

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 108 of 2011

Monday, this the 09th day of January, 2012

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Damodaran N.V.,
S/o. Kunhiraman,
Gramin Dak Sevak Chayoth,
(Removed from service)
Residing at Choiyankode,
Chayoth P.O., Nileshwar : 671 314

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Applicant.

(By Advocate Ms. Jagada Bai)

v e r s u s

1. Union of India represented by
The Secretary to Department of Posts,
New Delhi – 110 001
2. Superintendent of Post Offices,
Kasaragod Division,
Kasaragod – 671 121
3. Shri C.H. Sudhaman,
Sub Divisional Inspector of Post Offices &
Adhoc Appointing Authority,
Kanhagad Sub Division,
Kanhagad : 671 315

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Respondents.

(By Advocate Mr. S. Jamal for R1-2)

This application having been heard on 19.12.11, the Tribunal
on 09-01-12... delivered the following :-

ORDER

HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant in this O.A while working as Gramin Dak Sevak
(GDS) was charge sheeted for not making payment of Rs. 660/- to the payee

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on 22.09.2003. The enquiry officer held the charges as proved. The Disciplinary Authority imposed the punishment of removal from service on him vide Annexure A-6 order dated 02.03.2009 which was confirmed in appeal vide Annexure A-8 order dated 28.02.2010. Aggrieved, the applicant has preferred this O.A. praying for the following reliefs:

- (i) Call for the records of the departmental enquiry;
- (ii) Quash and set aside Annexure A-6 and Annexure A-8;
- (iii) Reinstate the applicant into service with all consequential benefits;
- (iv) Any such remedy deemed fit and proper as this Hon'ble Tribunal may be pleased to order;
- (v) Grant costs to the applicant.

2. The applicant contended that the Disciplinary Authority/ Appellate Authority had cancelled all the proceedings conducted by the Inquiring Authority appointed as per Annexure A-2 order dated 28.02.2005 and appointed himself as Inquiring Authority as per Annexure A-4 dated 20.02.2007 without assigning any reason. Unless it is unavoidable, the Disciplinary Authority should refrain from being the Inquiring Officer. The respondent No. 3 was all set to remove the applicant from service at the instance of respondent No.2. The non examination of the payee or the remitter before the Inquiring Authority has prejudiced the case of the applicant. The complaint dated 17.10.2003 from the payee and a copy of the receipt showing the money as paid were not produced by the presenting officer on the ground that they were not available. The respondents No. 2 and 3 have solely depended on the opinion of the Finger Print Expert. The specimen thumb impression taken by the Investigating Officer was not identified by an independent witness. The unexplained delay in conducting the enquiry had



resulted in defeating an effective and reasonable defence of the applicant. He had paid the amount of money order to the payee on 22.09.2003 itself.

3. The respondents contested the O.A. The Postmaster General, Northern Region, Calicut had instructed the respondent No. 2 to change the Inquiring Authority keeping in view the judicial pronouncement that the Inquiring Authority should not be senior in rank to the Disciplinary Authority. The applicant was not denied any reasonable opportunity or natural justice owing to the fact that the Disciplinary Authority himself had functioned as Inquiring Authority. The payee of the M.O. had died. So she could not be brought before the Inquiring Authority. The standard of evidence in a departmental enquiry is based on preponderance of probability. The oral and documentary evidence adduced during the enquiry had categorically established that the applicant had failed to effect payment of the money order to the payee on 22.09.2003 and showed the money order as paid to the payee. The evidence of the Finger Print Expert is irrefutable. The letter of complaint made by the payee and the receipt of having paid the money were not made available to the applicant as they were not available. There is no reason to disbelieve the evidence rendered by a dispassionate and disinterested official witness. The delay in the case was not intentional but due to unavoidable administrative reasons.

4. We have heard Ms. Jagada Bai, learned counsel for the applicant and Mr. S. Jamal, learned ACGSC appearing for the respondents and perused the records.

5. The charge against the applicant in this O.A. is not the delay in

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making the payment of M.O. but the non-payment of the amount to the payee on 22.09.2003 even though the acknowledgement showed that it was paid on 22.09.2003. The misconduct on the part of the applicant amounts to embezzlement of Government money. The failure to follow Rule 127 of the Postal Manual Volume VI Part III and failure to maintain absolute integrity and devotion to duty as laid down in Rule 21 of the Gramin Dak Sevak's (Conduct and Employment) Rules, 2001, on the part of the applicant are held as proved by the Inquiring Authority. In the present case, the officer who was first appointed as Inquiring Authority was replaced by the Disciplinary Authority. This was done on the basis of the instruction received from the Postmaster General, Northern Region, Calicut. We do not find extraneous consideration to the prejudice of the applicant in doing so. If at all he had any objection, he could have raised it during the enquiry at the appropriate time. The applicant is estopped from raising the plea of prejudice later. Further, it is not the case of the applicant that he was not given reasonable opportunity of defence or natural justice. The standard of proof required in a departmental case is not as strict as the standard of proof required in a criminal case. The applicant has not challenged the opinion of the Finger Print Expert nor had he made any complaint as to the impartiality and objectivity in the conduct of the Finger Print Expert in respect of the enquiry. We do not find any merit in the argument of the applicant that the respondents held the applicant guilty of charges solely on the basis of the expert opinion.

6. Certain documents sought by the applicant have not been supplied to him for the reason that they were not available with the custodian of the documents. We find this stand of the respondents reasonable and therefore, acceptable. The payee of the money order could not be produced



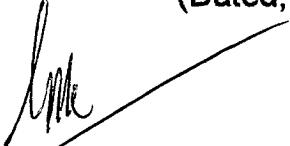
before the Inquiring Authority as she was not alive. We find no substance in the argument that non-examination of the remitter of the M.O has prejudiced the applicant. In a matter of embezzlement, it is not necessary that there should be a formal complaint to initiate a departmental enquiry.

7. We do not find any procedural lapse, denial of opportunity or arbitrariness on the part of the respondents that vitiates the enquiry. The respondents have concluded the enquiry on the basis of the oral and documentary evidence that the applicant has failed to pay the amount to the payee on 22.09.2003 and imposed the punishment of removal from service on him. In the facts and circumstances of the case, there is no justification for this Tribunal to interfere in the matter. Therefore, the O.A fails.

8. However, before parting with the case, we would observe that it has taken a long period of time to conclude the enquiry against the applicant. The respondents have taken almost 2 $\frac{1}{2}$ years after the event took place to issue a charge sheet against him and another 3 years to complete the enquiry. Even if there are some administrative reasons for the delay, we do not appreciate the long delay. We also find that the applicant has not moved the authority or this Tribunal to expeditiously complete the enquiry.

9. The O.A. is dismissed with no order as to costs.

(Dated, the 09th January, 2012)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R.RAMAN
JUDICIAL MEMBER

cvr.