

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA NO. 155/2004

TUESDAY THIS THE 28th DAY OF NOVEMBER, 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

K. Krishnan S/o Polan
Kailuvayal, Nirvaran
Panamaram
Wayanad District.

..Applicant

By Advocate M/s M. Sasindran & Tojan J Vathikulam

Vs

- 1 Director General of Posts
Department of Posts.
Dak Bhavan
New Delhi-110 001
- 2 Chief Post Master General
Keralal Circle
Thiruvananthapuram-695 033
- 3 Postmaster General
Office of the Postmaster General
Northern Region,
Calicut-673 011
- 4 Director of Postal Services
Northern Region
Calicut-673 011
- 5 Superintendent of Post Offices
Thalassery Division,
Kannur. .. Respondents

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

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The facts furnished in the Application can be briefly stated as under:- The applicant was working as BCR SPM, Panamaram SO, when he was charge-sheeted under Rule 14 of the CCS(CCA) Rules, 1965 as per charge memo dated 12.4.2000 of the 4th respondent. The following charges were framed against the applicant:

Article-1

That the said Sri K.Krishnan while working as SPM Panamaram during the period 8.6.98 to 24.6.99 failed to produce the entire cash balance of the office before the SDI(P) Mananthavadi on 23.6.99 and Supdt. of Post offices Thalassery on 24.6.99. Therefore it is alleged that by his failure to produce the full cash balance of the office on these days, the said Shree K. Krishnan has violated Rule 84 of Postal Manual VoVI Part III (6th edition) and thereby failed to maintain absolute integrity contravening Rule 3(1) (1) of CCS (Conduct) Rules 1964.

Article-II

That the said Sri K.Krishnan while working as SPM Panamaram SO during the period from 8.6.98 to 24.6.99 accepted a sum of Rs 8397.20 on 11.5.99 and a sum of Rs 7022.20 on 21.5.99 from Smt A. Udayakumari, MPKBY Agent, attached to the office with RD schedules and passbooks and failed to credit the said amount in the accounts of the respective days violating Rule 103 of FHB Vol and thereby failed to maintain absolute integrity contravening Rule 3 (!) of CCS (Conduct) Rules and thus acted in a manner unbecoming of a government servant contravening Rule 3 (1) (iii) of CCS (Conduct) Rules 1964.

2 The applicant denied the charges, an enquiry was conducted under Rule 14 of the CCS (CCA) Rules by appointing an Enquiry

Officer who held the charges proved. The applicant was furnished a copy of the Enquiry Report and he submitted a written objection stating that the enquiry was vitiated and the principles of natural justice have been violated. However the 4th respondent rejected the same confirming the findings of the Enquiry Officer and imposed the penalty of compulsory retirement from service on the applicant. A statutory appeal was filed raising various legal contentions and pointing out the irregularities that have crept into the proceedings and also alleging malafides. However the appeal was dismissed without looking into any of these matters by the Annexure A-7 order.

3 The legal and other grounds taken by the applicant are:-

- 1 The Annexure A-7 order is cryptic, non-speaking and *per se* illegal.
- 2 The confession statements were obtained under threat and coercion.
- 3 Documents sought for by the applicant were denied. Apart from the statement of SW1 there was no evidence to corroborate the charges.
- 4 The punishment imposed is highly disproportionate.

4 The following reliefs are sought:-

- (i) To call for the records leading to Annexure A-1, Annexure A3, Annexure A-5, Annexure A-7, declare them to be illegal and set aside the same.
- (ii) To issue an appropriate direction or order declaring that the petitioner is entitled to be reinstated in service with continuity of service w.e.f the date of his suspension and direct the respondents to reinstate the applicant in service with continuity of service.

(iii) Issue any other order which this Hon court may deem fit to grant for the redressal of the grievances of the applicant.

(iv) To award the cost of the applicant.

5 It is submitted by the respondents in their reply that when the Sub divisional Inspector (Postal) (SDI(P) for short) visited the office of the SPM on 23.6.99, a shortage of the cash balance to the tune of Rs 15271.05 was detected. The SDI reported the matter to the Supdt. of Post Offices who visited the office on 24.6.99 and detected a further shortage of Rs 7000/. Immediately a verification of past records was also conducted and cases of noncredit of PLI Premium of Rs. 388/- dated 62.99 and RD frauds to the tune of Rs. 15419.40 also came to light and the official was placed under suspension. The amount involved in the fraud case was Rs 38078.45 and net loss was Rs 22659.05 which was made good by the applicant.

6 Regarding the averments of the applicant that he was denied access to the documents, they have submitted that the enquiry officer had given cogent reasons for denying access to the document which in his opinion were not relevant to the case. And the decision of the Enquiry Officer is perfectly in order as per the Govt of India, Ministry of Home Affairs OM No. F30/5/61- AVD dated 25.08.1961.

7 They have further submitted that no coercion was exercised on the applicant during the Preliminary enquiry and the statements recorded from SW1 and SW2 are legally valid if proved in the enquiry

and the supreme court has ruled in AIR 962 SC 276 that Customs officers are not Police officers and that ruling is applicable to Postal officers also.

8 No rejoinder has been filed.

9 We heard the Learned counsels, M. Sasindran for the applicant and Mrs Mariam Mathai for the respondents.

10 The Learned counsel for the applicant argued that the enquiry was vitiated and that the principles of natural justice have been violated and that the discrepancies in evidence and the statements of witnesses were not weighed in the right perspective by the Enquiry Officer and the Disciplinary authority without looking into these aspects confirmed the finding of the Enquiry Officer. The counsel for the respondents contended that the enquiry was conducted strictly in accordance with the Rules and that according to the instructions produced at Annexure R-1, reports of the Preliminary investigations are not required to be given to the charged employee.

11 We have gone through the pleadings on record. The applicant's contention that the principles of natural justice has been violated is based on the denial of the enquiry officer to accede to the request of the employee to supply the copies of the reports of the SWs 1 & 2. The respondents have relied on the R-1 memorandum

no. F. 30/5/61-AVD dated 25.8.1961 issued by the Ministry of Home Affairs, Government of India which deals extensively with the manner of dealing with such requests for documents by Govt. servants in a departmental enquiry. The relevant portion in para 6 thereof dealing with preliminary investigation reports is extracted below.

"Reports made after a preliminary enquiry or the report made by the Police after investigation other than those referred to in clause (a) of subsection (1) of section 173 of the Criminal Procedure Code, 1898 are usually confidential and intended only to satisfy the competent authority whether further action in the nature of a regular departmental enquiry or any other action is called for. These reports are not usually made use of or considered in the enquiry. Ordinarily even a reference to what is contained in these reports is not made in the statement of allegations. It is not necessary to give access to the Government servant to these reports."

By virtue of these instructions it is evident that it is open to the government to deny access to documents which are not considered relevant and there is no provision for unlimited access to all documents which are not made part of the enquiry. The question therefore is whether the document asked for was relevant? The documents cited by the applicant are the reports of the Inspecting officers who detected the shortages. The inspection of the office was conducted in an open manner in the presence of the applicant and after verification of records and the cash balance on hand and Inventories of the cash balance and stamps and the shortages arrived at were prepared which were signed by the applicant in the presence of witnesses. The applicant had also accepted the shortages and made good the amount. The inspecting officers were

examined in the enquiry as SW-1 & 2 and the applicant had opportunity to cross examine them. The above mentioned inventories were the basis of the charges were marked as Exts. S-3 & S-4 and identified by witnesses during the enquiry. Hence all the materials required for proving the charges were made available to the applicant and he had also participated in the enquiry. We therefore fail to appreciate the contention of the applicant how he has been prejudiced by not supplying the copies of the reports which may be in the nature of official correspondence only and which are not relied upon by the Enquiry Officer or the Disciplinary authority. We hold that no prejudice has been caused to him by non supply of these documents. The decisions of the Apex Court in Syndicate Bank & ors Vs. Venkatesh Guru Rao Kurati (2006 (2) ATJ 316) is relevant in this regard.

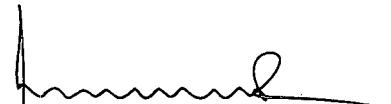
"In our view, non supply of documents on which the E.O does not rely during the course of enquiry does not create any prejudice to the delinquent. It is only those documents which are relied upon by the E.O to arrive at his conclusion the non supply of which would cause prejudice to the case of the officer and must be established by the delinquent officer. It is well settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case."

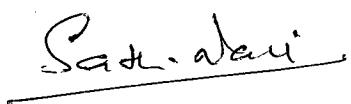
12 The other grounds viz. the the appellate order is non-speaking, no evidence and disproportionate punishment also are not tenable as seen from the proceedings of the enquiry and the factual circumstances of acceptance of the guilt by the applicant, making good the shortage later which clearly point to lack of integrity on part

of the applicant who was entrusted with the custody of public money.

13 In the result we do not find any merit in the prayer of the applicant. OA is dismissed.

Dated 28.11.2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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