

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL ,

ADDITIONAL BENCH, ERLAKULAM

O.A.No.

97 of 1990

Applicant:

P.Balakrishnan Nair, Assistant Postmaster,
Head Post Office, Quilon.

Versus

Respondents:

1. The Government of India, represented by the Secretary to Government, Ministry of Communications, New Delhi.
2. The Member (Personnel) Postal Services Board, Department of Posts, New Delhi.
3. The Director of Postal Services (HQ) Kerala Circle, Trivandrum.
4. The Senior Superintendent of Post Offices, Quilon.

DETAILS OF APPLICATION

1. Particulars of the orders against which the application is made.
 1. Annexure A1. -Order No.DPS(HQ)/INQ/2/85 dated 19-8-1985 passed by the third respondent imposing upon the applicant, the punishment of reduction of pay by 4 stages for a period of three years, ~~xx~~ with effect from 1st September 1985.
 2. Annexure A2 Order No.1/92/89-Vig III dated 25-5-1989, issued by the 2nd respondent modifying Annexure A1.

2. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the orders against which he wants redressal is within the jurisdiction of the Tribunal.

3. Limitation.

The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE:

(1). In 1984, the applicant was functioning as Sub Postmaster of Kilikollur (Lower Selection Grade) under the Administrative Control of the 4th Respondent - Superintendent of Post Offices, Quilon. On 28-1-1984, the Assistant Superintendent of Post Offices inspected the office at 12 A.M. and he verified cash balance. He did not mention any defect or shortage of cash. In the afternoon the 4th respondent also visited the office. He did not verify cash. By about 4 P.M. on the same day, the Sub Divisional Inspector of Post Offices came to the office and inspected the records and verified cash. On such verification the Sub Divisional Inspector said that there is a shortage of Rs.1563.07. The applicant told the Inspector that there is no possibility of any such shortage and requested him to recount the cash. But the Inspector was adamant and he maintained that his verification is correct and there is no question of a second verification. The Inspector asked the applicant to credit the sum of Rs.1563.07 stated to be the shortage. The applicant

thereupon caused deposit of the amount under unclassified receipt in the account of the Post Office under ACG 67, Receipt No.74 dated 28-1-1984.

(2). The 4th Respondent placed the applicant under suspension with effect from 28-1-1984. Thereafter, after the lapse of more than 6 months, the 4th respondent issued a Memo of charges dated 8-8-1984 initiating disciplinary proceedings under Rule 14 of the CCS(CC&A) Rules 1965. The main charge levelled against the applicant is that he caused a shortage of Rs.1563.07 in the cash balance of the Post Office when verified on 28-1-1984. There are few other allegations about maintenance of account book and submission of periodical statements to the Head Post Office. On receipt of the Memo of charges, the applicant submitted a detailed explanation denying the charges. However, the 4th respondent was not satisfied with the explanation and therefore he ordered a detailed enquiry in terms of Rule 14 of CCS(CC&A) Rules 1965. One Sri M.Arumugham, then Asst. Superintendent of Post Offices, Quilon was appointed as enquiry officer. Under Rule 14(8) of CC &A Rules, a delinquent government servant is entitled to take the assistance of another Government Servant or a retired Government servant, to represent him at enquiry under Rule 14. The applicant nominated one Sri K.Madhavan Nair Retired Sub Postmaster, Trivandrum as Assisting Government Servant. But the 4th respondent rejected the nomination on the ground that the said Madhavan Nair has been a practising advocate after his

retirement. Thereupon the applicant nominated one Sri K.P.Narayanan Nair, ~~SM SPM~~, Gandhi Nagar, Kottayam. That nomination was disallowed by the Inquiry Officer on the ground that the said person is from another station. In view of that, the applicant made a third nomination of one Sri NRC.Kurup, P.A. in Quilon. But the 4th respondent allowed the nomination only after commencement of inquiry and therefore the nominated government servant declined to participate in the inquiry. In this situation, the applicant had no alternative than to participate in the inquiry without the assistance of any other government servant.

(3). The inquiry Officer completed the enquiry and gave an opportunity to the applicant to submit written brief. On 23-3-1985 the applicant submitted to the Inquiry Officer that he is not well versed in the proceedings and that he is unable to submit written brief. However, later, the applicant got the written brief prepared and the same was sent to the Inquiry Officer on 25-5-1985. However the Inquiry Officer, without taking into account the written brief so sent to him, submitted a report dated 2-7-1985 to the 4th respondent, wherein he held that all charges are proved. Thereafter, the 3rd Respondent issued an order No.DPS(HQ/INQ/2/85 dated 19-8-1985 imposing upon the applicant, the punishment of reduction of pay by four stages from Rs.485 to Rs.425/- in the scale of Rs.425-640 for a period of three years with cumulative effect. The said order is produced herewith and marked as Annexure A1.

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The applicant was also reinstated in service, after giving effect to the punishment.

(4). Though the applicant had a right of appeal to the 2nd respondent against the punishment order, it so happened that he did not prefer such an appeal. However the applicant preferred a revision petition dated 21-10-86 to the President of India, in terms of Rule 29 of CCS (CC&A) Rules. Thereupon the President's Secretariat informed the applicant as per letter dated 3-11-1986 that the Revision Petition has been forwarded to the Secretary to Government for appropriate action. Thereafter the 4th respondent issued a communication dated 28-11-1986 intimating the decision of the Postmaster General that the Revision Petition is not maintainable. On receipt of the said communication, the applicant filed O.A. No. 68 of 1987 before this Hon'ble Tribunal for a direction to the first respondent to take up and pass orders on the Revision Petition, on merit. This Hon'ble Tribunal by order dated 3-3-1989 allowed the O.A. with direction to the first respondent to pass orders on the Revision Petition submitted by the Applicant, within a period of two months from the date of receipt of a copy of the order.

(5). In pursuance to the direction the 2nd respondent herein has passed and issued order No. 1/92/89 Vig III dated 25-5-1989 modifying the punishment imposed under Annexure A-1. A true copy of the above order dated 25-5-1989 issued by the 2nd respondent is produced herewith and marked as Annexure A2. The applicant is seriously aggrieved by A1 as modified by Annexure A2. Hence he begs to file this

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Application under Section 19 of the Administrative Tribunals Act.

5. GROUNDs:

- (A). Annexures A1 and A2 orders are illegal and discriminatory.
- (B). The findings in Annexures A1 and A2 that the Applicant is guilty of the charges framed against him are perverse and unwarranted.
- (C) The orders Annexure A1 as modified by Annexure A2 are vitiated by errors apparent on the face of the record.

6. Details of remedies exhausted.

The applicant declares that he has availed remedies available to him under the service rules, as stated below.

The applicant has availed the remedy of revision under Rule 29 of the CCS(CC&A) Rules which resulted in Annexure A2 order. There is no further remedy against A2 order under the Service Rules.

7. Matters not previously filed or pending with any other course.

The applicant further declares that he had not previously filed any application, writ petition, or suit regarding the matter in respect of which this application is made before any court or any other bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Reliefs sought for

In view of the facts mentioned in para 4 above the applicant prays for the following reliefs.

(i) an order quashing/setting aside Annexures A1 &A2 orders;

and

(ii) such other consequential reliefs as this Hon'ble Tribunal may deem fit and proper.

The above reliefs are claimed on the following

G r o u n d s:

(A). The inquiry on the basis of which Annexure A2 order has been passed is illegal, and discriminatory for violation of Rule 14(8) of CCS(CC&A) Rules, and the principles of natural justice. The applicant had exercised right under Rule 14(8) by nominating one Sri Madhavan Nair, a retired government servant. The said person does not cease to be a retired government servant by virtue of his having enrolled as an advocate after retirement from service. The decision of the 4th respondent disallowing the said nomination is violative of Rule 14(8) of the Rules. By way of abundant caution, the applicant had made a second nomination of another government servant working in Kottayam. That also was rejected by the Inquiry Officer on the ground that nominating-ed Government servant is from another Station. There is no stipulation in Rule 14 (8) that the delinquent government servant and the nominated government servant should be of the same station. Hence rejection of nomination is illegal and unjustified. Thus the reasonable opportunity and the right under Rule 14(8) has been arbitrarily and illegally denied to the applicant. It has been held by the supreme Court in C.L.Subramanian v. Collector of Customs(AIR)1972 SC..) that denial of

opportunity under Rule 14(8) vitiates the enquiry and subsequent proceedings. The punishment order Annexure A1 as modified by A2 is thus void for non-compliance with Rule 14(8) and principles of natural justice.

(B). The specific contention of the applicant was that there is no shortage and that the assessment of shortage at Rs.1563.07 is incorrect. But the inquiry officer rejected the contention and according to his findings the shortage of Rs.1563.07 is proved. But the fact that a sum of Rs.664.10 has been refunded later would show that the assessment of shortage was incorrect. This fact substantiating the contention of the applicant that the assessment of alleged shortage is absolutely illegal. It is thus evident that the findings of the inquiry officer is perverse. The findings in respect of other minor irregularities are also vitiates. The circumstances would show that the action of the inquiry officer and the disciplinary authority is vitiates due to malafides.

(C). The irregularity in assessing the alleged shortage is actually found by the 2nd respondent. Further the 2nd respondent has also found that the fact that there was extreme pressure of work in the office is the cause for minor omission in the maintenance of records. In these circumstances the 2nd respondent ought to have found that there is absolutely no ground to sustain the finding of misconduct. The facts of the case, clearly warrant total interference with Annexure A1 order. Even the modified punishment has resulted in huge loss and injury to the

applicant.

(D). The 2nd respondent ought to have held that the serious procedural irregularity in the enquiry conducted against the applicant, vitiates the entire proceedings.

9. Interim order prayed for.

No interim order is prayed for.

10. The application is presented to the Tribunal through Counsel.

11. Particulars of the postal order in respect of the Application fee.

1. No: of the I.P.O. 61-~~14~~ 1 288.
2. Name of the issuing P.O. Kaloor P.O.
3. Date of issue of I.P.O. 26.1.1990.
4. Post office at which payable. Ernakulam.

12. List of Enclosures:

1. Annexure A1. Order No.DPS(HQ)/INQ/2/85 dated 19-8-1985 passed by 3rd respondent.
2. Annexure A2. Order No.1/82/89-Vig III dated 25-5-1989 of 2nd respondent.

Verification

I, P. Balakrishnan Nair, aged 51 years, son of Parameswaran Pillai employed as Asst. Post Master in the Quilon H.P.O. do hereby verify that the contents of paras 1 to 4 and 6 to 11 are true to my personal knowledge and that the contents of para 5 are believed by me to be sustainable and that I have not suppressed any material fact.

Dated this the 23rd day of January 1990 at Ernakulam

Mr. R. Nair

R. Nair

Advocate

Signature of Applicant.

Annexure A1.

No.DPS(HQ)/INQ/2/85

Government of India
Office of the postmaster General
Kerala Circle, Trivandrum-695 033

Dated 19th August 1985

ORDER

Sri P.Balakrishnan Nair, LSG Official of Quilon Postal Division was functioning as Sub Postmaster, Kilikollur during the period from 1-5-83 to 28-1-1984. On 28-1-1984 at about 12.45 Hrs Sri K.Padmanabhan Nair, ASP Quilon Division visited Kilikollur S.O by surprise. On verification of cash and stamp balances he found a shortage in the balances of the P.O. The S.O account book (PA-17) of the P.O. had not been written up for the period from 5-11-83 to 24-11-83 and from 26-11-83 to 27-1-1984. Hence it took much time to work out the correct cash and stamp balances. Meantime, Sri T.M.Mathew, S.D.I Quilon North also came to the office. On verifying the accounts and balances, a sum of Rs.1563.07 was found short at the P.O. Sri P.Balakrishnan Nair was questioned about this. In a statement given before the SDI Shri Balakrishnan Nair admitted the shortage. The deficiency in cash was charged in the accounts as unclassified payment on 28-1-1984. Later on the day, it was made good by the official and credited in accounts vide ACG-67 receipt No.73 of the date. Since preliminary enquiries disclosed serious acts of misconduct on the part of Sri P.Balakrishnan Nair, he was placed under suspension and in Memo No.F1/6/83-84 dated 8th August 1984 of SSPOs Quilon an inquiry was ordered against Sri P.Balakrishnan Nair under Rule 14 of the CCS(CCA) Rules, 1965. The articles of charge and imputations framed against him were as follows:-

Article I.

That the said Sri P.Balakrishnan Nair while functioning as Sub Postmaster, Kilikollur during the period from 1-5-83 to 28-1-1984 was found retaining with him Rs.1563.07 short when the cash and stamp balances of Kilikollur S.O were verified by the Sub Divisional Inspector, Quilon North Sub Division on 28-1-1984. Sri P.Balakrishnan Nair by the aforesaid Act has violated Rule 658A of P&T Manual Vol VI Part III and thereby has exhibited lack of integrity violating rule 4 3.1 (i) of CCS(Conduct)Rules,1964.

Article II.

That the said Shri P.Balakrishnan Nair while functioning as Sub Postmaster, Kilikollur during the period from 1-5-1983 to 28-1-1984 failed to write the Sub Office account of his office from 5-11-83 to 24-11-83 and 26-11-83 to 27-1-84 and has thereby violated Rule 658 A of P&T Manual Vol VI Part-III and thus has exhibited lack of devotion to duty thereby violating Rule 3(1)(ii) of CCS(Conduct) Rules,1964.

Annexure II

Statement of imputation and misconduct of misbehaviour in support of the articles of charge against Sri P.Balakrishnan Nair, SPM Kilikollur under suspension.

=: 11 :-

Article I.

The Sub Divisional Inspector, Quilon North Sub Division and Asst. Supdt of Post Offices, Quilon Division paid a surprise visit to Kilikollur S.O on 28-1-84. Sri P. Balakrishnan Nair who was functioning as the Sub Postmaster of the Office from 1-5-1983 was in charge of the office that day. The Sub Divisional Inspector, Quilon North Sub Division verified the cash and stamp balances of the office and found Rs.1563.07 short in the cash balances. The details of cash and stamp balances available with sri P. Balakrishnan Nair at the time of verification was as follows:-

Cash	Rs. 4984.05
Postage stamps	5385.15
Revenue Stamps	20.00
N.S. Stamps	5.00
BRL Stamps	2647.50
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	Rs. 13041.70
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The balance in cash and stamps which ought to have been found in the office at the time of verification was Rs.14604.77, the details of calculation being as follows:

Receipts:

Opening balance on 28-1-1984	Rs. 15,832.17
Received from H.O.	5,372.50
M.O. Issue	309.00
TPH	7,282.65
R.D.	240.25
Telegraphs receipts	3.50
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Total	29,040.07
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Payments:

M.O.paid	Rs. 3,948.00
Nills paid	3.00
Remittance through cheques	6,967.65
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Total	10,649.25
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Balance	18,390.82
Balance due from Kallumthazham	3,786.05
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	Rs. 14,604.77

Sri P. Balakrishnan Nair admitted the shortage in the statement given by him before the Sub Divisional Inspector, Quilon North Sub Division on 28-1-1984. The amount of Rs.1563.07 found short was thereupon charged to UCP in accounts of Kilikollur S.O Shri P. Balakrishnan Nair, SPM made good the shortage immediately and the amount of Rs.1563.07 so made good was credited to the account of

Kilikollur S.O. under unclassified receipts. A receipt was also issued to Sri P. Balakrishnan Nair in ACG-67 receipt book under No. 74 of 28-1-1984 for the sum of Rs. 1563.07 credited by him under UCR.

It is imputed that the said Sri P. Balakrishnan Nair has by the aforesaid act violated Rule 658 A of the P&T Manual Vol VI and has thereby exhibited lack of integrity violating rule 3(1)(i) of CCS(Conduct)Rules, 1964.

Article II.

The SubDivisional Inspector, Quilon North Sub Division and Asst. Supdt of Pos Quilon Division paid a surprise visit to Kilikollur S.O. on 28-1-1984. It was detected by them then that Sri P. Balakrishnan ~~was deputed by them~~ Nair SPM Kilikollur who was functioning as Sub Postmaster, Kilikollur from 1-5-83 had not written up the Sub Office account of his office from 5-11-83 to 24-11-83 and 26-11-83 to 27-1-1984. Sri P. Balakrishnan Nair admitted failure on his part to write the Sub Office account of his office for the aforesaid period in the statement given by him before the Sub Divisional Inspector, Quilon North Sub Division on 28-1-84. Sri P. Gopalakrishna Pillai P.A. Kilikollur and joint custodian for cash and stamp balances along with the Sub Postmaster also deposed before the Sub Divisional Inspector, Quilon North Sub Division on 30-1-84 that the sub office account of Kilikollur for the period of 5-11-83 to 24-11-83 and 26-11-83 to 27-1-84 was not written by Sri P. Balakrishnan Nair who was working as Sub Postmaster, Kilikollur from 1-5-83 to 28-1-84. Sri P. Balakrishnan Nair by his failure to write the Sub Office account for the aforesaid period has violated Rule 658 A of P&T Manual Vol VI Part III and has thereby exhibited lack of devotion to duty violating Rule 3(1)(ii) of CCS(Conduct)Rules, 1964.

2.1. The memorandum was received by Sri P. Balakrishnan Nair on 16-8-1984. He denied the charge. Hence Sri M. Arumugham, ASP, Quilon South Sub Division was appointed ~~as~~ on 17th September 1984 as Inquiry Authority to inquire into the charge. To present the case on behalf of the disciplinary authority Sri P. C. Geevarghese, complaints Inspector was appointed.

2.2. Sri P. Balakrishnan Nair, nominated as his AGS one Sri K. Madhavan Nair, Retired Sub Postmaster, Trivandrum. Since Sri Madhavan Nair was reported to be a legal practitioner his engagement as defence Assistant was not approved by the disciplinary authority as well as by the Inquiry Authority as the Presenting Officer was not a legal practitioner. The delinquent official then nominated Sri K. P. Narayanan Nair, SPM Gandhinagar, Kottayam as AGS. This was not allowed by the Inquiry Authority as the nominated AGS was from outstation and according to latest

orders on the subject the AGS should be from the same station. Subsequently the delinquent government servant nominated Sri N.R.C.Kurup, PA. Quilon but Sri Kurup declined to assist him. Thus, though Sri P. Balakrishnan Nair was given sufficient opportunity to secure the services of a Defence Assistant, he did not secure one and so participated in the inquiry without a defence Assistant. His contentions that he was denied opportunity in nominating a defence Assistant are not tenable in the light of facts stated above.

2.3. The delinquent official called for certain additional documents. These were produced. He requested the production of three persons, viz. (1) Dr. M.T. Yacob, Civil Surgeon, Hospital Road, Quilon (2) Sri M.N. Muraleedharan, ED Messenger, Kilikollur and (3) Sri K. Kunjuraman, Postmaster, Kilikollur as Defence witnesses. The Inquiry Authority decided that the production of Dr. Yacob Civil Surgeon as witness was irrelevant to the case and did not therefore accede to the request of the delinquent. The other two persons were summoned as Defence witnesses and examined.

2.4. On completion of the production of evidence, the delinquent official was given an opportunity to file a written brief of his case. But he did not do so intimating in a letter dated 23-3-85 that he had no brief to submit as he cannot write a brief effectively. Subsequently on 29-5-1985, the disciplinary authority received a written brief from the delinquent. Though this does not form part of the inquiry documents I have taken that also into consideration.

3.1. On conclusion of the inquiry, the Inquiry Authority has submitted his report of findings on 2-7-1985 to the SSP, Quilon holding that both the articles of charge have been proved. A copy of the inquiry report is attached hereto.

3.2. The S.P. Quilon, who is the disciplinary authority, having considered the report of inquiry came to the conclusion that the imposition of major penalty is warranted in the case. Since he is not competent to impose any of the major penalties on the accused government servant who is in the lower selection grade, he has forwarded the case to the undersigned who is the appointing authority in respect of the delinquent.

4.1. I have carefully gone through the report of inquiry and connected records. I agree with the findings of guilt returned by the Inquiry Authority for the reasons stated below.

4.2.4.2. The first article of charge relates to the shortage of Rs.1563.07 in the cash and stamp balances of Kilikollur S.O on 28-1-1984. The shortage is

recorded in the sub office account (PA-17) by the SDI (PW-2). In the written statement deposed by the delinquent official before PW-2 on 28-1-1984 produced and marked as Ext P-1 he has admitted that there was a shortage of Rs.1563.07. Sri K.Padmanabhan Nair, ASP (PW-1) has deposed that on his verification, he had found heavy shortage in the cash balance of the S.O. The delinquent is reported to have told him that the shortage was Rs.3700/-. Since the S.O. account book had not been written up for days and months the Investigating Officers, PW.1 and PW.2 had much difficulty in working out the correct balances of the P.O. Meantime according to PW.1, the delinquent official had gone out and brought a bundle of currency notes and put it inside the office table. The delinquent official has made an attempt to prove that he had not gone out and brought the money. But he has not produced any evidence to show that the money with which he made good the shortage was available in the office at the time of verification. PW.2 Sri T.M.Mathew, SDI, Quilon North has stated that he arrived at the amount of shortage, after working out the balance on the basis of opening balance of 28-1-1984 as furnished by the delinquent Sub Postmaster. It is seen from documents, Exts D-1 (Daily account dated 25-1-85) and Ext P5 (daily account dated 27-1-85) that the accused official had not been preparing the S.O. daily accounts correctly. For example in Ext D-1 he had not accounted an advance remittance of Rs.4700/- sent to H.O. on 25-1-1984. In addition to this there were other mistakes in the closing balance. The opening balance of S.O. daily account dated 27-1-84 has been corrected by the H.O. as Rs.15229/02 from Rs.15933.02 entered by the accused official and the resultant excess Rs.704/- had been accounted by H.O. as UCR. In the same daily account the H.O. has noted an unclassified payment of Rs.39.90 also. Thus the accused official has not been correctly accounting the receipts and payments. One of the contentions put forward by the accused official is that if the UCR of Rs.704/- and UCP of Rs.39.90 were taken into computing the shortage the actual shortage would be Rs.989.97 and not Rs.1563.07 as alleged. In this context it should be remembered that the delinquent official had not written up S.O. accounts for a long period and documents were not available for comparing and checking up the correctness of opening balance of 28-1-84 furnished by the delinquent official. PW.2 Sri Mathew has deposed that the S.O. Daily Account of the previous day viz. 27-1-1984 was not available for verifying the closing balance of 27-1-84 and O.B. of 28-1-84. Hence the O.B. furnished by the accused had to be accepted, and on that basis the amount of shortage worked out viz. Rs.1563.07 is correct. The official in his statement Ext P1 has also accepted this amount as the shortage. Hence the dispute regarding the actual shortage is untenable. Another point put forward by the official is that an inventory of cash and stamps

actually found has not been drawn up by the Investigating Officers as required by Rule 217 of P&T Manual Vol V. and got signed by two independent witnesses. This, of course, appears to be an omission on the part of PW.1 and PW.2 as no inventory is found on the record. But this omission does not in any way disprove the existence of shortage, which has been admitted by the accused official in Ext P-1 as well as while answering questions by the Inquiry Authority. The evidences tendered by the Defence Witnesses DW-1 and DW-2 do not indicate anything to the contrary. In the light of overwhelming documentary and oral evidences, the existence of shortage of cash on 28-1-84 has been proved beyond doubt. Rule 658 A of PIT Manual Vol VI lays down that a Sub Postmaster is personally responsible that the sub office account is correctly and punctually written up before the office is closed for the day and generally that his accounts and cash balances are correct. The accused official has failed to observe this rule. Since he ~~proximly~~ has not properly accounted for Government moneys entrusted to him he has failed to maintain absolute integrity. Rule 3(1)(i) of CCS(Conduct) Rules enjoins that every government servant shall at all times maintain absolute integrity. The accused official has obviously failed to observe this rule also. Thus the first article of charge against him stands fully proved.

4.3. The second article of charge is in respect of the failure of the delinquent official to write sub office account for periods from 5-11-83 to 24-11-83 and from 26-11-83 to 27-1-84. The S.O account book (PA-17) from 29-7-1983 has been produced in evidence and marked as Ext P-3. The document shows that accounts for the periods mentioned above have not been written up. The accused official has admitted this in his reply to the questions of Inquiry Authority. So this charge stands proved. In explanation of the omission the accused official has stated that the office was during the period manned by untrained short duty clerks, that he had himself to perform their work, that due to revision of working hours the counter work had increased and that these had thrown extra work load on him and consequently he could not write up the accounts. Writing of the S.O. account is a personal duty of SPM and it takes only a few minutes to make the necessary entries. His explanation that the omission was due to pressure of work is untenable and unacceptable.

4.4. The accused official has put forward a plea that he was denied sufficient opportunity to defend himself as his nomination of Sri K. Madhavan Nair, a retired P&T official as AGS was not accepted. It has already been pointed out that the said Sri Madhavan Nair is a legal practitioner. Since the Presenting officer was not a legal practitioner the disciplinary authority

was perfectly right in denying permission to the delinquent for engaging a legal practitioner. No principle of natural justice has been violated by this. The subsequent nomination of Sri K. P. Narayanan Nair of Kottayam Division as Defence Assistant was not approved by the I.O. as he was not from the same station. Thereafter the delinquent official nominated Sri N. R. C. Kurup P.A. Quilon but the latter declined to function as AGS. Thus no act of the disciplinary or inquiry authority has deproved the delinquent official of his right to obtain the services of an AGS as permitted by rules. His failure to secure a Defence Assistant cannot be attributed to the Disciplinary or inquiry authority.

5. On a thorough examination of the evidences in the case, I have found that both the articles of charge against Sri P. Balakrishnan Nair have been proved beyond doubt. There are no extenuating circumstances in his favour. The accused is a senior official in the L.S.G. His acts of misconduct are so serious that they render him unfit for further retention in service. Hence the extreme penalty dismissal from service would be fully justified in this case. However, purely as an act of leniency I would impose only a lower penalty. Accordingly I hereby order that the pay of Sri P. Balakrishnan Nair be reduced by four stages from Rs.485/- to Rs.425/- in the scale of Rs.425-15-560 -EB 20- 640/- for a period of three years with effect from 1st September 1985. It is further directed that Sri P. Balakrishnan Nair will not earn increments of pay during the period of reduction and that on expiry of this period the reduction will have the effect of postponing his future increments of pay.

Sd/-

M. Thomas Varghese
Director of Postal Services (HQ)
Kerala Circle, Trivandrum-33

To

Sri P. Balakrishnan Nair. Ex SPM Kilikolloor through SSP Quilon. A copy of inquiry report is enclosed

-True copy- *Bhag*

This is the document referred to in the O& marked Annexure A 1.



Advocate

No.1/92/89-Vig III
Government of India
Ministry of communications
Department of Posts

Dak Bhavan, Sansad Marg.
New Delhi 110 001

Dated 25-5-89

O R D E R

This is regarding judgment of the Central Administrative Tribunal, Ernakulam in the case of Sri Balakrishnan Nair, LSG P^A. Quilon against whom the penalty of reduction in his pay by four stages from Rs.485/- to Rs.425/- in the time scale of pay for a period of 3 years w.e.f 1-9-85 had been ordered by the disciplinary authority i.e DPS(HQ) @ the PMG Kerala Circle, Trivandrum. The Tribunal has directed that the petition of the official submitted to the President of India and re-directed to the first respondent viz. Secretary, Ministry of Communications should be disposed of within two months of the date of receipt of the copy of the judgment. The order of the court was received on 23-3-1989. In the meantime, the petitioner has submitted a petition dt 8-4-89 to Member(P) against the said penalty.

2. The case, in brief, is that Sri P. Balakrishnan Nair was working as SPM, Kilikollur during the period from 1-5-83 to 28-1-84. On 28-1-84, the ASPM Quilon D^N visited Kilikollur ~~as~~ f SO for a surprise check and on verification of the cash and stamp balance, he found a shortage of Rs.1563.07. It was also noticed during the verification that the S.O. Account Book(PA-17) of the P.O. had not been written up for the period from 5-11-83 to 24-11-83 and from 26-11-83 to ~~22~~ 27-1-84. In a statement given to the SDI, who had accompanied the ASP, Quilon during the surprise visit, Sri Balakrishnan Nair admitted the shortage and the deficiency in cash was charged in the account as unclassified payment on 28-1-84. Later it was made good by the official and credited in the accounts vide ACG-67 receipt No.73 dt 28-1-84.

3. Disciplinary proceedings were initiated against the official for the above lapses noticed on his part under Rule 14 of the CCS(CCA) Rules, 1965. Since, the petitioner denied the charges, as open enquiry was conducted as per the provisions of Rule 14 of CCS(CCA) Rules 1965. On conclusion of the inquiry, the I.O. submitted his report holding the articles of charges proved. The SPOs, Quilon, who was the disciplinary authority, having considered the IO's report and other facts and circumstances of the case, came to the conclusion that imposition of a major penalty was

warranted in this case. Since he was not competent to impose any of the major penalties, the case was referred to the DPS(HQ) who was the competent authority for the imposition of the major penalties. The DPS(HQ) after careful consideration of the I.O's report, imposed upon the official the penalty of reduction of his pay by four stages from Rs.485/- to Rs.425/- in the time scale of pay for a period of 3 years w.e.f 1-9-85. The official did not submit any appeal against the impugned order of the DPS(HQ) within the stipulated period. Rather, he submitted a petition dt 21-10-86 addressed to the Hon'ble President of India. The official was informed by office of the PMG, Kerala Circle, Trivandrum that a petition would not lie to the President of India at that stage because the other departmental channels available to the official had not been exhausted and that he was free to prefer a petition to Member(P) Postal Services Board. In the mean time, the official had filed an application before the C.A.T. Ernakulam Bench against the impugned punishment order. The said application filed by the Official before the C.A.T. Ernakulam Bench has been disposed of with a direction as mentioned in para 1 above.

4. In the present petition to the President of India, the petitioner has stated that he had nominated Sri K. Madhavan Nair, a retired P&T pensioner, as his defence assistant. But the I.O. turned down his request on the ground that Mr. Nair was a legal practitioner after retirement and as such, the SPS could not take his assistance. The denial to avail the services of a retired government servant tantamounts to violation of principles of natural justice. The submission of the petitioner is not correct in view of the fact that the petitioner had a right to avail the services of a legal practitioner only if the ~~present~~ Presenting Officer was also a legal practitioner or the I.O. would have allowed the services of a legal practitioner as Defence Assistant in case he was satisfied taking into account the facts and circumstances of the case. In the present case none of the above conditions were satisfied and the I.O. rightly dis-allowed the services of Sri Nair, who was a legal practitioner at the time of inquiry.

5. The Petitioner has further submitted that the I.O dis-allowed the services of Sri K.P. Narayanan Nair also on a different ground that he was an official from out station. Here also, the petitioner contends that he was denied reasonable opportunity to defend his case. This submission of the petitioner is also not

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acceptable in view of the fact that government servants from other stations can be allowed only if there is no other government servant at the station of inquiry who can assist the S.P.S. It was not a case of non-availability of any other Government servant at the station of inquiry. The S.P.S. should have nominated a Government servant from the same station where the inquiry was being conducted.

6. Finally, the petitioner nominated another Govt. servant from Quilon Town itself. But his services were not available to him because he was not relieved by his controlling officer and as such, he had to defend the case himself. This submission of the petitioner is factually incorrect in view of the fact that the records reveal that Sri N.R.Chandra Kurup, P.A. Quilon H.O who had been nominated by the petitioner, declined to work as AGS, vide his letter dt 26-1-1985. The petitioner was informed by the I.O. and was asked to nominate other government servant from the same station, but he did not make any nomination. Rather he informed the I.O. that he was not making any further nomination and further informed that he would himself defend the case. As such, there is absolutely no denial of natural justice.

7. With regard to Article I of the charge, the petitioner has submitted that the stamp and cash balances was not verified in his presence by the S.D.I. Quilon and A.S.P. Quilon. in 28-1-84, as alleged. The same was verified by Sri K.Padmanabhan Nair himself. Due to a mere arithmetical mistake the opening balance of 28-1-84 was written by the petitioner as 15832.17 instead of 15169.07. Finally he was forced to remit an amount of Rs.1563.07 which had been calculated as a shortage in his cash stamp balances. Later on it was found that the actual shortage was only Rs.898.97 instead of Rs.1563.07. Thus, an excess amount of Rs.664.10 was credited by him due to the error of the Inspecting Officers, which had been admitted by the disciplinary authority also in the punishment order. Now the point for consideration here is that the petitioner did not bring out any case that the shortage was less by 663.10 on 28-1-84 at any stage of the inquiry. If there was a defect in assessing the amount of shortage found on 28-1-84, it was open to the petitioner to bring out the defect during the inquiry by a proper evidence, which was sanctioned to the petitioner, has been misinterpreted by him. The fact remains that the refund sanctioned was an excess amount found in the daily account of the S.O. dt 27-1-84 and not on 28-1-84. On 27-1-84, the petitioner had taken a wrong opening balance and the net excess of Rs.663.10 was taken to UCR and this UCR credit was refunded to him later on. From this fact it is clear that on 28-1-84 the shortage was of Rs.1563.07 and not less than this, which was admitted by the petitioner

1563.07
663.10
-92.00

in writing and further he himself credited the amount under UCR. If he was really innocent, there was no need for him to credit the amount. Thus, it is proved beyond any shadow of doubt. In fact, there was a shortage of Rs.1563.07 in the balance of this a sub office and the petitioner was wholly responsible for the same. This kind of shortage in the accounts of a Government office indicates that the petitioner had temporarily misappropriated the amount in question for this personal use and had there been no inspection on the said date, the petitioner could have misused the government funds for still longer period.

8. The next contention of the petitioner is that the second article of charge relates to non-writing of S.O. account of the office for some period. In this connection he has stated that he used to maintain his S.O. account perfectly in order, but due to some rush of work and change of working hours of the office, he took help of some untrained short duty clerks and due to this reason, S.O. account could not be completed for certain periods. The submission of the petitioner deserves consideration on account of the fact that there might have been some increase in work due to change of working hours and increase in the work load of various counters and he might not have been able to write the S.O. account regularly.

9. From the above discussion of facts and circumstances of the case, it has come to light that Article I of the charge relating to shortage in the cash and stamp balances of the official has been proved without any doubt on the basis of his own admission also and the charge is serious enough warranting one of the major penalties. However, it is felt that the amount involved is small and as such the penalty of reduction in stage by four stages from Rs.485/- to Rs.425/- for a period of 3 years with cumulative effect is slightly dis-proportionate to the charges proved. The petitioner deserves some consideration on account of increase in work in his office also. Keeping these facts in view, it is felt that the ends of justice would be met if the penalty is modified to that of reduction in pay by four stages for a period of 1 year only with further direction that the reduction will not have effect of postponing his future increments of pay.

10. In view of the foregoing discussions and in exercise of the powers conferred vide rule 29 of CCS(CCA) Rules 1965, I hereby order accordingly.

Sd/ Sri P. Kailash Prakash Member(Personnel)
Balakrishnan Nair Postal Services Board

True copy-
This is the document referred to in OA & marked Rx
Annexure A-2.

Advocate

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Filed on :

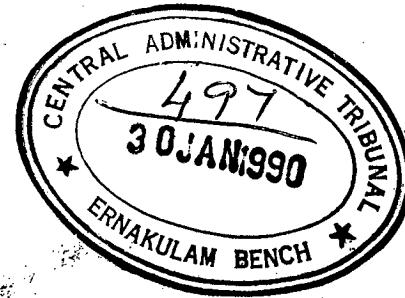
BEFORE THE CENTRAL ADMINISTRATIVE
TRIBUNAL, ADDL BENCH ERNAKULAM.

O.A.No. 97 of 1990

P.Balakrishnan Nair ... Applicant

Vs.
The Govt of India
and others ... Respondents

Application filed under Section
19 of the Administrative Tribunals
Act



*28/3/90
3/3/90*
K.R.B.KAIMAL
ADVOCATE FOR THE APPLICANT

*Received Copy
J.C. Gopal
Jercivikar
Date 30-1-90
30-1-90*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM

OA NO.

97

OF 1990

P. Balakrishnan Nair.

..... Applicant

vs.

The Govt. of India & Others.

..... Respondents.

REPLY STATEMENT FILED BY RESPONDENTS

I, S. Meenakshi Sundaram aged 57 Years, S/O M. Sastha Iyer, do hereby solemnly affirm and state as follows :-

1. I am the 4th Respondent in the above original application. I am fully conversant with the facts of this case. I am filing this reply statement on my own behalf and on behalf of the other respondents also.

2. The averments and allegations contained in the original application are denied, except those which are specifically admitted hereunder.

3. Regarding the para 4(i) of the original application, it is respectfully prayed that the applicant was functioning as Lower Selection Grade Sub Postmaster, Kilikollur Sub Post Office from 1-5-83 to 28-1-84 which is under the administrative control of the 4th respondent. On 28-1-84 the Asst. Supdt. of Post Offices, Quilon Division visited Kilikollur Post Office and verified the cash and stamps balance of the office. It is not correct to say that he did not mention any defect or shortage of cash. It is true that the 4th respondent visited the office in the afternoon. As the Asst. Supdt. of Post Offices of the office of the 4th Respondent was already available at Kilikollur Post Office examining the records, it

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was not necessary for the 4th respondent to verify the cash. The Supdt. of Post Offices has to take up the investigation personally only in cases which are not within the competence of the Asst. Supdt. of POs or Sub Divisional Inspector of Post Offices. In this case the monetary limits for investigation by the latter was not exceeded and therefore it was not at all necessary on the part of the Supdt. of Post Offices to take up the investigation personally or to verify the cash and stamp balance of the office. The Sub Divisional Inspector of Post Offices under whose jurisdiction the post office lies, inspected the records and verified the cash and stamp balances of the office in the afternoon on 28-1-84 as per the direction of the Supdt. of Post Offices. He found a shortage of Rs 1563.07 in the cash balance. The applicant had not stated or requested anybody to recount the cash. Therefore, it is not at all correct to say that the Sub Divisional Inspector was adamant and that he maintained that his verification was correct and there was no question of second verification. There is no point in the argument that the applicant credited the sum of Rs 1563.07 in post office only because Inspector asked him to do so. No sensible man would credit so much amount from his pocket simply because an Inspector directed him to do so unless he accepted the shortage. The shortage was actual and the applicant credited the amount into Post Office accounts on the same day. Further the applicant never represented before any higher authority about any such compulsion by the Sub Divisional Inspector. Neither the Sub Divisional Inspector has no disciplinary or appointing power over the official, nor he has power to transfer him.

4. The contentions raised by the applicant in para 4(2) are denied. It is true that the 4th respondent placed the applicant under suspension with effect from

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28-1-1984. On 8-8-84 the applicant was issued with a memo of charges initiating disciplinary action under Rule 14 of the CCS (CCA) Rules 1965 for shortage of Rs. 1563.07 on 28-1-84 and for non-maintenance of S.O. account, and the applicant received the same on 16-8-1984. On the denial of both the charges by the applicant, an oral inquiry in terms of Rule 14 of the CCS(CCA) Rules 1965 was ordered to be held. The then Asst. Supdt. of Post Offices, Quilon South Sub Division was appointed as the Inquiry Officer. The delinquent Govt. servant was entitled to take the assistance of another Govt. servant or retired Govt. Servant to present the case on his behalf under Rule 14(8) subject to certain conditions. The applicant nominated one Sri. K. Madhavan Nair, Retired Sub Postmaster, Trivandrum to assist him the inquiry. But this was not permitted as Sri. K. Madhavan Nair was a legal practitioner and the presenting officer appointed in this case was not a legal Practitioner and also having regard to the circumstances of the case like the nature of offence and documents involved. The nomination of Sri. K.P. Narayanan Nair, Sub Postmaster, Gandhinagar, Kottayam as the Assistant Govt. Servant was not allowed as the Assisting Govt. Servant was from an outstation and according to the then orders the Assisting Govt. Servant should be from the same station. Thereafter the applicant nominated one Sri. N.R.C. Kurup, Postal Assistant, Quilon as his Assisting Govt. Servant and this was allowed, and the permission was communicated to the applicant on 3-1-85. But Sri. N.R.C. Kurup declined to function as the Assisting Govt. Servant of the applicant. This fact was intimated to the applicant by the Inquiry Authority on 31-1-85 vide letter No. ASP/1/84 and the applicant was advised to nominate some other Govt. Servant to assist him in the inquiry. But the applicant did not nominate any other person. The inquiry started in full swing only on 21-2-85 with the examination of charge side witnesses. Therefore, the argument of the applicant that the 4th respondent

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allowed nomination of his Assisting Govt. Servant only after commencement of the inquiry and therefore the nominated Govt. servant declined to participate in the inquiry is contrary to the facts and therefore is not maintainable. It was upto the applicant to choose another Assisting Govt. Servant and there was sufficient time at his disposal to get this done. Still the applicant preferred to conduct his case without any assistance.

5. The contention of the applicant in para 4(3) is baseless. The applicant participated in the inquiry by arguing his case himself throughout. He also desired production of additional documents and therefore it was not correct on the part of the applicant to say, at the close of the proceedings, that he was not well versed in the proceedings. Though the applicant stated on 23.3.85, that he had no ~~ex-~~ brief to submit, later the disciplinary authority received the written brief on 29.5.85 and the disciplinary authority before passing the punishment order has duly considered this brief. The argument of the applicant that his written brief was not taken into account is not correct. This position has been clearly discussed in para 2.4 of Annexure A-1 order issued by the 3rd respondent.

6. Regarding paragraph 4(4), it is respectfully submitted that as the punishment was imposed on the applicant by the 3rd Respondent he should have submitted his appeal to the Postmaster General, Kerala Circle within the prescribed time limit. But it is seen that the applicant submitted a revision petition to the President of India on 21-10-86 and as directed by the Postmaster General, Trivandrum he was informed that a petition did not lie to the President at that stage. Thereupon the applicant approached this Honourable Tribunal and the latter in its order dated 3-3-89 in OA 68/87 observed that the revision petition dated 21-10-86 of the applicant addressed to the President of India was not properly considered and disposed off while directing the first Respondent thereby (the Secretary, Communication Department, Dept. of Posts, New Delhi) to dispose of the petition in accordance with law within 2 months of receipt of the order.

7. The averments in para 4(5) are denied. A petition addressed to the Member(P) Department of Posts, New Delhi was obtained from the applicant on 8-4-89 and the same was disposed off by the 2nd Respondent by order No. 1/92/89/Vig.III dated 25-5-89 modifying the punishment imposed by the 3rd Respondent.

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8. The allegations in para 6 are not correct. The punishment was imposed on the applicant by the 3rd Respondent. As such the applicant should have preferred an appeal to the Postmaster General, Trivandrum within the prescribed time limits. This was not done by the applicant. Instead he submitted a revision petition to the President of India which was not in order.

9. Regarding Ground (A) it is respectfully submitted that rule 14(8) of the CCS (CCA) Rules 1965 has not been violated. The said rule does not stipulate that a retired Government Servant who is a legal practitioner can be nominated for assisting the Government Servant when the presenting officer is not a legal practitioner. The decision of the 4th respondent disallowing the nomination of Shri Madhavan Nair who was a legal practitioner as Assisting Govt. Servant is not therefore violative of Rule 14(8) of the CCS (CCA) Rules. In accordance with D.G's letter No. 13/11/83/VIG/III dated 16-8-83 the delinquent Govt. Servant can take the assistance of any other Govt. servant posted in any office either at his head quarters or at the place where the inquiry is held. It is open to the Inquiring Authority not to allow a Govt. Servant posted at another station to work as Assisting Govt. Servant as per the above letter of the D.G. As such rejection of such nomination is not illegal and unjustified. Therefore, no reasonable opportunity is denied to the applicant. The applicant was free to nominate another Govt. servant and accordingly he nominated another Govt. Servant and this was allowed. But the nominated Govt. Servant declined to work as his Assisting Govt. Servant. As such Annexure-I punishment order which was modified by Annexure-II is not void as there is neither non-compliance of Rule 14(8) nor violation of principles of natural justice.

10. The averment in Ground (B) is devoid of merit. The applicant has not stated any where or at any stage that there was no shortage of cash. The shortage was assessed as Rs.1563.07 on verification of the accounts maintained by the applicant. It is true that the applicant was given a refund of Rs.663.10. This happened due to the incorrect maintenance of the accounts by the applicant. The refund was granted in consideration of the adjustment of the excess credit made in the Head Post Office accounts which amount was brought under 'unclassified receipt'. The order of refund was issued on the specific request of the applicant.

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This does not disprove the facts that there was shortage of cash in the office on 28-1-1984. If there was no shortage of cash the applicant would not have ventured to credit the amount of Rs. 1563.07. Therefore, the action of the Inquiry Officer and the disciplinary authority is not vitiated and there is no malafides.

11. Regarding ground (c) it may be noted that the 2nd respondent had found that the charge against the applicant relating to shortage of cash had been proved without any doubt and the charge was serious enough warranting one of the major penalties. However some leniency was shown to the applicant. The 2nd respondent felt that the amount involved is not very big. Accordingly the punishment imposed on the applicant by the 3rd Respondent was modified by the 2nd Respondent by Annexure A-2 order dated 25-5-89.

12. For the reasons stated above, it is respectfully submitted that the applicant is not entitled to any reliefs prayed for. So this Hon'ble Tribunal may be pleased to dismiss the application with costs.

VERIFICATION

I, S. Meenakshi Sundaram aged. 57 years, son of. M. Sastha. Jeyer. do hereby verify that the statement of facts contained above are true to the best of my knowledge, information and belief.

Dated. Quilon this the.. 23rd day of March 1990.

Sundaram
..... Respondent

Solemnly affirmed and
Signed in my presence
this day, the 23rd March 1990.

ATTESTION

J
23/3/1990
(K. K. JOSHI (H))
कार्यालय: कुल्लू
कोडलोन-६९१००९
SUPERINTENDENT
CENTRAL TELEGRAPH OFFICE
KULLOON-691001. PHONE.522*

(28)

Posted to 24-4-90

Filed on: 26-3-1990

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 97 of 1990

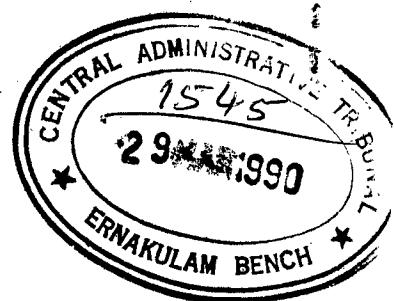
P. Balakrishnan Nair. Applicant.

-Vs-

Union of India & others... Respondents

REPLY STATEMENT FILED BY THE FOURTH

RESPONDENT



Advocate:-

T. P. M. IBRAHIM KHAN,
Standing Counsel for the Department
of Post.

Revive GM
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28/3/90
K. R. S. Iyer
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