

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 87 of 2005

Wednesday, this the 25th day of July, 2007

C O R A M :

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

N.M. Lalithamma,
W/o. Gopi Rajan,
(Formerly EDBPM, Madathumbhagam North)
Nampurakkal Veedu,
Madathumbhagam North P.O.,
Puramattom Via., Thiruvalla. ... Applicant.

(By Advocate Mr. Shafik M.A.)

v e r s u s

1. The Chief Postmaster General,
Department of Posts India,
Kerala Circle, Thiruvananthapuram : 695 033
2. The Director of Postal Services (SR),
Department of Posts India,
Kerala Circle, Thiruvananthapuram : 695 033
3. The Superintendent of Post Offices,
Thiruvalla Division, Thiruvalla : 689 101
4. K. J. Jacob,
Inquiring Authority and Asstt.
Superintendent of Post Offices,
Thiruvalla Sub Division, Thiruvalla : 689 101 ... Respondents.

(By Advocate Mr. P.A. Aziz, ACGSC)

O R D E R

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

 The applicant in this O.A. challenges the following orders:-

- (a) Order No. VIG/RP/2/NML/3/2002 dated 23.12.2004 issued by the first respondent (Annexure A/1).
- (b) Memo No. F1/IV-2/94-95 dated 31.07.95 issued by the third respondent (Annexure A/3).
- (c) Enquiry report dated 24.5.1996 of the 4th respondent (Annexure A/4).
- (d) Order No. F1/IV-II/94-95 dated 12.8.1996 of the 3rd respondent (Annexure A/6).
- (e) Order No. ST/MP-1/97 dated 4.2.1998 issued by the 2nd respondent (Annexure A/8).

2. Briefly stated, the applicant while functioning as Extra Departmental Branch Postmaster, Madthumbhagam North Post Office was served with Annexure-A3 charge sheet on 31.7.95 under Rule 8 of the Extra Departmental Agents (Conduct and Service) Rules, 1964. The following are the allegations levelled against the applicant :-


- (a) Accepted Rs. 1000/-- for deposit in SB Account No. 426724 in April, 1994, but credited the amount in Account only on 6.7.1994.
- (b) Accepted a sum of Rs. 500/- in June, 1994 from the said depositor, but failed to credit the same in the Account.
- (c) Accepted a sum of Rs. 500/- in July, 1994 from the said depositor but failed to deposit the amount in the Account.

3. According to the applicant, the amounts in question were utilised for payment to the payees of certain money orders the money order amounts had been misappropriated by the then EDDA and the applicant had to keep silent due to the threat given the then EDDA.

4. The respondents conducted regular enquiry in which the applicant participated. The enquiring authority by Annexure A/4 rendered his finding that all the charges against the applicant stood proved.

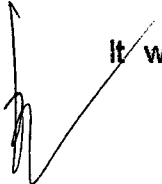
5. The Disciplinary Authority forwarded the enquiry report to the applicant and in turn, the applicant filed representation dated 18.6.1996 by Annexure A/5. In the said representation, the applicant had stated that the deposits could not be accounted for immediately due to dishonest behaviour of the EDDA. She had also stated therein that she should not have indulged in such irregular action and apologized for the act but stated that it was because of the dishonest act of the EDDA she had to siphon out the amounts in question. The Disciplinary Authority agreeing with the enquiry report passed the Annexure A/6 order of removal from service. The applicant filed Annexure A/7 appeal before the Appellate Authority which was dismissed by Annexure A/8 order dated 4.2.98. The applicant filed revision petition dated 3.7.2002 (4 years after passing of the appellate order) and the Revisional Authority by Annexure A/1 order dated 23.12.2004 dismissed the revision petition.

6. Departmental proceeding apart, according to the applicant, criminal proceeding on the same set of facts were also set in motion but the Criminal Court acquitted the applicant by Annexure A/11 order dated 27.9.2001. In her revision petition, the applicant had referred to the said decision and thus asked for revision of the punishment order, which was however, rejected by the impugned revisional order. Hence this OA.




7. Respondents have contested the O.A. They have stated that averment of the applicant that the amounts in question were utilized for payments to the payees of the money order as the money orders amount were misappropriated by the EDDA does not hold ground or dilute in any way the gravity of irregularity committed by the applicant. Such an averment only amounts to a clear admission of the charges. As regards acquittal by the Criminal Court, the respondents have stated that the charges in the departmental proceedings and the Criminal Court are entirely different and also relate to different transactions. While in respect of departmental enquiry the S.B./RD Account wherein the misappropriation took place were respectively 426724, 381025 and 550014, in the Criminal proceeding the transactions were in respect of Account No. 426768, 381029 and 380960.

8. Learned counsel for the applicant initially argued that on the basis of the decision by the Apex Court in the case of **Capt. Paul Antony (1999 (3) SCC 679)** and **G.M. Tank (2006 (5) SCC 446)**, the applicant's case should not have proceeded under the departmental proceeding when criminal matter was pending and in any event once the criminal case ends in an acquittal, the respondents ought to have revised the penalty order. However, on being pointed out that the criminal case was on a different set of facts as contended by the respondents, counsel for the applicant did not press that point but stated that right from the beginning the applicant has been maintaining the truth and she had been under threat by the then EDDA. It was also argued that the punishment is shockingly disproportionate.



9. Learned counsel for the respondents argued that no flaw can be discerned from the sequence of events in holding the enquiry; that the applicant has actually admitted the act of misconduct; that the reason given by her cannot be a justification for the irregularity; that the departmental proceedings are independent; and lastly that the finding arrived at cannot be upset by the Tribunal as held by the Hon'ble High Court of Kerala in the case of **Cochin Shipyard vs. Industrial Tribunal** (2006 2 KLT 825).

10. Arguments were heard and documents perused. That the departmental proceeding and criminal proceeding are on different sets of facts have not been disputed by the counsel for the parties. Hence the judgment of **Paul Antony or G.M. Tank** (supra) do not apply. The applicant herself has conceded the act of misappropriation as in the charge sheet but tried to justify the same by giving certain reasons. Those reasons have been held untenable by the authorities concerned. The revisional authority has rightly held, "to say the least this is an indefensible argument". The appellate authority on this point held, "In fact, the appellant is guilty of conniving with the EDDA in the latter's wrong deal. There is absolutely little merit in taking this plea to absolve her from the charges now levelled." The disciplinary authority also, referring to the justification of the applicant, held that the argument of the official that the dishonest activities of the EDDA forced her to cause delay for the deposits entrusted to her by the investors, cannot be accepted. She was the then EDBPM of the BO and was responsible not only for her own work but also to ensure that other official placed under her did their work in accordance with the rules. The disciplinary authority ultimately held, "she is solely responsible for not



accounting of the deposits accepted by her from the members of the public and she cannot be absolved of the responsibilities simply for the reason that she was forced to do so by somebody's dishonest activities.

11. In view of the above, we do not find any illegality in the decision making process of the respondents. The impugned orders cannot thus be held invalid and as such the O.A. is dismissed.

Under the circumstances, there shall be no order as to costs.

(Dated, the 25th July, 2007)


Dr. K B S RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

Cvr.