

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 96 of 2004

Friday, this the 7th day of July, 2006

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. KBS RAJAN, JUDICIAL MEMBER**

C.S. Prabhakaran,
GDSBPM (under removal),
Late Shankaran,
Chalackal House,
Mangapara Kara,
Konnathady P.O.,
Idukki District.

... Applicant.

(By Advocate Mr. M.V. Sabu)

v e r s u s

1. The Union of India represented by
Secretary, Ministry of Communications,
Department of posts,
New Delhi.
2. The Chief Postmaster General,
Thiruvananthapuram.
3. The Superintendent of Post offices,
Idukki Division,
Thodupuzha,
Idukki.
4. The Director of Postal Services,
Central Region,
Office of the Postmaster General,
Kochi - 16.

... Respondents.

(By Advocate Mrs. Mariam Mathai, ACGSC)



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

Certain fundamental prepositions of disciplinary proceedings are essential to be set out at the very outset and it is within this arena that the case of the applicant has to be analyzed as to whether his challenge against the orders of the disciplinary authority and appellate authority is legally sustainable. A few of such prepositions not directly related to the fact of the case have also been brought in here, so that all the main principles are available in a single location. These are as under:-

- (i) ***Penalty order is vitiated if Inquiry officer's report is perverse:*** In the case of ***Nand Kishore Prasad Verma Vs. the State of Bihar (Reported in AIR 1978 SC 1277)***, the Apex Court held that ***"the disciplinary proceedings before a domestic Tribunal are of a quasi judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence i.e. to say such evidence which and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicious cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the enquiry officer will be perverse"***.
- (ii) ***Scope of Judicial Review:*** In a very recent case, ***V. Ramana v. A.P. SRTC, (2005) 7 SCC 338***, the Apex Court has, referring to a number of decisions, has defined the scope of judicial review. the Apex Court has held as under:

 7. Lord Greene said in 1948 in the famous ***Wednesbury*** case that when a statute gave discretion to an

administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or the other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken. These principles were consistently followed in the UK and in India to judge the validity of administrative action. It is equally well known that in 1983, Lord Diplock in Council of Civil Service Unions v. Minister for Civil Service (called the CCSU case) summarised the principles of judicial review of administrative action as based upon one or other of the following viz. illegality, procedural irregularity and irrationality. (underlining supplied)

2. Now the facts of the case as contained in the OA:

(a) The applicant was working as Extra Departmental Branch Postmaster. In March, 1993, disciplinary action was initiated against the applicant alleging :

(i) shortage of cash of Rs. 2094/- in the Post Office on 26.6.92 when the Sub Divisional Inspector, Munnar, made a surprise visit to Post Office;

(ii) that a sum of Rs. 500/- was withdrawn from the S.B. Account without the knowledge of the depositor on 19.6.2002;

(iii) that he failed to credit the deposit of Rs. 100/- each on 29.02.92 and 31.3.92.

(b) The applicant submitted explanation to the charge memo. Thereafter,

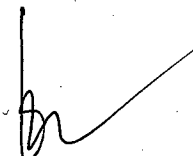
no notice was served on him. An ex parte enquiry was conducted against the applicant. He was dismissed from service with effect from 31.4.94 as per order No. F.4-10/92-93 dated 31.3.94. Against the dismissal order, the applicant approached this Tribunal by filing O.A. No. 1043/99. The said O.A. was allowed setting aside the dismissal order with a direction to reinstate the applicant in service with 50% back wages with liberty to the respondents to conduct enquiry after serving notice. The respondent filed an R.A. No. 1/2002 which was dismissed on 14.10.2002. The respondent thereafter, filed O.P. No. 20247/03 before the Hon'ble High Court which was also dismissed.

- (c) Criminal complaint was lodged against the applicant. After trial, he was acquitted duly finding not guilty.
- (d) The applicant was reinstated in service on 16.8.2002. Back wages were paid to him. On the next day on 17.8.2002 he was again placed under put off duty. Charge sheet dated 6.9.2002 was issued to the applicant containing 3 charges. The charges are as under:-

ARTICLE - I

That the said Shri C.S. Prabhakaran, while functioning as EDBPM, Kottathady Central BO on 26.6.92 failed to produce the entire cash balance of the office when required by the Sub Divisional Inspector, Munnar Sub Division, during his verification of cash and stamp balances of the office. Shri C.S. Prabhakaran by his above act failed to maintain absolute integrity and devotion to duty violating Rule 17 of P&T ED Agents (Conduct and Service) Rules, 1964.

ARTICLE - II



That the said Shri C.S. Prabhakaran while functioning as EDBPM, Konnathady Central BO had withdrawn a sum of Rs. 500/- from SB A/c. No. 523093 standing open at Konnathady Central B.O. in the name of Shri S. Sukumaran on 19.6.92 without the knowledge of the depositor and without entering in the Pass Book. Shri C.S. Prabhakaran by his above act failed to maintain absolute integrity and devotion to duty violating Rule 17 of P&T ED Agents (Conduct and Service Rules) 1964.

ARTICLE - III

That the said Shri C.S. Prabhakaran while functioning as EDBPM Konnathady Central BO on 29.2.92 and 31.3.92 failed to credit a sum of Rs. 100/- (Rs. One Hundred) each shown as credited in the RD PB in respect of Account No. 10300701 in the name of Shri Abhilash C. to the Post office Account. Shri C.S. Prabhakaran by his above act failed to maintain absolute integrity and devotion to duty violating Rule 17 of P&T ED Agents (Conduct & Service) Rules, 1964."

3. The retort of the respondents to the above OA, as per the reply statement is congealed as hereunder:

(a) The applicant did not produce the entire cash balance of the said office before the Sub Divisional Inspector, Munnar Sub Division, on 26.6.92 when the latter was inspecting the said office. A shortage of Rs. 2094.40 was detected at that time and the Sub Divisional Inspector, Munnar recorded the statement of the applicant in which he admitted that the amount was pick pocketed from him while he was sleeping in a building owned by Shri Sudhakaran. Therefore, there was no need for the SDI to ask the applicant for production of the said sum. This further amounts to the fact that he did not keep cash safely, which



resulted in the loss and thereby violated the provisions contained in Rule 11 (2) of the Rules for Branch Post offices. The SDI had recorded the statement of the applicant as S-3, which shows that the applicant had acted contrary to the Rules. As per S-7 Pass Book, the depositor has made a deposit of Rs. 200/- on 29.2.92. In S-1 statement, the depositor has stated that he has regularly and continuously remitted the monthly instalments in his RD Account No. 10300701. S-7 shows the deposit on 29.2.92. Whereas, that was not reflected in SB, RD journals and S2 BO Accounts.

4. Arguments were heard and documents perused. The learned counsel for the applicant has argued that the legal flaws in the conducting of the Departmental Proceedings are as under:-

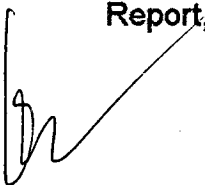
(a) This is a case of no evidence and hence the inquiry report is perverse.

(b) The Department has completely ignored the stand taken by the applicant right from the beginning. It has neither been considered by the Disciplinary Authority nor by the Appellate Authority in its proper perspective.

(c) Provisions of Rule 82 of the Postal Manual have been given a complete go by by the Respondents.

(d) The findings of the Inquiry Authority of third charge, which was held as "partly proved" is not based on records.

5. To substantiate his contention of (a) and (b) above, the counsel for the applicant has taken us through the depositions as extracted in the Inquiry Report, the representation against the Inquiry Report and the appeal. His



contention has been that the money involved was pick pocketed a few days prior to the surprise inspection and this was narrated to the authorities; yet, the statement S 3 was got recorded by the inspecting official. Yet the applicant had undertaken to make good the amount involved. And, according to the applicant the money was brought and deposited the same day, though the deposit was accounted for in the next day account only. Of course, the applicant had not lodged any complaint or F.I.R of the pick-pocketing of the amount to the police. He had sought for time to remit the amount but the same was rejected. This contention of the applicant has been the admitted position and the following references are apt to be referred to:-

(a) In the statement at S-3, the applicant had stated, "I am ready to bring and remit Rs. 2,094.45 (Rupees Two thousand and ninety four and paise forty five only) which was found short in the B.O. on 26-06-1992

(b) Vide the Inquiry Report: It has been stated by the Inquiry Officer as under:-

"The other argument of the defence that the CO was not permitted to fetch the cash etc. are too flimsy and away from truth and I do not agree."

(c) Vide the representation against the Inquiry Report, the applicant has stated:-

"I was not given time to go out for fetching the cash and higher denomination stamps from my house where they were kept under safe custody."

(d) Vide Disciplinary Authority's order, it has been stated:-

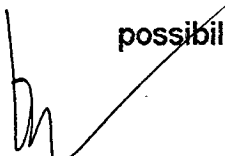
"The charged GDS in one side argued that he was not given time to fetch the cash from his house

whereas on the other side he argued that he was not given time to recount the cash which are quite contradictory."

- (e) In his appeal the applicant had reflected the relevant portions of S-3 (as contained vide (a) above).
- (f) Vide the appellate Order the Appellate authority has held as under:-

"In this statement marked as exhibit S-3, the appellant categorically states that amount was pick pocketed from him while he was sleeping in a building owned by one Shri Sudhakaran. When the appellant made such a statement, there was no necessity for SDI to ask the appellant to go and bring cash from where it was supposed to be kept. The S-3 statement goes to show that office cash was not kept at any secure place by the applicant. Therefore, it is clear that the applicant acted in contravention of note below Rule 11 (2) of Rules for Branch Office."

6. When the admitted position is that the applicant was prepared to bring the amount, and in fact when the amount was remitted on the next day, Rule 11(2) has been violated by the respondents. Rule 11(2) is a general rule and it does not take into account all the contingencies (as for example, when the money is lost). The spirit behind the rule should be to the extent that keeping the amount is the sole responsibility of the B.P.M. and that on demand he should be in a position to account for the same. When no separate iron safe etc., has been provided for, liberty is given to the B.P.M to keep the money at any place he desires. If there be any inordinate delay in remitting the amount, there could be possibility of any temporary misappropriation and the individual could then be



proceeded against. In the instant case, candidly the applicant having conceded the non availability of the amount due to pickpocketing and he having assured the respondents to make good the same, the respondents ought to have afforded him the time. And, in fact the amount had been remitted the very next day. The holding of Inquiry Officer that the very fact that the money was pick pocketed shows the negligence and hence Article I is proved does not appeal to logic as the charge is not of keeping safe the money but one of failure to remit. Hence, the finding of the Inquiry Officer that Charge No. 1 was held as proved is not only not based on evidence, but also certainly perverse as contended by the applicant. Once the finding is perverse, the enquiry is vitiated. Nand Kishore Prasad Verma (supra) refers.

7. As regards contention that Rule 82 of the Postal Manual has been given a complete go bye, the same has to be rejected. For, Rule 82, as extracted in the appellate order itself is as under:-

"It is not permissible to hold departmental enquiry in respect of a charge based on the same facts or allegations which have already been examined by a Court of competent jurisdiction and after Court's finding that they are not true. The SDI Munnar had made a complaint to the S.I. Of Police Vellathooval in respect of Article I charge which led to trial at Judicial First Class Court Adimali. On completion of the trial, the appellant was acquitted by the Court. The operative portion of the judgement in the said case (CC 211/94) reads as follows:-

"In the above circumstances, it is found that the accused did not forge any document or has not committed any criminal breach of trust in the capacity of public servant. The accused is found not guilty of the said act punishable under Section 468 and 409 IPC. The accused is acquitted of the same and set at liberty under

Section 248 (1) Cr. PC."

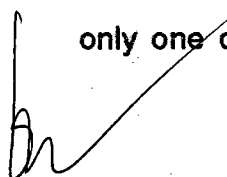
8. A perusal of the judgment of the criminal Court would reveal that the charge therein is entirely different. The very first para of the judgment dated 27-06-1998 reads as under:-

"The accused while working as a Central Post Office Branch Postmaster, Konnathadi on 31.3.92 has not credited two deposits of Rs. 500/- each in the T.D. Account of CW6 and the daily account of that date, and he has not despatched the money orders entrusted by CW7 and CW8 respectively on 6.6.92 and 8.6.92 and thereby appropriated a sum of Rs. 1025/- and thereby committed offences punishable under Section 468 and 409 IPC."

9. Keeping in juxtaposition the above charge in the criminal proceedings and the Articles of Charges as per the Departmental proceedings, it would be seen that the two are independent of each other. Of course, both the charges may be on the same set of facts but that alone cannot mean that provisions of Rule 82 of the Postal Manual would be attracted.

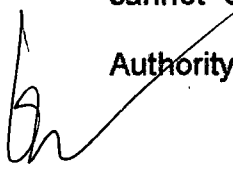
10. As regards, Article II, the same was held to be not proved and also accepted by the Disciplinary Authority.

11. As regards Article III, there appears a confusion relating to the date of deposit. The deposit being one of recurring on monthly basis, there could be only one deposit in a month and according to the applicant, for the month of



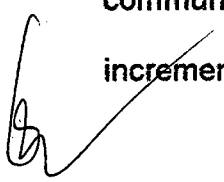
February, 1992, the amount was deposited by the depositor on 8th February, 1992 and as such, allegation that deposit was made on 29-02-1992 which was not registered by the applicant is incorrect, argues the applicant. In his representation against the Inquiry Report, this point was raised but the same was not reflected in the disciplinary authority's order. Again, in the appeal the same was raised and the appellate authority, though referred to the same has not indicated whether there was any entry of Rs 100/- as of 8th February, 1992. The counsel for the applicant submitted that the entry in the pass book as of 29-02-1992 was the same as the one deposited on 08-02-1992, which was duly accounted for in the office ledger. Thus, according to the applicants, the clerical mistake crept in entering the date of deposit in the Pass Book. It is trite that recurring deposits are made once in a month and if deposit for February, 1992 figured in, there is no question of further deposit in the same month. The respondents have failed to consider this aspect, either in the Disciplinary Authority's order or in the Appellate Order.

12. Since the provisions of Rule 11(2) of the Rules of Branch Post Office stand violated by the respondents, inasmuch as the time required has not been granted (and in fact the money has already been remitted), finding by the Inquiry Officer on Charge-I having being perverse, order of the disciplinary authority based on this finding gets vitiated and thus, the order of the Disciplinary Authority cannot survive. Even in respect of Charge III, the findings of the Inquiry Authority and the decision of the Disciplinary authority cannot legally sustain.



The Order of the Disciplinary Authority thus is declared as 'illegal order'. Consequently, as held by the Apex Court in the case of Union of India vs R. Reddeppa, (1993) 4 SCC 269, "*An illegal order passed by the disciplinary authority does not assume the character of legality only because it has been affirmed in appeal or revision unless the higher authority is found to have applied its mind to the basic infirmities in the order.*"

13. In view of the above, the OA succeeds. The orders of the Disciplinary Authority and Appellate Authority are hereby quashed and set aside. The applicant is entitled to be reinstated in service with back wages for the period he was kept out of service with effect from 17.8.2002. If the respondents, during the interregnum period (i.e. after removal of the applicant from service) had engaged any one else to perform the duties of Branch Post Master of Konnathadi Post Office, it is for them to make suitable arrangements as per law for his failure continuance. The applicant shall be reinstated as Gram Dak Sevak Branch Post Master Konnathadi. The order of reinstatement shall be passed by the authority concerned within two months from the date of communication of this order, while payment of the backwages with effect from 17.8.2002, after adjusting the amount, if any, paid during the period he was kept on "put off duty", shall be made within two months thereafter. If there be any delay in the payment of back wages beyond four months from the date of communication of this order, the amount payable to the applicant shall be incremented by interest @ 9% for the period from the date of communication of



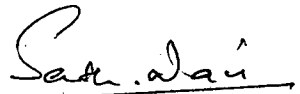
the order itself till the date of payment, unless, permission is sought from this Tribunal before the expiry of the period of four months.

14. Under the above facts and circumstances, there shall be no orders as to costs.

(Dated, the 7th July, 2006)



K B S RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

CVR.