

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 165 of 2009

Tuesday....., this the 22nd day of *February* 2011

CORAM:

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

P. Bhaskaran,
S/o. the late Rarappan Nair,
Gramin Dak Sevak Mail Deliverer (Retd.)
Extra Departmental Delivery Agent,
Karthikappally P.O., Villiappilly SO,
Vadakara Division, Vadakara,
Residing at Puthenpurayil House,
PO East Cherode, Kozhikode : 673 106 ... Applicant.

(By Advocate Mr. O.V. Radhakrishnan (Sr.) with
Ms. Rekha Vasudevan)

v e r s u s

1. Superintendent of Post Offices,
Vadakara Division, Vadakara : 673 101
2. Postmaster General,
Northern Region, Calicut : 673 011
3. Union of India represented by its
Secretary, Ministry of Communication,
New Delhi.
4. Assistant Superintendent of Post Offices (OS),
Vadakara Division, Vadakara. ... respondents.

(By Advocate Mr. Millu Dandapani, ACGSC for R1-3 and
Mr. A.D. Raveendra Prasad for R4.

This application having been heard on 19.01.2011, the Tribunal on
22/02/2011 delivered the following:

ORDER

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

The applicant while working as Gramin Dak Sevak Mail Deliverer
(GDSMD), Karthikappally SO, was put off duty under Rule 9(1)(a) of the

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P&T ED Agents (Conduct and Service) Rules, 1964, as per Memo dated 08.09.1999 of the Assistant Superintendent of Post Offices, Vadakara South Division. He was served with a memorandum of charges dated 14.08.2000 alongwith Annexure-II statement of imputations of misconduct or misbehaviour in support of each article of charge framed against him, list of documents and list of witnesses. In the enquiry that followed, the enquiry officer held that the 1st charge under Article I is not proved and the 2nd charge under Article II is partly proved. The applicant submitted a representation dated 31.12.2001 to the 1st respondent against the finding of the inquiry officer. The 1st respondent vide memo dated 25.03.2002 ordered reinstatement of the applicant in service and imposed on him a penalty of debarring from being considered for recruitment to Group-D for a period of not exceeding 3 years from the date of his reinstatement in service and the period of his put off will not count for any purpose. The appeal dated 04.11.2006 filed by the applicant against the said punishment was rejected by the Chief Postmaster General, Kerala Circle, stating that the enquiry officer and the disciplinary authority were very lenient to the applicant and the applicant was imposed with a very light penalty. Therefore, there is no reason to interfere with the punishment order. Aggrieved, the applicant has filed this O.A. for the following reliefs:

- (i) To call for the records leading to Annexure A-3, A-4 and A-6 and to set aside the same to the extent they adversely affect the applicant;
- (ii) To declare that the finding in Annexure A-3 Inquiry Report that the 2nd charge under Article II as partly proved after finding that the entire charge thereunder has not been established apparently on a new charge of delay in payment of the money order which was not the subject matter of the inquiry as illegal and ultra vires;



(iii) To issue appropriate direction or order directing the respondents to treat the period of put off duty from 08.09.1999 to 25.03.2002 as duty for all purposes and to disburse to the applicant full allowances for the above period after deducting the amount paid as compensation by way of ex-gratia payment expeditiously and at any rate, within a time frame that may be fixed by this Hon'ble Tribunal;

(iv) To issue appropriate direction or order which this Hon'ble Tribunal deems fit, just and proper, in the circumstance of the case; and

(v) Award the costs to the applicant.

2. The applicant contended that the Annexure A-4 order imposing the penalty on him was not preceded by a valid enquiry. The finding on the 2nd charge under Article II has been entered by the inquiry officer in favour of the applicant and charge No. 2 has been found to be not proved. However, the inquiry officer found charge No. 2 as partially proved on the basis that there was delay in making the payment of a money order. There was no charge against the applicant that the money order was not paid in time or that he committed temporary misappropriation. In the absence of such a charge, the inquiry officer is not justified in holding that the charge No.2 has been partly proved after finding that the charge as framed has not been proved. Therefore, the penalty imposed on the basis of the enquiry report must be set aside. Annexure A-4 order imposing the penalty which is inherently indefensible cannot be made the basis for treating the period of put off duty as non-duty for all purposes as ordered therein.

3. The applicant further contended that the disciplinary authority had not considered whether the finding of the inquiry officer is justified either in

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law or on facts. The appellate authority also failed to consider the legality or otherwise of the finding of the inquiry officer and the penalty imposed by the disciplinary authority as required under Rule 18 of the GDS Conduct and Employment) Rules, 2001. The 2nd proviso to Rule 12(3) of the GDS (Conduct and Employment) Rules provides that in the event of a Sevak being exonerated, he shall be paid full admissible allowance for the period of put off duty. In other cases, such allowances for the put off duty can only be denied to a Sevak after affording him an opportunity of being heard and by giving cogent reasons. Annexure A-4 order is a composite order imposing the penalty under Rule 9(iii) of the GDS (Conduct and Employment) Rules, 2001. The applicant was not afforded an opportunity of being heard as required under the 2nd proviso to Rule 12(3) of the said Rules, 2001, and no reason is shown for denying the allowance for the period he was kept under put off duty. Annexure A-4 order imposing the penalty and regulating the period of put off duty as non-duty for any purpose is violative of the 2nd proviso to Rule 12(3) and the principles of natural justice. Consequently, Annexures A-3, A-4 and A-6 are liable to be struck down. The learned senior counsel appearing for the applicant relied on the following cases in support of his contentions:

- (i) ILR 1982 (2) Ker. 299
- (ii) 1984 KLT 226
- (iii) (1998) 5 SCC 87
- (iv) (2009) 12 SCC 78
- (v) (1986) 3 SCC 454
- (vi) AIR 1971 SC 752
- (vii) (1999) 7 SCC 409

4. The respondents opposed the O.A. In the reply statement filed by them it was stated that the 2nd charge framed against the applicant was that



he failed to make the payment of money orders entrusted to him on 26.08.99, 27.08.99, 28.08.99 and 30.08.99 and took payment by himself of the amount of the money order. It was proved beyond doubt during the enquiry that the money order was not paid to the payee on 30.08.1999 instead it was paid to the payee on 07.09.1999 only. Though this finding is based on the evidence adduced during the course of the hearing, it is very much related to the original charge. Therefore, the finding of the inquiry officer that the charge was partially proved cannot be termed as not justified. The payee himself has deposed in the enquiry that the money order was paid on 07.09.1999 and not on 30.08.1999 as shown in the record. There is clear violation of Rule 127 of the Postal Manual Vol. VI Part III in this case. It was further submitted that the orders at Annexures A-4 and A-6 were issued after due consideration of the evidences adduced in the departmental enquiry and all the arguments and defences put forth by the applicant. The enquiry authority and the disciplinary authority were very lenient towards the applicant. The departmental inquiry against the applicant was conducted fully in accordance with the rules and procedures. The respondents admitted that Annexure A-4 was a composite order. No separate notice was issued to the applicant before ordering how the period of put off duty is to be regulated. The applicant had submitted in his written defence to the disciplinary authority that he would not claim any back wages for the period of put off duty which is specifically mentioned in Annexure A-4 order. Therefore, the argument that the applicant was not afforded an opportunity of being heard and that no reason is shown for denying the allowances for the period of put off duty is not correct. He was put off duty for the period from 08.09.1999 to



25.03.2002 as a departmental enquiry proposing major penalty was being conducted against him.

5. We have heard Mr. O.V. Radhakrishnan (Sr.) with Ms. Rekha Vasudevan, learned counsel for the applicant and Mr. Millu Dandapani, learned ACGSC for respondents No. 1 to 3 and Mr. A.D. Ravindra Prasad, learned counsel for the respondent No. 4 and carefully perused the material on record.

6. The second charge which is the subject matter of adjudication in this O.A., reads as under :

"Article II : That the said Sri Prabhakaran while functioning as EDDA Karthikapally Post Office failed to make payment of money order No. 677-91 dated 21.08.1999 of Orkatteri Post Office for Rs. 600/- payable to Shri Chandu Nair, S/o. Andy Nair, Kuttimeethal House, Karthikapally entrusted to him for payment to the payee on 26.08.99, 27.08.99, 29.08.99 and 30.08.99 and took payment by himself of the amount of the money order violating the Rule 127 of Postal Manual Vol. VI Part III and thereby failed to maintain integrity and devotion to duty as required of him under Rule 17 of the P&T ED Agents (Conduct and Service) Rules, 1964."

7. The finding of the inquiry officer against the above charge is as follows:

"So, the evidence on record reveals that the MO was paid to the payee on 07.09.99 and not on 30.08.99, and the allegation in the charge sheet regarding non-payment is not correct. The prosecution has not produced any evidence to show that the MO was not paid to the payee and it was taken payment by the charged ED Agent. But here there is 7 days delay in payment. The charged ED Agent is responsible for the delay and for the temporary misappropriation of the amount for this 7 days."



8. The finding of the inquiry officer is that the charge regarding non-payment of the money order was not proved and that there was no evidence to show that the money order was not paid to the payee and that the applicant himself took the amount of money order. In other words, the charge under Article II is not proved. The finding of the inquiry officer that the applicant was responsible for the delay and temporary misappropriation of the amount by 7 days is a new finding based on the evidence adduced during the course of hearing. True, it could have been a distinct charge but at the same time, it is very much related to the charge of non-payment of the money order. The money order was not paid on the day it was shown to have been paid. It was proved that the payment was made on 07.09.1999 instead of 30.08.1999. Therefore, the finding that the second charge was partially proved is not without justification. The principle of natural justice was followed when the applicant was given an opportunity of making the representation dated 31.12.2001.

9. In the representation dated 31.12.2001, the applicant submitted that if any omission or commission occurred on his part, the same was not purportedly committed, but due to excess workload in the festive season. He further expressed his deep sense of regret for any omission on his part and sought reinstatement in service waiving any claim for back wages for the put off duty period. In this situation, an enquiry in the new finding of delay and temporary misappropriation on the part of the applicant was not called for. And, the Disciplinary Authority was justified in issuing the Annexure A-4 order reinstating the applicant in service.



10. The order of the Disciplinary Authority is reproduced as under:

"I, V. Shanku, Superintendent of Post Offices (OS), O/o the Superintendent of Post Offices, Vadakara Division, Vadakara, after careful examination of the case decided to take a lenient view on him and hereby order that Shri P. Bhaskaran, EDDA, Karthikappally (Put off duty) be reinstated into service with immediate effect and he be debarred from being considered for recruitment to Group-'D' for a period of not exceeding three years from the date of his reinstatement into service. The period of his put off duty will not count for any purpose."

11. This is a composite order imposing the penalty under Rule 9(iii) of the GDS (Conduct & Employment) Rules, 2001 and denying the payment of allowances for the period of put off duty under the Rule 12 of the Rules. The regulation of payment of allowances during the period of put off duty not being a penalty should not have been included in the order of punishment. A separate order should have been issued to regulate the payment of allowances for the period under put off duty. The 2nd proviso to Rule 12(3) provides that full admissible allowance for the period of put off duty can only be denied to a Sevak after affording him an opportunity of being heard and by giving cogent reasons. The order of the Disciplinary Authority states that the period of applicant's put off duty will not be counted for any purpose. The respondents stated that the applicant had agreed in writing that he would not claim any back wages. This undertaking made by the applicant cannot override the statutory provision of giving an opportunity of being heard and to give cogent reasons for denying full admissible allowances for the period of put off duty. The reliance of the Disciplinary Authority on this undertaking is against the statutory provision and, therefore, not sustainable in law.



12. The order of the Disciplinary Authority was made on 25.03.2002. The applicant was reinstated in service on 28.03.2002. Despite the above infirmity in the aforesaid order, the applicant chose not to challenge it till 04.11.2006. Meanwhile, he had retired from service on attaining the 65 years of age on 14.06.2005. The applicant allowed the order of punishment to run its full course while in service. The belated appeal dated 04.11.2006 was disposed of by the appellate authority on merits vide order dated 17.06.2008 without specifically condoning the delay. It also, like the order of the Disciplinary Authority, suffered from the infirmity of not considering the regulation of payment of allowances during the period of put off duty of the applicant as per rules. In our considered view, this infirmity should be cured. Accordingly, it is ordered as under:

13. Annexure A-4 order dated 25.03.2002 and Annexure A-6 order dated 17.06.2008 are quashed and set aside to the extent they do not conform to the 2nd proviso to 12(3) of GDS (Conduct & Employment) Rules, 2001. The respondents are directed to regulate the payment of allowances during the period of put off duty of the applicant as per rules within a period of 3 months from the date of receiving a copy of this order.

14. The O.A. is allowed to the extent above with no order as to costs.

(Dated, the 22nd February 2011)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER