

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 102 of 1990
T. A. No.

DATE OF DECISION 25-11-1991

M Ramachandran Nair Applicant (s)

M/s Babu Thomas &
Marykutty Babu Advocate for the Applicant (s)

Versus

Dept. of Posts(CPMG, Kerala) Respondent (s)
and 3 others

Mr KA Cherian, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? N
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The applicant who commenced ~~the~~ service as Postman in Thycaud Post Office, Trivandrum on 19.10.1982 was placed under suspension by order dated 28.2.1983 by the third respondent.

He was served with a memorandum of charges at Annexure-A1 dated 12.9.1984. There were 3 heads of charges. The charges are as follows:

"ARTICLE-I

That the said Shri M Ramachandran Nair, while functioning as Postman, Thycaud HO on 28.12.82 failed to pay the value of FPO 1704 money order No.4437 dated 10.12.82 for Rs.25/- payable to Smt.P Gomathy, T.C. 16/1048, Panayil House, Jagathy Thycaud and remitted by Shri K Raghav No.1381957, 5004, ASC BN C/o 99 APO to the correct payee. The money order was treated

as paid by him on 28.12.82 and returned with a signature other than that of the payee on the MO form. By the above said act, Shri M Ramachandran Nair has failed to maintain absolute integrity and devotion to duty violating the provision of Rule 3(1)(i) and (ii) of CCS (Conduct) Rules 1964.

ARTICLE-II

That the said Shri M Ramachandran Nair while functioning as Postman, Thycaud on 12.2.83, did not pay the value of Ghatkopar West Bombay money order No.4657 dated 9.2.83 for Rs.600/- payable to Smt.Rajashri Nair, Jaivihar Jagathy, Thycaud and remitted by Flight Lieutenant Madhusudan Nair, Officers Mess Air Force Station, Cotton Green Bombay-33 to the payee. The money order was treated as paid on 12.2.1983.

ARTICLE-III

That the said Shri M Ramachandran Nair, while functioning as Postman, Thycaud HO on 5.2.83 did not pay to the payee the value of Sastrinagar Madras money order No.4173 dated 2.2.83 for Rs.100/- payable to Mrs Janaki Amma, Sivamandiram, Jagathy, Trivandrum-14, remitted by Mrs.Asha Sivaram, No.7, 6th Cross Street, Sasthri Nagar, Adayar, Madras-20. The money order was treated as paid by him on 5.2.83.

By the above said act, Shri M Ramachandran Nair has failed to maintain absolute integrity and devotion to duty and violated the provisions of Rule 3(1)(i) and (ii) of CCS (Conduct) Rules, 1964.

3. The statement of imputations of misconduct or misbehaviour in support of the articles of charges framed against Shri Ramachandran Nair is as follows:..."

Though the applicant submitted a written statement of defence, the third respondent ordered an inquiry to be held under Rule 14 of the CCS (CCA) Rules. The 4th respondent who was appointed as Inquiry Authority examined 8 witnesses and marked 20 documents. After considering the evidence and the written

briefs submitted by the Presenting Officer and the applicant, the 4th respondent held that the charges were proved and submitted the Inquiry Report to the third respondent. The third respondent concurring with the findings of the 4th respondent held the applicant guilty of the charges and by order dated 28.11.1986 imposed on the applicant a penalty of dismissal from service. The appeal filed by the applicant challenging the order of dismissal was dismissed by the Appellate Authority. Thereafter the applicant filed OAK-315/87 before this Tribunal. It was contended in the above application that the inquiry was vitiated as the applicant was not given adequate opportunity to defend his case as he was not allowed to cross-examine the witnesses 3 and 6, that certain documents required by him for making his defence were not made available and that the Inquiry Authority was biased. Finding that in not giving adequate opportunity to the applicant for cross-examining the witnesses 3 and 6 and in not making available to the applicant the documents required by him, the principles of natural justice have been violated, the Tribunal allowed the application, set aside the order of the Disciplinary Authority and the Appellate Authority and directed the Disciplinary Authority to have the inquiry conducted on the same memorandum of charges affording opportunity to the applicant to inspect the document relied in the memorandum of charges and to cross-examine the witnesses 3 and 6. Pursuant to the above order, the third respondent directed the 4th respondent to

conduct the inquiry as directed in the order of the Tribunal. The applicant submitted a bias petition to the third respondent requesting for a change of Inquiry Authority. This representation was rejected. Therefore the applicant filed OA-190/89 for a direction to change the Inquiry Authority. This application was dismissed. After dismissal of this, applicant submitted another representation to the 1st respondent stating that as he did not expect justice from the 4th respondent some other Inquiry Authority may be appointed. Anyway, the inquiry was proceeded with. The applicant was provided with the assistance of Mr R Narasimhan, nominated by him as his defence assistance. The witnessess 3 and 6 were recalled and offered for cross-examination but the complaint register and the original acknowledgement of the payees of the money orders demanded by the applicant were not made available to him. On completion of the inquiry, the 4th respondent again submitted the inquiry report dated 26.6.1989 Annexure-AIV holding that the charges were established. The applicant was supplied with the copy of the Inquiry Report and was given an opportunity to make his representation. The applicant made a representation pointing out the infirmity in the proceedings and contending that the charges have not been established. The Disciplinary Authority by order dated 17.7.1989 at Annexure-A-VII held the applicant guilty of the charges and imposed on the applicant a penalty of dismissal

from service with immediate effect. The 2nd respondent to whom an appeal was filed against the Annexure-A-VII order dismissed the appeal confirming the findings and the punishment imposed by the third respondent by order at Annexure-A-IX. Aggrieved by the above said orders, the applicant has filed this application praying that the inquiry report of the 4th respondent at Annexure-A-IV, the order of the Disciplinary Authority at Annexure-A-VII and the order of the Appellate Authority at Annexure-A-IX may be quashed and that the respondents be directed to reinstate the applicant in service with all consequential benefits. It has been averred in the application that the inquiry proceedings is vitiated as the 4th respondent is biased against him, that the Inquiry Authority has committed a grave error in law by not making available to the applicant the complaint register and the originals of the acknowledgements of the money orders thereby disabling the applicant from making proper defence, that the findings of the Inquiry Authority and the Disciplinary Authority that the applicant is guilty of the charges are perverse, that the Appellate Authority has not considered the various grounds raised by him in the appeal memorandum especially, that the third respondent who is on deputation from RMS and was holding a charge of Superintendent of Post Offices was not competent to impose the penalty of dismissal on the applicant, that the defence of the applicant that the 3 money orders in question were mistakenly paid to

wrong payees owing to his inexperience has been arbitrarily rejected by respondents 2,3 & 4 and that even if it is assumed that the charges have been established, the punishment of dismissal from service is too harsh and disproportionate to the misconduct alleged.

2. In the reply statement, the respondents have contended that as the only ground alleged in the bias petition was that the 4th respondent had earlier found the applicant guilty and as he had not made available to the applicant, the services of Shri Narasimhan, his defence assistance and as the services of Shri Narasimhan was made available to the applicant, there is no basis for the contention of the applicant that the 4th respondent is biased against him. It has been contended that the inquiry has been conducted in full compliance with the principles of natural justice and the directions of the Tribunal in OAK-315/87. Regarding the complaints register and the original acknowledgement receipts not being made available, it has been contended that the acknowledgements being not with the Department and the complaint register being not relevant for the purpose of the inquiry, no prejudice has been caused to the applicant in his defence and that there is no merit in the contention that the inquiry is vitiated for non-supply of these documents. The respondents have contended that as the impugned orders have been passed after a proper inquiry and ~~due~~ application of mind, the challenge against them is unsustainable.

3. We have perused the pleadings, documents and the file relating to the disciplinary proceedings. We have heard the learned counsel on either side.

4. The learned counsel for the applicant argued that the 4th respondent being biased against the applicant, the inquiry held by him cannot be taken as an impartial one and that therefore the whole proceedings is vitiated. Annexure-A-III is a copy of the representation submitted by the applicant to the Chief Post Master General on 31.3.1989. The only ground stated in this representation for the apprehension of the applicant in the mind that the 4th respondent is biased against him is that the services of Shri Narasimhan were not made available to him as defence assistance. But we find that the 4th respondent had issued orders directing that the services of Shri Narasimhan should be made available to the applicant for enabling him to make a proper defence and that pursuant to that the services of Shri Narasimhan were made available to the applicant. So there is absolutely no basis for the argument that the inquiry authority is biased against the applicant and that the proceedings held by him were not impartial. We have carefully gone through the proceedings of the inquiry. We find that the inquiry authority had taken due care to see that every opportunity is afforded to the applicant to make a proper defence and that the inquiry was held in conformity with the rules and principles of natural justice. Hence we ^{don't} find any force in this

argument. The learned counsel next contended that since the Inquiry Authority did not make available to the applicant the complaints register and the acknowledgements of the money orders which were required by him despite a direction by the Tribunal in the order in OAK-315/87, the inquiry held by him is vitiated for violation of principles of natural justice and also for the violation of the order of the Tribunal in OAK-315/87. In the order in OAK-315/87, this Tribunal had made the following direction:

"....We direct the respondents to have the enquiry conducted on the same memorandum of charges. The applicant shall be afforded opportunity to inspect the documents relied upon in the memorandum of charges. He shall also be given an opportunity to cross-examine P.Ws 3 and 6. The statement of the other witnesses will stand and they can be made use of by the enquiry authority. After the cross-examination of P.Ws 3 and 6 the applicant will be enabled to file his written brief in the light of the entire evidence before the enquiry authority. After the matter is closed the enquiry authority shall reconsider the entire evidence and submit a fresh report to the disciplinary authority which the latter shall consider, irrespective of what it has earlier stated in its report and the disciplinary authority shall pass orders in accordance with the law."

As Annexure-A-III to the memorandum of charges, 20 documents are listed as documents on by which the articles of charges are proposed to be sustained. The complaint register or the acknowledgement of the money orders have not been shown in the list. Therefore, the argument of the learned counsel that the direction contained in the order in OAK-315/87 have been violated for non-supply of the complaint register and

and the money order acknowledgements cannot stand. Anyhow if these documents were relevant materials, and if the non-availability of which would anyway prejudice the defence, it could be said that there has been violation of principles of natural justice, if the Department was in possession of these documents or if the documents were within the reach of the Department. From the pleadings and the evidence on record it is evident that the facts that the applicant was working as Postman on the relevant dates and that the 3 money orders to which the charges relate were entrusted with the applicant for delivery to the addressees and that the applicant had shown these money orders as paid to the respective payees are facts which are beyond dispute. Smt. Rajashree Nair examined as PW-6 at the inquiry has proved the complaint sent by her husband Flight Lt. Madhusudan Nair regarding non-payment of the money for Rs.600/- sent by him to Smt. Rajashree Nair. This document has been marked as Exbt.P.19. The complaint register is maintained only for the purpose of entering the details regarding the complaint. The preservation period of such registers as per Postal Manual V.VI, Part 1, Item 30 is only $1\frac{1}{2}$ years. The complaint was made in the year 1983 and evidence of the inquiry was taken more than $1\frac{1}{2}$ years later. According to the Disciplinary Authority, the complaint register was not available. The question is whether the non-production of the complaint register has caused any prejudice to the defence. Inasmuch as it has been proved that a ^{complaint} was

made by Flight Lt. Madhusudan Nair to the effect that a money order sent by him to his wife Smt Rajashri Nair was not delivered and as Smt Rajashree Nair has proved this fact that the money order was not paid to her, whether this complaint was entered in the complaint register or not is of no consequence. No prejudice can be said to have caused to the applicant on account of the non-availability of such a register. Similarly, the acknowledgement of the money orders are documents which would not be in the possession of the Department. These documents are also of no consequence in deciding whether the money orders have been actually paid to the respective payees inasmuch as the applicant himself had admitted in his pleadings that on account of his inexperience, payment must have been made to wrong persons. Therefore, we are of the view that the non-availability of these documents have not in any way, prejudiced the defence. The argument advanced on the side of the applicant that for not making these documents available to the applicant, the inquiry is vitiated has therefore to be rejected.

5. The learned counsel for the applicant vehemently argued that the finding of the inquiry authority and Disciplinary Authority that the charges were established are perverse and not based on any acceptable evidence. The three payees in respect of the money orders concerned in this case have given evidence in unambiguous terms that

the money orders were not paid to them at the time when they were questioned at the preliminary inquiry. That the applicant was the Postman who was entrusted with these money orders that he had reported that these money orders were delivered by him to the respective payees are facts admitted by the applicant. The case of the applicant is that as he started working at Thycaud only recently by mistake, he would have made payment to wrong persons. That he had made payments to wrong persons have not been established by the applicant by any evidence. On a careful scrutiny of the entire evidence adduced at the inquiry, we are convinced that the findings of the inquiry authority which was confirmed by the Disciplinary Authority are based on clear, cogent and convincing evidence. Therefore we reject the argument of the learned counsel for the applicant that the findings are perverse.

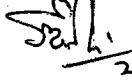
6. last argument the learned counsel urged that the punishment of dismissal from service is disproportionate to the misconduct alleged. The applicant has started his career as a Postman only on 19.10.1982. On 28.2.1989 he was placed under suspension on the basis of an inquiry held in respect of complaints of non-delivery of money orders. In the inquiry held under Rule 14 of the CCS(CCA)Rules, it was established beyond doubt that the applicant has reported that the 3 money orders relating to the 3 charges have been delivered to the respective addressees without making payments to them.

Retention of such person in service is detrimental to
public interest. In these circumstances, we are convinced
that the impugned orders of Disciplinary Authority as well
as that of the Appellate Authority that the applicant has to
be dismissed from service is fully justified.

7. In view of what is stated in the foregoing paragraph,
we find that there is no merit in the application and there-
fore we dismiss the same without any order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER

25/11/91


(SP MUKERJI)
VICE CHAIRMAN

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