Dated, 10th January, 2003.)



(K.V. SACHIDANANDAN)
JUDICIAL MEMBER



(G. RAMAKRISHNAN)
ADMINISTRATIVE MEMBER

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