

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 140 of 2004

Tuesday, this the 27th day of March, 2007

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

T. Rajamma,
W/o. Late O. Stephen (Ex. Extra Departmental
Delivery Agent), residing at Kanchimoodu
Thadatharikathu Veedu, Vazhichal,
Pantha Post, Vla. Kattakada. ... Applicant.

(By Advocate Mr. M.V. Somarajan)

v e r s u s

1. The Sub Divisional Inspector,
Post Offices,
Neyyattinkara - 695 121
2. The Superintendent of Post Offices,
Trivandrum South Division,
Trivandrum - 695 014
3. Union of India, represented by its
Secretary, Ministry of Communications,
New Delhi. ... Respondents.

(By Advocate Mr. T P M Ibrahim Khan, SCGSC)

The Original Application having been heard on 5.3.07, this Tribunal
on ...27/3/07 delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

At the outset it is to be stated that Smt. T. Rajamma, the present
applicant in this O.A. is the widow of Late Shri D. Stephen, who was removed
from the services as EDDA for certain proved misconduct of misappropriation of



money orders while he was in service. As the said Stephen expired during the pendency of this OA, his wife, the present applicant has stepped into the shoes of the original applicant. Thus, if the OA is allowed the same would be only with reference to ex gratia payment.

2. Now the facts: Late Shri Stephen was functioning as EDDA in Pantha Post Office and was put off on 11-07-1997 in contemplation of Inquiry under Rule 8 of the P & T ED Agents(Conduct and Services) Rules, 1964. Annexure A-1 Memo under the Rules was issued to the said Stephen on 31-07-1998, which contained two articles of charge as under:-

"(1) That the applicant while working as EDDA Pantha BO treated as paid on 26.6.1997 of perunguzhi M.O. No. 4447 dated 23.6.97 for Rs. 1500/- payable to Smt. V. Sajeela, Little flock House, Pottamthattam, Pantha BO which was entrusted to him, with required cash for payment to the payee. Without paying the value of the MO to the correct payee and without obtaining the signature of the correct payee in the said MO the applicant violated the relevant rules.

(2) The applicant while working as EDDA Pantha BO treated as paid on 8.2.1997 of Neyyattinkara M.O. No. 2801/99 dated 20.1.1997 for Rs. 1500/- payable to Smt. S. Sobha, Pettipara Thadatharkathu Veedu, Edavanchal, Pantha BO which was entrusted to him, with required cash for payment to the payee. Without paying the value of the MO to the correct payee and without obtaining the signature of the correct payee in the said MO the applicant violated the relevant rules."

3. Inquiry was conducted and the I.O. furnished his report on 11-12-2001, vide Annexure A/2. The findings are as under:-

"8. ... Regarding the first charges framed against the

CGS, the points to be considered are :

- (I) Whether the CGS was on duty on 26.6.1997;
- (II) Whether Perumguzhi MO No. 4447 dated 23.6.1997 for Rs. 1500/- payable to Smt. V. Sajeela, Little flock House, Pottamthattam, Pantha BO was actually entrusted to him with required cash for effecting payment to the real payee;
- (III) Whether the said MO was paid by the CGS to the correct payee after obtaining the signature of the correct payee in the money order form.

Ext. P2 is the paid voucher of MO No. 4447 dated 23.06.97 of Perumguzhi SO payable to Smt. V. Sajeela, Little Flock House, Pattamthottam Pantha. It is admitted in Ext. P.22 by the charged Government servant that the signature appearing in Ext. P2 voucher was put by him and the amount of the MO was given to the payee in instalments. To add to this, the Assistant Govt. Examiner of Questioned Documents, Hyderabad has opined that "the person who wrote S1 to S4 (the specimen signature of the real payee) did not write the red enclosed writings Q-1 (signatures of the payee in the paid voucher Ext.P2).

From the above it is clear that there that there is no dispute that the MO in question was paid to the real payee Smt. V. Sajeela. There is no dispute from either side that the CGS was on duty on 26.06.97 and the amount for payment with the MO in question was entrusted to the EDDA. The depositions of CW-1, CW-3, CW-5 and CW-8 and the documents P-1, P-2, P-3, P-4, P-5, P-6, P-7 and P-9 give ample evidence that the charged Government servant was on duty on 26.06.97 and the MO in question was entrusted to him for payment with required cash and the charged Govt. servant not paid the money order to the correct payee.

Hence I hold the first charge as proved without any iota of doubt.

9. Regarding the second article of charge, the points to be considered are :

- (I) Whether the charged Govt. servant was on duty 8.2.97.
- (II) Whether Neyyattinkara MO No. 2801/99 dated 29.01.97



for Rs. 600/- payable to Smt. S. Sobhana, Pettiparathadatharikathu Veedu, Edavachal, Pantha BO was entrusted to the EDDA with required cash for effecting payment to the payee.

(iii) Whether the MO in question was paid to the correct payee by the ED Agent.

There is no dispute from either side that the charged Govt. servant was on duty on 8.2.97 and the money order in question was entrusted to the EDDA with required cash for payment. The dispute is regarding the signature appearing in Ext. P-11 (paid voucher of MO No. 2801/99) in the place of the payee.

Ext. P-11 is the paid voucher of MO No. 2811/99. The payee Smt. Sobhana asserted firmly in her deposition dated 22.7.99 that the signature appearing in Ext. P-11 is not her and she has not yet received the amount of the money order. The charged Government was permitted to cross examine this witness, but he did not dare to do so for reasons not known. From the naked eye it can be seen that there is glaring difference in the signature appearing in Ext. P-11 and Ext. P-17 and Ext. P-17-A. The correct payee Smt. Sobhana puts here signature as "Sobhana" whereas in Ext. P-11 it written as "Shobhana". In Ext. P-13 (Postman's book), the name of the payee is seen written as "Shobhana" by the charged Government servant. To a pointed question by SDI Nedumangad on this point the charged Govt. servant has not given a convincing answer in Ext. P23. As the charge of the prosecution is that the MO was not paid to the correct payee the onus of the charged Govt. is to prove otherwise. Even though the charged servant was given reasonable opportunity in the sitting dated 29.09.99, he did not dare to do so.

From the depositions of CW-1, CW-2, CW-3, CW-5 and CW-6 and Exhibits P-9, P-10, P-10A, P-11, P-12, P-13, P-14, P-15, P-16 and P-23, the second charge is also proved beyond any iota of doubt."

4. After completing other formalities, the Disciplinary authority had, by order dated 21-02-2002 (Annexure A-3) passed the order of removal from service with immediate effect of the said Stephen.



5. Availing of the provisions of appeal, the said Stephen had filed appeal dated 17-04-2002 to the Superintendent of Post Office, who had, after considering the same rejected the appeal, vide Annexure A-5 order dated NII Feb. 2002.

6. The applicant challenged the order of removal and order rejecting the appeal on various grounds which are in brief as under:-

(a) The applicant emphatically contested his attendance on duty on 26.6.1997 in Pantha BO. No attendance register was produced. The applicant was deprived of the opportunity to have the service of an assisting Government servant after the 7th sitting. Denial of having the assistance of a Government servant after the 7th sitting of the proceeding is illegal and violative of Article 311(2) and natural justice.

(b) The grounds narrated in the representation dated 17.1.2002 were not considered by the disciplinary authority. The order is against the decision of the Apex Court in Mahaveer Prasad vs. State of U.P, AIR 1970 UP SC.

(c) The enquiry officer was extremely biased. The preliminary enquiry report was termed by the enquiry authority as a 'Secret document'. There was enormous delay in completing the enquiry proceedings. No personal hearing was afforded to the applicant at the appellate stage.

7. Respondents contested the OA. According to them, the OA is liable to be



dismissed. Their contentions are congealed in nutshell as under:-

(a) There is indisputable proof that the applicant was on duty on 26.06.1997 at the Post Office and the money order and its value were entrusted to him. The prosecution witnesses were available to cross-examination. Smt. Sobha CW 2 was cross examined on 22.7.1999 as the AGS declined to cross examine her on the plea that the applicant was not present. But on 29.09.1999, when she was available for cross-examination, the applicant refused to cross examine. It was not because of any denial of opportunity, but because of non-utilisation of the given opportunity that the witnesses were not cross-examined. There was no denial of natural justice as alleged.

(b) Allegation of bias against the Inquiry Authority was considered by the Appellate Authority and reasoned orders were passed. The applicant did not make any earnest effort to get the assistance of an AGS, when his first AGS withdrew his consent. The one who had expressed willingness was not permitted by the controlling authority. When this was informed to him, he failed to nominate another one. Delay in completion of the Inquiry proceedings was due to various administrative reasons. The verification of the past work of the applicant was necessary before issuing a formal charge sheet. It is not mandatory that personal hearing should be allowed while disposing of the appeal.

8. Counsel for the applicant submitted that the charges were that the amount was not paid to the real payee. Attendance register, which is one of the vital pieces of evidences to ascertain whether at all the applicant was on duty on the day when the alleged misappropriation of money order took place, was not



produced. Applicant was denied access to the Preliminary Investigation Report, which formed the basis of the inquiry and the I.O. termed the said report as 'secret', which cannot be accepted. When request was made for engaging a particular individual as Defence Assistant, the controlling authority of that individual refused to spare him, consequently, prejudice was caused to the applicant's husband.

9. Counsel for the respondents has submitted that there has been absolutely no flaw in conducting the Inquiry. The decision making process being in accordance with the stipulated provisions of the rules, judicial review being limited only to see whether there is any such legal lacuna in the decision making process, the OA is liable to be dismissed.

10. Arguments were heard and documents perused. Original records of disciplinary proceedings were also perused. At the outset, it may be stated that the delay in concluding the proceedings which were initiated as early as in July, 1998 was on account of various requests made by late Stephen for change of Inquiry authority etc. These were fully examined by competent authority and orders passed. In all there were 12 sittings and the Inquiry was concluded on 11-12-2001. Full opportunity was given to the said Stephen. Thus, the delay in conducting the Inquiry cannot be said to be unjustified nor did the delay prejudice the defence of the said Stephen.

11. It is a matter of record that after the conclusion of the Inquiry

proceedings, when a copy of the brief of the Presenting officer was made available to the said Stephen, he did not care to file any written brief and this was recorded by the Inquiry authority in its report.

12. On receipt of the copy of the Inquiry report, the said Stephen did file a representation and the same was taken into account by the Disciplinary authority, as could be seen from para 6 of the order of removal from service, vide Annexure A-3 and the same reads as under:-

"6. I have gone through the Inquiry report, the representation of Shri D. Stephen, the charged EDA and all other connected records of the case. I agree with the findings of the Inquiring Authority that both the articles of the charge have been proved in the Inquiry. The charged EDA in his above representation submitted that he was not given reasonable opportunity to defend his case and he was not guilty of charges. In this case, the inquiry commenced on 30.10.98 and concluded only on 20.7.2001 with 12 sittings. The charged EDA was given all opportunity to defend his case and the inquiry conducted in consistent with the provisions of the rule. The charged EDA has nominated Shri M. Rajasekharan Nair, APM, Trivandrum GPO as his Assisting Government Servant and he attended the Inquiry upto the seventh sitting and withdrawn his consent later on. Then the charged EDA nominated Shri V.S. Chandrakumar, PA, Vattapara as his AGS in the 8th sitting but the controlling authority of the official intimated that his service could not be spared for the purpose and the last three sittings held ex parte."

13. The said Stephen had filed an appeal, contending that the ADA did not apply his mind nor considered various points raised in his representation and itemized such points. These were reflected in the Appellate order and duly considered and the decision of the Appellate authority given. Of course, on a close scrutiny of the appellate order, it would be seen that the contention of the



said Stephen that the attendance register was not produced during inquiry was not considered by the appellate authority. The question is whether the same vitiated the inquiry in toto. On a perusal of the records made available that as early as on 11-07-1997, when the applicant's husband was put off duty, he was stated to have made a statement admitting the fact of his having put the signature of the payee in the M.O. Had he been on leave, he would have expressed so and would not have given a statement of his having put the signature as of the payee. Human memory would have faded at a fairly longer distance of time but not within a few days. This statement was one of the documents enlisted by the respondents to prove the charge and there appears no resistance to deny the same by the said Stephen. Thus, non production of attendance register cannot be held to be fatal to the case of the defence.

14. Considering all the facts and circumstances, it is seen that the said Stephen had committed the misconduct for which the penalty imposed was in order. As such, the impugned orders cannot be faulted with.

15. The O.A. has, therefore, necessarily to be dismissed, which we do so. No costs.

(Dated, the 27th March, 2007)



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



Dr. K B S RAJAN
JUDICIAL MEMBER