

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 149/2000

MONDAY THIS THE 8th DAY OF APRIL 2002.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

K.C. Santhoshan S/o K.C. Kanaran
Postman (Removed), Chemmancheri P.O.
Vadakara Division, Calicut
residing at Karindiri Kandanchalil House
Mehaniam P.O. Perambra,
Calicut-673 525.

Applicant

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. Union of India represented
by the Secretary
Ministry of Communications
New Delhi.
2. Member (Personal)
Postal Service Board
New Delhi.
3. Director of Postal Services
Northern region
Calicut.
4. Superintendent of Post Offices
Vadakara Division
Vadakara.

Respondents

By Advocate Mr. T.C. Krishna. ACGSC

The Application having been heard on 4.3.2002 this Tribunal
delivered the following on 8.4.2002

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

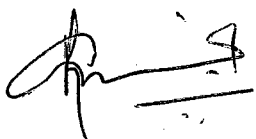
Applicant while working as Postman at Koilandy Sub
Division was proceeded against for three charges communicated
to him by A-4 charge memo dated 28.3.95 of the 4th
respondent. Applicant denied the charges. An enquiry was
held and in A-5 inquiry report dated 16.8.96 submitted by the
Inquiry Officer, the applicant was found guilty of all the
charges. The 4th respondent after consideration of the
inquiry report passed A-3 order dated 15.10.96 removing the
applicant from service. Applicant filed A-6 appeal dated

4.11.96 to the 3rd respondent. The third respondent by A-2 order dated 12.3.97 rejected the appeal. Applicant filed A-7 petition under Rule 29 of CCS (CCA) Rules before the 2nd respondent. Aggrieved by non-disposal of A-7 petition the applicant approached this Tribunal in OA No. 92/99. This Tribunal by A-8 order dated 5.2.99 directed the second respondent to consider and pass orders on A-7 petition. Applicant received A-1 order dated 20.1.99 issued by the second respondent. Aggrieved by A1, A2 and A3 orders applicant filed this Original Application for quashing A1, A2 and A3 and for a declaration that he was liable to be exonerated of all the charges and to direct the respondents to reinstate him in service with full back wages. According to the applicant A1 order was not a speaking order. It has not considered the various points raised in A1. The Enquiry Officer has not considered the various points raised in A-9 written brief dated 22.7.96. There was no evidence warranting any of the findings against the applicant. He was denied reasonable opportunity to defend his case and as such there was a violation of article 311(2) of the Constitution and hence the whole proceedings were vitiated. The enquiry conducted was without complying with the rules and principles of natural justice and the documents which did not form part of Annexure A-III of Annexure A5 was relied on. Further, most of the depositions forming the basis of finding of guilt were not worthy to be relied on. The punishment meted out was highly disproportional to the gravity of charge and hence the impugned action were unreasonable and violative of Article 14 and 16 of the Constitution.

2. Respondents filed reply statement resisting the claim of the applicant. They submitted that while the applicant was working as Postman at Perampara post office certain



complaints alleging non-payment of money orders were received. The complaints were enquired into by the assistant Superintendent of Post Offices Vadakara South Sub Division and the enquiry revealed that the applicant had failed to effect payment of certain money orders entrusted to him for payment to the payees even though he had shown them as duly paid and tendered the paid vouchers for the payments. The paid voucher of money order No. 816 of Nadavau for Rs. 250/and the specimen signature of the payee were forwarded to the Government Examiner of Questioned Documents, Hyderabad for expert opinion. The paid vouchers of money order No. 2801-61 for Rs. 210/- of Perampira and that of money order No. 2801-112 dated 22.1.94 for Rs. 210/- of Perampira were sent to Finger Print Bureau, Trivandrum along with thumb impressions of the respective payees and of the applicant for expert opinion. In the case of money order No. 816 of Nadakavu for Rs. 250/- the Government Examiner of Questioned Documents, Hyderabad in his report dated 11.11.94 opined that signature appearing on the money order paid voucher was not that of the payee. In the case of the other two money orders the Finger Print Expert of Finger Print Bureau, Trivandrum reported that the left thumb impressions appearing on the money order paid vouchers were identical with the specimen thumb impressions of the applicant and that they do not resemble those of the respective payees. On the basis of the reports of the experts it was decided by the Superintendent of Post Offices, Vadakara, the disciplinary authority of the applicant that disciplinary action was warranted against the applicant and accordingly the applicant was chargesheeted under Rule 14 of the Central Civil Services (Classification, Control and Appeals) Rules, 1965. Enquiry was conducted as per rules and in consonance with the principles of natural justice and necessary opportunity was given to the applicant



to defend himself against the charges. The Enquiry Officer submitted the report on the basis of the evidence adduced in the enquiry holding that all the charges framed against the applicant as proved. The 4th respondent forwarded a copy of the enquiry report to the applicant on 3.9.96 asking him to submit his representation if anyone the enquiry report. The 4th respondent on being satisfied that the enquiry was conducted in a fair and just manner and that the findings were arrived at were well supported by evidence after duly considering the representation on the inquiry report received from the applicant decided the quantum of punishment to be awarded and issued A-4 order removing the applicant from service. Applicant's appeal was rejected by 3rd respondent by A-2 order. The Revision petition filed by him was rejected by the second respondent by A-1 order dated 20.1.99. While the revision petition was pending the applicant approached this Tribunal by O.A. No. 92/99 which was disposed of by this Tribunal by order dated 5.2.99 with a direction that the Revision Petition should be disposed of within five months from the date of receipt of the said order. The said revision petition was considered in detail and rejected by the second respondent by A1 order. The applicant's allegation that documents which did not form part of Annexure-III of Annexure A4 was relied on it was submitted that the applicant had not clearly stated which was the document which did not form part of Annexure-III of A-4 that was relied on. It was submitted that the date of one letter of complaint marked in the enquiry as ext. P5 was actually dated 25.2.94. But this was shown as 25.2.95 in annexure-III of A-4. The correction was issued in this regard to all concerned including the applicant. The minor correction of date in the charge sheet did not have any effect of hampering the reasonable opportunity of the applicant to defend his



case nor did it affect the evidence led in at the enquiry to prove the charges against him. The charges proved against the applicant were grave and they warranted the punishment of dismissal. It was as a matter of leniency that he was given the punishment of removal from service. The punishment imposed was not disproportionate to the gravity of the misconduct. They pleaded for dismissal of the Original Application.

3. Heard learned counsel for the parties. The learned counsel for the applicant referring to Annexure-III of A-4 and para 5 of A-5 enquiry report submitted that Annexure-III documents which were not listed in A3 were relied on by the authorities to conduct the enquiry and finding the applicant guilty of the charges and hence the enquiry and the orders A1, A2 and A3 passed pursuant to the same were vitiated and the O.A. was liable to be allowed. Learned counsel for the respondents submitted that the documents referred to by the applicant were enclosures to the listed documents in Annexure-III and they were not additional documents.

4. We have given careful consideration to the submissions made by the learned counsel for the parties, rival pleadings and the documents brought on record. A-4 is the memorandum of charges dated 28.3.94 issued to the applicant. From Annexure-I to A-4 Memorandum we find the three articles of charges against the applicant as follows:

Article-I

That the said Shri K.C. Santhoshan while functioning as Postman No.II Perampara failed to make payment of the value of Nadakavu money order number 816 dated 7.1.94 for Rs. 250/- P/t Smt. T.P. Sobha Parakandy house Perampara entrusted with him for payment on 8.1.94 to the correct payee violating the provisions of Rule 127 of the Postal Manual Vol. VI



part III and thereby failed to maintain devotion to duty required of him violating Rule 3(1)(ii) of the CCS (Conduct) Rules, 1964.

Article II

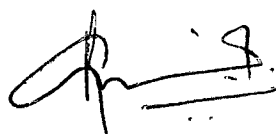
That the said Shri K.C. Santhoshan while functioning as Postman NO.II Perampra failed to make payment of the value of Perampra MO No. 2801-61 dated 22.1.94 for Rs. 210/- payable to Sri Koliyattumeethal Ramunni Nambiar S/o Krishnan Nair, Post Perampra entrusted with him for payment join 27.1.94 and mismanaged the value of the money order showing it as paid on 27.1.94 by taking payment himself by impressing his own LT mark in the money order thus violated the provisions of Rule 127 of the Postal Manual Vol. VI Part III. He has thus failed to maintain absolute integrity and devotion to duty and behaved in a manner unbecoming of a Government servant violating Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules 1964.

Article-III

That the said Shri K.C. Santhoshan while functioning as Postman No.II Perampra failed to make payment of Perampra MO NO. 2801-112 dated 22.1.94 for Rs. 210/- payable to Smt. Ayyappankandi Aniyara W/o Ariyan P.O. Parampra entrusted with him for payment on 27.1.94 and mismanaged the value by himself taking payment by impressing his own LT mark in the money order. He has thus failed to maintain absolute integrity and devotion to duty and behaved in a manner unbecoming of a Govt. servant violating the provisions of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) rules 1964.

Annexures -II, III and IV of A-4 are the statements of imputation of misconduct against the applicant for each of the articles of charges, list of documents by which the charges framed against the applicant were proposed to be sustained and the list of witnesses by whom the article of charges framed against the applicant were proposed to be sustained respectively.

5. The applicant's main ground for assailing the impugned orders was that the documents which were not listed in Annexure-III had been introduced and relied on during the course of the enquiry. Respondents' case is that these documents referred to by the applicant were not new documents but were enclosures to the documents listed in Annexure-III.



6. What we find is that in the O.A. the applicant had not given the list of documents that did not form part of Annexure-III of A4 which was relied on. In the reply statement the respondents had clearly stated this fact. Even after that, the applicant did not file any rejoinder to bring out the list of such documents which were relied on in the enquiry to substantiate the ground. It was only during the course of the oral submissions by the learned counsel for the applicant by comparing the list given in para 5 of A5 enquiry report and Annexure-III of A4 charge memo that the details of the additional documents relied on in the enquiry was brought out. From the enquiry report what we find is that the applicant had objected to production of these documents even as they were produced during the enquiry. The Enquiry Officer had permitted the Presenting Officer to introduce these documents. We find this ground had been raised by the applicant in his appeal and the Appellate Authority had dealt with this ground in his appellate order as follows:

"Another vehement argument of the petitioner is, questioning the admissibility of P15, P15 A to C, P26, P26 A to G and P28 A to N as evidences which were originally unlisted in Annexure-III to the charge sheet introduced subsequently. Most of his arguments with reference to the three charges, also revolve on this point. From a scrutiny I find, that these documents are well related to the originally enlisted documents of Sl.11 and 17 of the memo of charges and they are not admitted as documents in support of any new charge. The Inquiring authority had permitted these documents as provided in Rule 14(15) and the note thereunder in the CCS (CCA) Rules, 1965. The defence side was also given due opportunities to inspect these documents and to question the testifiers of these documents. Hence the contention that it was done to jeopardise the interest of the appellant and that there was denial of natural justice etc. are unsustainable..."

7. Sub Rule 15 of Rule 14 reads as under:

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the



Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. the inquiring authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary, in the interests of justice.

NOTE:- New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

On a careful consideration of the rule position and the Note below thereto as brought out above we do not find any infirmity in the reasoning given by the Appellate Authority in rejecting the ground of the applicant. We are of the view the introduction of the additional documents cannot be faulted as the same can be done under sub-rule 15 of Rule 14 of CCS (CCA) Rules. The only requirement is that the charged employee should have access to these documents. The applicant does not have a case that he did not have access to these additional documents. Moreover, these were part of the documents listed in Annexure-III to A-4. In the above backdrop we reject this ground advanced by the applicant.

8. Another ground advanced by the applicant was that A1 order was not a speaking order. We have carefully gone through A1 order which is the Revisionary Authority's order. We have also gone through A-7 Revision Petition filed by the applicant. We are of the considered opinion that the Revisionary Authority had adequately covered all the points raised by the applicant in A-1 order. In the absence of any specific point included in the revision petition and not covered in the revisionary order being specifically brought out in the O.A. we are unable to sustain this ground.

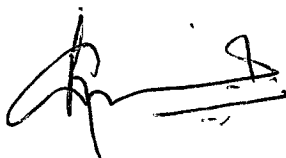


9. Another ground advanced by the applicant was that the Enquiry Officer had not considered the various points raised by the applicant in his A-9 written brief. However, the applicant did not specifically state in the OA as to which of the points raised by the applicant in his A-9 written brief that had not been included in the inquiry report by the Enquiry Officer. In the absence of such a specific pleading we are unable to sustain this ground. We have gone through the enquiry report. We find that the Enquiry Officer had covered all the points raised in the written brief.

10. The next ground advanced by the employee is that this is a case of 'no evidence'. However, the applicant has not elaborated in the OA as to how this is a case of 'no evidence'. On going through A-5 enquiry report we are convinced that there is some evidence for a reasonable man to come to the conclusion which the disciplinary authority has come to in his A-3 order. Hence we reject this ground.

11. After carefully going through the charge memorandum, the enquiry report and the other documents which were brought to our notice we have no hesitation in holding that the applicant was given reasonable opportunity to defend the charges levelled against him and had a fair hearing. In the light of the foregoing we are of the view that there is no reason for interference by this Tribunal.

12. One other ground advanced by the applicant was that the punishment meted out to the applicant was highly disproportionate to the gravity of the charges. As already brought out by us, the articles of charges against the applicant were that he while working as Postman had failed to make payment of Money Orders specifically to three members of



the public and had taken the amount himself. Considering the nature of the job to be performed by the applicant - a Postman and the fact that the charges against him had been held as proved, we do not find the punishment imposed on the applicant disproportionate.

13. In the light of the foregoing we hold that the applicant is not entitled to any of the reliefs sought for by him through this O.A. Accordingly, we dismiss this O.A. with no order as to costs.

Dated the 8th April, 2002.



K. V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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A P P E N D I X

Applicant's Annexures:

1. A-1 : True copy of the order No.1-42/98-VP, dated 20.1.99, issued by the 2nd respondent to the applicant.
2. A-2 : True copy of the Memo No.Staff/30-19/96, dated 12.3.97 issued by the 3rd respondent to the applicant.
3. A-3 : True copy of the Memo No.F/1/3/93-94, dated 15.10.96, issued by the 4th respondent to the applicant.
4. A-4 : True copy of the memo No.F1/3/93-94, dated 28.3.95 issued by the 4th respondent to the applicant.
5. A-5 : True copy of the Inquiry Report bearing No.Ing/I/95 dated 16.8.96 submitted by the Inquiry Officer.
6. A-6 : True copy of the appeal dated 4.11.96 submitted by the applicant to the 3rd respondent.
7. A-7 : True copy of the petition under Rule CCA (CCA) dated 13.10.97 submitted by the applicant before the 2nd respondent.
8. A-8 : True copy of the judgement dated 5.2.99 in OA 92/99, of this Hon'ble Tribunal.
9. A-9 : True copy of the written brief dated 22.7.96 submitted by the applicant to the Inquiry Authority in Rule 14 inquiry.

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18.4.02