

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A 97/2004

Wednesday this the 1st day of November, 2006

CORAM

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

K.Rajesh,
S/o late Gopalan,
Ex.Postman, Kodur Malappuram,
residing at Raj Bhavan,
Koramkodu, Uphill PO,
Malappuram, Pin.676 505.Applicant

(By Advocate Mr. P.C.Sebastian)

V.

- 1 The Superintendent of Post Offices,
Manjeri Division, Manjeri.676 121.
- 2 The Director of Postal Services,
Nrothern Region, Calicut.673011.
- 3 The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
- 4 The Assistant Superintendent of Post Offices (O/s)
Manjeri Division & Inquiring authority,
Manjeri.676 121.
- 5 The Union of India, represented by
Secretary to Govt. of India,
Ministry of Communications.
Department of Posts,
New Delhi.Respondents

(By Advocate Mr. C.M.Nazar, ACGSC)

The application having been finally heard on 19.10.2006, the Tribunal on 1.11.2006 delivered the following:

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ORDER

Hon'ble Mr. George Paracken, Judicial Member

After a detailed departmental inquiry under Rule 14 of the CCS (CCA) Rules, 1965 into the following charges against the applicant, the disciplinary authority imposed the penalty of removal from service vide Annexure.A2 proceedings dated 20.9.2001:

Article I: That Shri K.Rajesh while working as Postman/II Down Hill SO during the period from 7.5.97 to 16.11.98 failed to deliver Calicut HO Registered letter No.495 to the addressee, the Headmaster, AMLP School, Mylappuram entrusted to him for delivery on 28.9.98 violating Rule 127 of Postal Manual Vol.VI Part III (Sixth Edition) and instead delivered the same to person other than the addressee without presenting the article at the given address in contravention of Rule 117 and 115 of Postal Manual Vol.VI Part III (Sixth Edition) and thereby failed to maintain absolute integrity and devotion to duty violating Rules 3 (1)(i) and 3(1)(ii) of CCS (Conduct) Rules, 1964.

Article-II: That Shri K.Rajesh while working as Postman/II Down Hill during the period from 7.5.907 to 16.11.98 failed to deliver Calicut HO Registered letter No.1972 to the correct addressee, the Headmaster, AMLP School, Mylappuram entrusted to him for delivery on 24.10.98 violating Rule 127 of Postal Manual Vol.VI Part III (Sixth Edition) and instead delivered the said R.L to a person other than the addressee without presenting the article at the given address on the same day in contravention of Rule 117 and 115 of Postal Manual Vol.VI Part III (Sixth Edition) and thereby failed to maintain absolute integrity and devotion to duty violating Rules 3(1)(i) and 3(1)(ii) of CCS (Conduct) Rules, 1964.

Article III: That Shri K.Rajesh while working as Postman/II Down Hill during the period from 7.5.97 to 16.11.98 failed to deliver Calicut HO Registered letter No.1933 to the correct addressee, the Headmaster, AMLP School, Mylappuram entrusted to him for delivery on 24.10.98 violating Rule 127 of Postal Manual Vol.VI Part III (Sixth Edition) and instead delivered the same to a person other than the addressee without presenting the article at the given address on the same day in contravention of Rule 117 and 115 of Postal Manual Vol.VI Part III (Sixth Edition) and thereby failed to maintain absolute integrity and devotion to duty violating Rules 3(1)(i) and 3(1)(ii) of CCS (Conduct) Rules, 1964.

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The appellate authority has upheld the aforesaid Annexure A2 punishment order vide its Annexure.A4 order dated 29.4.2003 and the Revision Petition filed by the applicant was dismissed vide Annexure.A6 order dated 13.6.2003.

2 The gist of the aforesaid three charges are that on 28.9.98 the applicant was entrusted with a registered letter No.495 from Passport Office, Calicut to be delivered to Headmaster, AMLP School, Mylappuram and on 24.10.98, two more letters registered vide Nos.1972 and 1933 were also entrusted with him to be delivered to the same addressee. The case of the defence is that the applicant instead of delivering those letters directly to the Headmistress Ms.K.C.Sosamma, delivered to persons other than her. On the other hand, the applicant's version is that the letter No.495 was delivered to one Sri. K.Aboobacker, the Manager of the School without checking his identity as he had the seal of the Headmaster with him and he admitted that it as a short coming on his part but his contention was that though the rules regarding delivery of registered letters insist that such letters addressed to the Head of an institution should be delivered to him only if there is no written authorization in favour of any other person, the practice widely followed in post offices is to effect delivery of them at the office after obtaining the signature of immediate junior looking after his duties. He, therefore, requested the respondents to excuse him for the said short coming as there was no complaint from the sender or addressee of the said registered letter regarding non-delivery. As regards the other two letters nos.1972 and 1933 were concerned, the applicant submitted that they were delivered to the actual addressee, namely, Smt.

K.C.Sosamma , Headmistress on 24.10.98 under her signature on the delivery slip.

3 The respondents had earlier ordered for a preliminary inquiry in the matter about 2 years, and according to the report dated 11.1.2000 submitted by the preliminary inquiry officer, who was the then SDI(P), Smt.Sosamma denied having received all the above letters and disowned the signature appearing on the delivery slip and stated that it was not the one used in the school. She had also stated that she had not authorized anyone to receive the letters on her behalf. Thereafter a regular inquiry was ordered and the applicant was served with the aforesaid three charges. Both the preliminary inquiry officer and the Headmistress have appeared and deposed as prosecution witnesses. According to the SDI(P) who conducted the preliminary inquiry (SW1), the articles in question were not delivered to the correct addressee and it was in violation of Rule 127 of the Postal Manual Vol.VI and Part III, according to which the postman is responsible for the correct delivery of articles entrusted to him and in case of doubt, he must satisfy the identity of the addressee by making proper inquiries before delivering articles. It was also alleged to be in contravention of Rule 117 and 115 of the Postal Manual Vd.VI Part III. Rule 117 requires that receipts and acknowledgments of accountable articles should invariably be signed by the addressee or his authorized agent and Rule 115 requires that if an addressee of an article cannot be found at the given address, inquiry regarding his changed address should be made from the neighbours. If trustworthy information can be obtained, the postman should deliver the article at the new address, if it is in his beat

or make a note of the new address on the article, so that it may be made over to another postman at the next delivery or redirected to another post-town, as the case may be. If sufficient information regarding the addressee cannot be obtained, the article should be returned to the postmaster as unclaimed. Smt. K.K.Sosamma, the Headmistress who was the next prosecution witness (SW-2), though she had stated before the SW.1 who conducted the preliminary inquiry that she did not receive the registered letters 1972 and 1933, she deposed before the inquiry officer that she had in fact received those letters against her own signature. However, the Inquiry Officer held that all the charges were proved against the applicant. On receipt of a copy of the inquiry officer's report, the applicant made a representation to the disciplinary authority stating that the inquiry officer did not give due weightage to the arguments of the defence and he has not done any offence purposely. Still if he is found guilty, he prayed that he should be excused and to take the following aspects into consideration before the question of punishment is decided:

"(a) There were no complaints from the sender or the addressee of the registered letters mentioned in the charges regarding the non-delivery or wrong delivery. The stipulated period for filing complaints was over in case of all the registered letters. His action has not in any way caused any loss to the department.

(b) He was recruited in relaxation of normal recruitment rules due to the demise of his father a TBOP PA while in service. He had the liability of looking after the family of the deceased consisting of aged and sick mother and unmarried sister. Punishment awarded will badly affect the poor family of the ex-employee directly.

(C) He hails from a poor family of the "weaker sector" of the Society deserving up-lift by all means. He states that it is a social need to ensure that such an official is not awarded major penalties on flimsy grounds.

(d) He had put in four years service in the department. He had never given room for an allegation of this kind in his service. He be excused for offence if any committed. He shall take all necessary steps to avoid a recurrence."

The disciplinary authority, according to its Annexure.A2 order dated 20.9.2001 considered the inquiry report, representation of the applicant and other relevant materials but was not satisfied with the explanation of the applicant and held that the applicant had clearly admitted the charge and ordered for his "Removal from Service" with immediate effect has been impugned in the present OA. The applicant submitted a detailed appeal. In addition to the grounds taken in his representation against the inquiry report before the disciplinary authority, he alleged violation of the principles of natural justice on the part of the disciplinary authority as he had written a letter on 15.2.2001 to the Deputy Director of Education complaining about the SW.2 Smt. K.C.Sosamma that she had gone to the defence side and gave deposition in favour of the applicant and asked them to take action against her. The disciplinary authority has informed them that he was going to report against her to the police. The said letter written by the disciplinary authority was reproduced in the appeal verbatim by the applicant. But the appellate authority did not even consider this aspect and upheld the orders of removal passed by the disciplinary authority. The revisional authority has also agreed with the disciplinary authority and the appellate authority and rejected the revision petition.

4. The applicant has challenged the Annexure.A1 inquiry report, Annexure.A2 removal order, Annexure.A4 appellate order and Annexure.A6 revisionary order on various grounds. He has submitted that

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the said punishment order was unjust, arbitrary and violative of the fundamental rights of the applicant under Articles 16 and 21 of the Constitution of India. He has also submitted that the punishment of "removal from service" imposed upon him on the basis of the findings of the inquiring authority was highly extreme, the findings of the inquiring authority were factually incorrect and grossly against the evidence adduced before it. According to him, SW2 the addressee of the registered letters in question who was examined in the departmental inquiry stated that she had received those letters and there were no complaints from the sender regarding non-delivery or any loss of the said letters. All the findings were unwarranted and unsupported by evidence. He has also alleged that the disciplinary authority made unwarranted interference in the matter by sending the registered letter to the Deputy Director of Education, Malappuram with a copy to the Manager, AMLP School, Mylappuram making allegations against the SW2 Smt.K.C.Sosamma that she had switched over to the defence side and gave deposition in his favour and recommended to take action against her for her 'unscrupulous' stand not expected from a responsible person of her status. The disciplinary authority has also informed the aforesaid parties that it was planning to report the matter to the police for appropriate action against the said Sosamma. The applicant brought those facts to the knowledge of the appellate authority extracting the copy of letter dated 15.2.2001 written by the disciplinary authority to the aforesaid authorities. However, the appellate authority has not considered those aspects at all in his impugned Annexure.A4 order dated 29.4.2002.

5. In the reply filed by the respondents also it was contended that the punishment of removal from service was awarded to the applicant after conducting a detailed inquiry as per the prescribed procedure under Rule 14 of the CCS (CCA0 Rules, 1965 and the reasons for removal from service is that the applicant himself had admitted his guilt during the inquiry and he has not put forward any ground to disprove the findings of the Inquiring Authority. They had also submitted that during the preliminary inquiry it was established that the regd. letters addressed to the Headmaster, AMLP School, Mylappuram were not actually delivered to the addressee but they were delivered irregularly to some other unauthorized persons by the applicant. They have also submitted that it is the duty of the Postman to deliver registered articles to the correct addressee and the responsibility for incorrect delivery of such articles fully rests with the Postman and it was in violation of Rules 115 and 117 of P&T Manual Vol.VI Part III. The respondents have denied the allegation that the disciplinary authority had interfered in the procedure and influenced the procedure. They have also submitted that no such allegations were made by the applicant during the inquiry and it was made only in the appeal made against the disciplinary order.

6. We have heard Advocate Shri P.C.Sebastian for the applicant and Shri C.M.Nazar, ACGSC for the respondents. From the facts of the case, it is seen that even though there were three articles of charges levelled against the applicant, the sum and substance of all of them is that he failed to deliver three Regd.letters addressed to the Headmaster, AMLP School, Mylappuram and delivered it to persons other than the addressee

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without presenting the articles at the given address in contravention of Rules 117 and 115 of the Postal Manual Vol.VI Part III and therefore failed to maintain absolute integrity and devotion to duty violating Rules 3(1)(i) and 3(1)(ii) of CCS (Conduct) Rules, 1964. As regards the first letter No.495 is concerned, the applicant himself has admitted that it was delivered to one Shri Aboobacker, the Manager of the AMLP School who had received it after affixing the stamp of the school which was not denied by the respondents. He also admitted that he did not verify the identity of the person who received the letter as the official stamp of the school itself was affixed on the receipt. As regards the other two Letters No.1972 and 1933 are concerned, the disciplinary authority relied completely on the preliminary report in which SW2, namely, Smt.K.C.Sosamma, Headmistress, AMLP School denied the receipt of those letters and submitted that she did not authorize anyone else to receive the letters on her behalf. However, during the departmental inquiry proceedings held in the matter, she had categorically stated that she was in receipt of those letters and she did not make any allegations of their wrong delivery. It is also to be noted here that according to the charge sheet itself the incident had happened on 28.9.98 and 24.10.98. The article of charges was served on the applicant nearly after two years on 28.7.2000. No reasons were given by the respondents for necessitating an inquiry after such a delay of two years. The contention of the applicant was that there were no complaints from the sender and the addressee about the non-receipt of the letters. Moreover, the addressee has clearly stated in her depositions during the inquiry that she had actually received all the three letters in

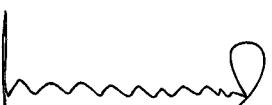
question. But it cannot be ignored that the applicant himself has admitted during the inquiry that RL.No.465 was not delivered the actual addressee and it was delivered to one Shri Aboobacker under the mistaken identity of his affixing the school stamp on the delivery receipt. Therefore, there is definitely a technical lapse on the part of the applicant that he has delivered the said letter to the wrong person. As regards the other letters when the addressee herself has submitted before the inquiry officer that she had actually received those letters there was no reason for the disciplinary authority to disbelieve that. When the prosecution witness herself has stated that she was the person who received these two letters, the inquiry officer should have considered it in the right spirit and should not have claimed that these articles of charges have been proved against the applicant. Moreover, the disciplinary authority's subjective involvement in this matter also creates doubts regarding the actual intention behind the inquiry held against the applicant. It is an undisputed fact that the disciplinary authority had written to the Deputy Director of Education, Malappuram on 15.2.2001 complaining against SW2 Smt.K.C.Sosamma, Headmistress. The disciplinary authority recommended the authorities concerned to take appropriate action against Smt.Sosamma, for her alleged unscrupulous stand which was unexpected of a responsible person of her status. He had also informed the Education Department that he was going to report the whole matter about her to the police. However, the disciplinary authority has not mentioned about it in his order which is quite conspicuous. The attitude of the disciplinary authority towards the applicant was also evident from its order. The disciplinary authority on the

one hand has stated in its order that he had considered the prayer of the applicant to take a lenient view, in view of his family circumstances and social background and it had claimed in its order that it actually took a lenient view. But strangely the punishment imposed upon the applicant was a gravest one, namely, the "removal from service". In the facts and circumstances of the case, by no stretch of imagination one can say that the punishment of "removal from service" imposed upon the applicant was after showing leniency. It only shows the perversity in the order of the disciplinary authority. As is well known, 'dismissal from service' and 'removal from service' in service jurisprudence can be compared only to the capital punishment or life imprisonment in criminal cases. Both the aforesaid sets of punishments are the gravest and the extreme. As held by the Apex Court in **Dr.Dattatraya Mahadev Nadkarni (since deceased by his Lrs) Vs. Municipal Corporation of Greater Bombay,AIR 1972 SC 786** removal is a form of dismissal. The letter dated 15.2.2001 of the disciplinary authority to the authorities in the Education Department before its punishment order dated 20.9.2001 also indicates the predetermined mind of the disciplinary authority. Undoubtedly the punishment of removal from service imposed upon the applicant is wholly disproportionate to the proven misconduct. The appellate order and the revisionary order are also unjustified as they lack application of mind.

7. In view of the above facts and circumstances of the case, the impugned A2 disciplinary order dated 20.9.2001, Annexure.A4 appellate order dated 29.4.02 and the Annexure.A6 revisionary order dated 13.6.2003 cannot be sustained and therefore, they are quashed and set

aside. The punishment of removal from service imposed upon the applicant by the disciplinary authority, upheld by the appellate authority and had the stamp of approval of the revisionary authority is shockingly disproportionate to the proved misconduct. However, the respondents may impose a suitable minor punishment on the applicant which shall be commensurate with the misconduct which have been proved. We, therefore, direct the respondents to reinstate the applicant in service with continuity in service, within a period of two months from the date of receipt of this order, failing which the respondents shall be liable to pay the full salary and allowances to the applicant from the expiry of that date. The competent authority shall pass appropriate orders regarding the manner in which the intervening period between 20.9.2001 ie., the date of removal and the date of reinstatement to the extent stated above be treated for the purpose of payment of backwages. There shall be no order as to costs.

Dated this the 1st day of November, 2006


GEORGE PARACKEN
JUDICIAL MEMBER


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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