

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 14 OF 2006

Dated the 11th day of October, 2007

CORAM:-

HON'BLE SMT. SATHI NAIR, VICE CHAIRMAN
HON'BLE Dr. KBS RAJAN, JUDICIAL MEMBER

Thomas Mathew,
Son of Mathew,
Ex Gramin Dak Sevak Mail Deliverer,
Residing at Pulickal House,
Vadapuram, PO-Mampad-676 542.

[By Advocate: Mr PC Sebastian)

-Versus-

... Applicant

1. The Superintendent of Post Offices,
Manjeri Division, Manjeri-676 121.
2. The Asstt. Superintendent of Post Offices (HQ)
(Adhoc Appointing Authority)
Office of the Supdt of Post Offices,
Tirur Division, Tirur-676 104.
3. The Asstt. Superintendent of Post Offices,
Perintalmana Sub Division,
(Inquiring Authority),
Perintalmana PO - 679 322.
4. The Union of India,
Represented by Secretary to Govt. of India,
Ministry of Communications,
Department of Posts, New Delhi.

... Respondents

[By Advocates: Mr PS Biju, ACGSC)

This application having been heard on 13th September, 2007
the Tribunal delivered the following -

ORDER

(Ms. Sathi Nair, Vice Chairman):

The applicant is aggrieved by the punishment of dismissal from service imposed on him by 2nd Respondent vide Annexure-A/2 order dated 4.1.2005 and rejection of his appeal by 1st Respondent vide Annexure-A/1 order dated 20.5.2005. The applicant while working as Gramin Dak Sevak Mail Deliverer (GDSMD) at Vadapuram Branch Post Office under Mampad SO, was placed under put off duty with effect from 29.3.2001 by the Assistant Superintendent of Post Offices Manjeri Sub Division, pending a departmental enquiry regarding alleged non delivery of registered letters to the addresses. Following articles of charges were levelled against the applicant:-

"Article-I - That the said Sri Thomas Mathew while working as GDSMD Vadapuram Branch Post Office on 20.10.2000, did not deliver the registered letter No.24366 of Calicut sent by Passport Officer, Kozhikode to its addressee, viz. HM Mar Clemis UP School, Vadapuram instead showed it as correctly delivered to the said addressee in contravention to the provisions contained in Rule 10(1) of the Rules for Branch Offices (Seventh Edition) and thereby exhibited lack of integrity and devotion to duty violating the provisions of Rule 21 of Department of Posts, Gramin Dak Sevak (Conduct and Employment) Rules, 2001.

Article-II : That the said Sri Thomas Mathew, while working as GDSMD Vadapuram on 17.11.2000 and 18.11.2000 did not deliver registered letter No. 28084 of Calicut addressed to the MM AMPLPS Pullode, to its addressee correctly instead showed it as delivered to

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him on 18.11.2000 in contravention of the provisions of Rules 19(1) of the Rules for Branch Offices (Seventh Edition) and thereby exhibited lack of integrity and devotion to duty violating the provision of Rule 21 of Department of Posts, Gramin Dak Sevak (Conduct and Employment) Rules, 2001.

Article-III: That the said Sri Thomas Mathew, while working as GDSMD, Vadapuram Branch Post Office during the period from 14.11.2000 to 18.11.2000 did not deliver registered letters Nos. 27043, 28282 and 28322 of Calicut addressed to the HM AMLPS, Pullode PO, Vadapuram, to its addressee but showed them as delivered to the addressee correctly on 15.11.2000, 18.11.2000 and 18.11.2000 respectively in contravention of the provision of Rule 10(1) of the Rules for Branch offices (Seventh Edition) and thereby exhibited lack of integrity and devotion to duty violating the provision of Rule 21 of Department of Posts, Gramin Dak Sevak (Conduct and Employment) Rules, 2001.

2. The charges were denied by the applicant and thereafter 3rd Respondent was appointed as Inquiring Authority, who on conclusion of the enquiry submitted his report dated 26.10.2004 to the Adhoc Disciplinary Authority holding that all the charges were proved beyond doubt and a copy of the same was furnished to the applicant vide letter dated 1.11.2004. Applicant submitted his representation dated 13.11.2004 against the findings of the Inquiring Authority refuting the allegations. The applicant was dismissed from service vide Annexure-A/2 order. Applicant submitted a representation dated 3.2.2005 against the order of dismissal and the Appellate Authority by Annexure-A/1 order

rejected the appeal upholding the punishment imposed on him allegedly without affording an opportunity of hearing.

3. Applicant has impugned the said orders mainly on the following grounds:

[i] The Enquiring Authority, the Disciplinary Authority as well as the Appellate Authority have heavily relied on the expert opinion of the Examiner on the questioned documents i.e. Exhibits S/20 and S/21, without examining the person who gave the expert opinion and thereby denying the opportunity to cross examine the person; [ii] The impugned penalty of imposing the punishment of dismissal was confirmed without affording an opportunity of hearing to the applicant; and [iii] The punishment is shockingly disproportionate with the offence alleged to have been committed. In short, the applicant submitted that the entire proceeding is based on no evidence and totally unsustainable.

4. No formal reply has been filed by the respondents and a short counsel's statement is filed, in which it has been stated that all statutory and legal provisions have been complied with and the authorities duly considered all the documents on record and thereafter passed the impugned order imposing the punishment on the applicant. No rejoinder has also been filed.

5. Learned counsel for the applicant in his argument mainly contended that the charges leveled against the applicant were alleged to be proved on the basis of the report of the Expert and no other documents were said to be proved by the respondents.

The Government Examiner of questioned documents, Bureau of Police Research and Development at Hyderabad, was also not examined as a witness in support of the said documents and the applicant was denied the opportunity to cross examine the author of the documents marked as S/20 and S/21. It was also submitted that a racket in fake passport business was operating and the staff of the said School were also reported to have been involved and the applicant has been made a victim of the racket. He also cited the following judgments in support of his case reported in AIR 1931 Oudh 296, AIR 1933 Lahore 885 and (1986) 3 SCC 103. The judgment in Ramachander-vs- Union of India (1986) 3 SCC 103, was relied heavily by the counsel for the applicant holding that the Appellate Authority should have given an opportunity of hearing and pass a reasoned order.

6. In the absence of any pleading from the respondents' side to counter the allegations except producing the documents relating to the disciplinary proceedings, we have proceeded to examine the averments of the applicant on record.

As evident from the charges as produced above, the allegation against the applicant was that he failed to deliver the registered letter Nos. 24366 to the addressee, the Headmistress of Mar Clemis UP School, Vadapuram and Nos. 28084, 27043, 28282 and 28322 to its addressee, the Head Master of AMLPS, Pullode PO, Vadapuram on 14.11.2000, 15.11.2000 and 18.11.2000 respectively, in contravention of the provisions of Rule 10(1) of the

Rules for Branch offices (Seventh Edition) which amount to lack of integrity and devotion to duty violating the provision of Rule 21 of Department of Posts, Gramin Dak Sevak (Conduct and Employment) Rules, 2001. The applicant's main contention is that from the evidence on record, no finding of guilt can be arrived at, as far as the applicant is concerned. According to the records maintained by the Department the said letters were correctly delivered by the applicant and necessary records were returned to office. The applicant had also submitted before the Enquiring Authority as well as the Appellate Authority that he had correctly delivered the letters to the addressee. From the record produced before us it is not clear how the matter came to be enquired initially as the records in the Post Office did not prima-facie create any suspicion about the registered letter having not been delivered. From the evidence of the Assistant Superintendent of Post Office, Mangeri Sub Division (SW-1) it appears that he received a complaint from the Passport Officer that some registered letters sent through Vadapuram Post Office had not been delivered properly and he had made an enquiry into the matter. From, the evidence of the said witness it transpires that the letter mentioned in the charge memo was sent by the Passport Officer to the School concerned for verification (Question No.1 of the cross examination). To a question whether the witness had any knowledge of the reasons for not delivering the article by the Postman he stated that it appears that these letters were given to some Travel Agency.

However, to a pointed question by the Enquiring Authority, this witness denied any specific knowledge about any racket operating in the passport business and also the involvement of the Headmaster and the staff of the concerned school.

7. The addressees of the registered letters, viz. the Headmistress of the Mar Clemis UP School, Vadapuram, and the Headmaster of AM LPS, Pullode had denied that the signatures and seals available in the records of the Branch Post Office belong to them. The relevant Exts-1, S-1 to S-3, S-5 and S-12, got verified with the specimen signatures of the concerned Headmasters and it has been confirmed by the Government Examiner of the questioned documents that "The person who wrote the enclosed writings stamped and marked S-4 to S-6 did not write the enclosed writings similarly stamped and marked Q2(a), Q2(b), Q2(c) and Q2(d). The impression in the enclosed portion marked Q1 does not tally with the impressions in the enclosed portions marked- S1 to S3." The applicant's main objection is that the Government Examiner who gave the above expert report was not examined in the enquiry. This objection may not be very relevant as no purpose would have been served by examining the Government Examiner, who is a technical expert, who had given his report after comparing both the signatures and seals. The addresses of the letters were examined in detail and the applicant had the opportunity to cross-examine them.

8. The applicant has produced a defence witness, an employee of the Travel Agency, and an attempt has been made to connect the Headmasters of the said schools, viz. addressees of the said registered letter, to have had some kind of suspicious relationship with the Travel Agency with regard to the passport documents. Though the evidence of the witness does not appear to be very credible or relevant in the sense that it does not have any connection with the impugned registered letters, it only raises some suspicion that a fake seal of the School was in circulation, which is purported to have been delivered by the Travel Agency to the School Authorities. This piece of evidence has not been pursued further in the enquiry.

9. On the whole, reading of the evidence and the statements of witnesses, we are led to the conclusion that though the procedural formalities of the enquiry have been fulfilled in accordance with the provisions of Rules, in the evidence on record there are several missing links and it shows that the needle of suspicion points to different persons at different stages, but no attempt was made to tie up the loose ends so as to lead to any specific conclusions. Rather it poses many questions like, if the letters were not delivered as alleged correctly to the addressee where they have gone and who had received them? Did anybody else in the said School receive those letters on behalf of the addressee? The Headmaster of AMLPS was stated to be on leave on 18.11.2000 then somebody would have performed his duties and

if so who was the person in-charge and why he was not examined? If the Department suspected involvement of the school staff and/or the Travel Agency, why the matter was not investigated by Police or by any Intelligence Agency? Was any criminal complaint lodged either by the Postal Department or by the Passport Office, if at all they had any knowledge about such racket operating in passport matters? It could not have been that the applicant alone was responsible and operating independently if there was a racket, there would be other accomplices also.

10. In the absence of any definite answers to these questions either from the respondents or from the record, we find merit in the submissions of the applicant that ~~as~~ mere conjecture he has been condemned unheard. The applicant has relied on the ratio of the judgment of the Hon'ble Supreme Court in Rama Chander -v- Union of India (Supra), wherein it was held that -

"...the impugned order of the Railway Board was just a mechanical reproduction of the phraseology of Rule 22(2) of the Railway Servants Rules without any attempt on the part of the Board either to marshal the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. There is also no indication that the Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty of removal from service for a single lapse in the span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service may not

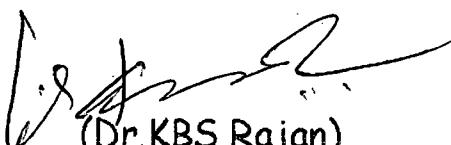
deserve such a harsh punishment. There being non compliance with the requirements of Rule 22(2), the impugned order passed by the Board was liable to be set aside."

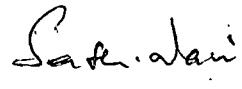
"The right to make a representation on the proposed penalty which was to be found in Article 311(2) having been taken away by the Forty Second Amendment, there is no provision of law under which a Government servant can claim this right. The only stage at which a Government servant gets "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him" i.e. an opportunity to exonerate himself from the charge by showing that the evidence adduced at the inquiry is not worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. That being so, the Appellate Authority must not only give a hearing to the government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. Although in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmance, Rule 22(2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The word 'consider' has different shades of meaning and must in Rule 22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision. Reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative

process. An objective consideration is possible only if the delinquent servant is heard and given a chance of satisfy the authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given."

11. We are of the view that the applicant's prayer for a personal hearing before the Appellate Authority might help to fill up the missing gaps in the evidence and also enable the applicant to bring out the subsequent developments, if any, which would have taken place in solving the so called passport racket. In such a view of the matter, we remit the case back to the Appellate Authority, setting aside the Annexure-A/1 order, with a direction to afford an opportunity of hearing to the applicant and then pass a reasonable speaking order after going through the entire records. This exercise shall be completed within two months of the receipt of the copy of this order.

Dated.....11..th October, 2007.


 (Dr. KBS Rajan)
 JUDICIAL MEMBER


 (Ms Sathi Nair)
 VICE CHAIRMAN

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