

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO.176/2008

Dated this the 4th day of August, 2009

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HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

M.G. Pradeep Kumar S/o Gopalakrishnan Nair
residing at Cheruvattopr House
Chalanchery Road,
Kochi-682 013

..Applicant

By Advocate M/s M.Hariraj, P.A. Kumaran,Vineetha B.,Neelima V.Nair

Vs

- 1 Union of India represented by
the Secretary to Government,
Department of Posts,
Ministry of Communication, New Delhi.
- 2 Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram.
- 3 Director of Postal Services
Central Region, Ernakulam
Kerala Circle, Thiruvananthapuram.
- 4 Senior Superintendent of Post Offices
Ernakulam,
Cochin-682 011

..Respondents

By Advocate Mr. P.S. Biju, ACGSC.

This application having been heard on 27.7.2009 the Tribunal delivered the following-

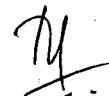
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ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant challenges Annexure A-1 order dated 30.8.2005 compulsorily retiring him from service, A-8 order of the Appellate Authority dated 28.12.2005 confirming compulsory retirement and A-11 order of the Revisional Authority dated 7.9.2007 rejecting the revision petition.

2 The applicant while functioning as Postman, Mulavukad was proceeded against under Rule 14 of CCS (CCA) Rules. An enquiry was conducted in which he was found guilty. Applicant submitted detailed representation pointing out the irregularities and denial of reasonable opportunity to him. Thereafter, the penalty of compulsory retirement with immediate effect was imposed on him. The appeal and the revision petitions were dismissed. Hence he filed this O.A. challenging the impugned orders on the ground that there is no legal evidence on record to come to the conclusion that he is guilty of the charge, he was denied all reasonable opportunity to defend his case, he was not given opportunity to explain evidence against him, the preliminary inquiry was conducted behind his back, the charge sheet was issued after lapse of one year from the date of suspension, the inquiry authority arrived at the findings that he is guilty of the charges based on his own statement before the Investigating Officer and deposition before inquiry under coercion. The disciplinary authority has not properly applied his mind to the fact of the case and that the appellate and disciplinary authorities did not consider the various points raised by the applicant. Hence, he seeks to quash Annexure A-1, A-8 and A-11 and to direct the respondents to reinstate him in service with all consequential benefits.



3 The respondents submitted that while the applicant was working as Postman in Mulavukad Sub Post Office, some complaints regarding non-payment of Money orders were received against him. These complaints were enquired into through Assistant Supdt. Of Post Offices, Ernakulam Sub Division and his past work was verified. It revealed that there was misappropriation in 37 money orders, amounting to Rs. 43,918/- As there was prima facie case against the applicant, he was placed under suspension on 13.8.2003 and later he was compulsorily retired from service. Applicant preferred appeal which was rejected confirming the punishment. He submitted revision petition. Meanwhile, he filed O.A. 553/2007 before the Tribunal against the penalty which was disposed of directing to dispose of the revision petition. On rejection of the revision petition the applicant filed this O.A. They submitted that there is admission of the guilt by the applicant which was corroborated during Rule 14 inquiry and that the charged employee must show the prejudice caused to him by non-supply of a copy of the documents, he was given copies of all documents, opportunities were given to the him. They further submitted that the admission of the applicant that he had taken the money order amounts by forging the signature of the payee mentioned in the charge sheet is corroborated by the deposition and various evidences adduced during inquiry clearly shows in unequivocal terms that the charge against the applicant is proved.

4 The applicant filed rejoinder reiterating the stand that the preliminary inquiry was conducted behind the applicant's back and that the witnesses retracted from their earlier statements and there is no reason for denial of investigation report to him.

5 The respondents filed additional reply statement and submitted that the Disciplinary Authority has selected three most

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important and serious cases in the charge sheet, no prejudice has caused to him for not framing the charges in all the detected cases. They submitted that the punishment awarded is not "shockingly disproportionate" to the gravity of charges levelled against him.

6 We have heard learned counsel for the parties and perused the enquiry file produced before us.

7 Let us examine the Article of charges framed against the applicant which are extracted below:

Article of Charge-I

That Shri M.G. Pradeep Kumar, while working as Postsman Mulavukad on 3.6.2003 received M.O.No. 2430 dated 30.5.2003 for Rs. 1000.00 issued by Assam Rifles Post Office and payable to Shri N. J.David, Nedukottil house, Ponnarimangalam, Mulavukad alongwith cash from Mulavukad S.O. On 3.8.2003 and that while tendering returns of the day the said Pradeep Kumar, showed the money order as paid on 3.6.2003 without obtaining the signataure of actual payee viz. the above named N.J.david in violation of Rule 121(2) and 127 (1) of Postal Manual Vo.:; BI Part-III Sixth Edition corrected upto 30th June, 1986. By the aforesaid acts Shri M.G. Pradeep Kumar showed lack of integrity lack of devotion to duty and behaved in a manner unbecoming of a Government seravant, contravening the provisions of Rule 3(I)(i), 3(I)(ii) and 3(I)(iii) respectively of CCS (Conduct) Rules, 1964.

Article of charge NO. II

That on 18.6.2003, while working as Postman Mulavukad S.O. Shri M.G. Pradeep kumar accepted Coimbatore Bazar MONo. 795 dated 16.6.2003 for Rs. 700.00 along with cash payable to Smt. Sindhu Gopi, Chettipadath on 18.6.2003 from SPM. The MO was shown as paid by Shri Pradeep Kumar on 18.6.2003 and the amount was taken by him in violation of Rule 121(2) and 127(1) of Postal Manual Vol. VI Part-III sixth Edition corrected upto 30th June, 1986 contravening the Provisions of Rule 3(I)(i), Rule 3(I)(ii) and Rule 3(I)(iii) of CSS Conduct Rules, 1964.



Article of charge No. III

That the said Shri M.G. Pradeep Kumar, Postman, Mulavukad, while working at Mulavukad P.O. On 22.5.2003 and 13.6.2003 accepted a MO No. 1083 dated 17.5.2003 for Rs. 400/- and another MO No. 1712 dated 11.6.2003 for Rs. 400.00 respectively both issued by Marol Naka PO and payable to K. P. Antony Kolothum veedu along with cash from Mulavukad SO. These Mos were shown as paid on 22.5.2003 and 13.6.2003 respectively without actually paying the amount to the payees on the respective dates and the amount was taken by him violation of Rule 121(2) and 127(1) of Postal Manual Vol. VI Part-I contravening the provisions of Rule 3(I)(i), Rule 3(I)(ii) and Rule 3(I)(iii) of CCS Conduct Rules, 1964.

8 The learned counsel for the applicant argued that it is settled law that to find the delinquent guilty, there must be some evidence which is relevant and there is no legal evidence on record to find the applicant guilty of the charge alleged against him. He relied on the decision of the Apex Court in Union of India Vs. H.C. Goyal (AIR 1964 SC 364), State of Andhra Pradesh Vs. Chitra Venkata Rao (AIR 1975 SSC 2151)

The learned counsel contended that in a domestic inquiry reasonable opportunity should be accorded to the delinquent employee to inspect and obtain copies of the documents sought for and to cross examine the witnesses. But the applicant was denied copy of the report of the preliminary investigation which was necessary to cross examine the investigating officer who was examined as a prosecution witness. The learned counsel submitted that the denial of copy of the report of the investigating officer has caused prejudice to the defence of the applicant. The instructions contained in OM No.F.30/5/61-AVD dated 25.8.1961 issued by the Ministry of Home Affairs directs that:



"(i) documents and records not so referred to in the statement of allegation but which the Government servant concerned considers as relevant for the purpose of his defence (ii) statements of a witnesses recorded in the course of (a) a preliminary enquiry conducted by the department or (b) investigation made by the Police (iii) reports submitted to government or other competent authority including the Disciplinary Authority by an officer appointed to hold a preliminary inquiry to ascertain facts shall not be refused access to documents without cogent and substantial reasons".

Another point raised by the learned counsel for the applicant is that the charged employee should be given opportunity to give evidence. The counsel relied on the judgment of the Hon'ble Supreme Court in State Bank of Patiala and Others Vs. S.K. Sharma (1996) 3 SCC 364 which held that:

"Where there is provision expressly providing that after the evidence of the employer/Government is over, the employee shall be given opportunity to lead defence in his evidence and in a case the inquiry officer does not give that opportunity in spite of delinquent officer/employer asking for it, the prejudice is well evident. No proof of prejudice as such need be called for in such cases."

The learned counsel further argued that the preliminary enquiry was conducted without giving notice to the applicant. Some of the officials of the department had also given statements. These statements were recorded behind the back of the applicant. The copy of the preliminary investigation report was not furnished to the applicant even though he had requested for the same as additional document.

The learned counsel submitted that the delay in submision of the charge sheet has prejudiced the applicant as he could not properly mould his defence on the allegations which are very old.



The learned counsel contended that the findings are based on applicant's statement before the Investigating Officer and his deposition before inquiry. The very conduct of a detailed enquiry shows that there is no acceptable confessions by the applicant.

9 The learned counsel for the respondents on the other hand argued that it is not mandatory that the charged employee is given notice of the preliminary inquiry and that there is well sufficient evidence to show that the charges against the applicant are proved. The counsel relied on the judgment of the State of T.N. Vs. M.A. Waheed Khan (1999 SCC (L&S) 257) in support of his argument. In that case the Apex Court observed as under:

"It is settled proposition of law that strict rules of evidence are not applicable to departmental enquiries. Before the evidence officer, the statements of both ladies were recorded. He appreciated these evidence in the light of their earlier statements made in the preliminary enquiry. In this view of the matter, it is not correct to say that there was no evidence before the Enquiry Officer."

The counsel argued that the charged employee admitted in the preliminary inquiry that he has taken the amount by forging the signature of the payees which is corroborated by the evidence adduced in the detailed inquiry.

Regarding the non-supply of documents the learned counsel relied on the Haryana Urban Development Authority Vs. Devi Dayal (2002 SCC (L&S) 413) and argued that the charged employee should establish the prejudice caused to him due to non-supply of the documents. The Apex Court in that case held as follows:

".....Prejudice caused by non-supply of documents has also to be seen. In yet another case relied upon by the learned



counsel for the appellant reported in State of UP Vs. Harendra Arora (2001 SCC (L&S) 959) it has been held that a delinquent must show the prejudice caused to him by non-supply of a copy of the document where the order of punishment is challenged on that ground".

The learned counsel contended that the applicant has not established any prejudice caused to him by non-supply of documents.

The learned counsel argued that the delay in issue of the charge sheet cannot be accepted. Relying on the judgment of the Apex Court in Additional Superintendent of Police Vs. T. Natarajan (1999 SCC (L&S) 646) the counsel submitted that the delay of more than one year in issuing charge memo is not fatal to disciplinary proceedings.

Regarding the deposition of Shri N.J. David that the money order amount was paid to his wife, the learned counsel argued that the charge against the applicant was that the money order in question was shown as paid on 3.6.2003 without obtaining the signature of the actual payee viz. Shri N.J. David who stated that the money order was paid to his wife. It is proved that the money order was not paid to the payee whose signature was shown in the money order voucher.

As regards the plea of the applicant that the punishment of compulsory retirement imposed on him is disproportionate to the gravity of allegations is also opposed by the learned counsel for the respondents. The counsel submitted that the duty of the postman involves dealing with public money and that a lenient attitude was adopted by the disciplinary authority in not awarding the extreme penalty of dismissal was not given showing leniency on him. The counsel relied on the judgment of the Supreme Court in Regional Manager, UPSRTC Etawah Vs. Hotilal (2003 SCC (L&S) 363) in support of his

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argument. The Apex Court in that case held as follows:

"A mere statement that it is disproportionate would not suffice. A party appearing before a court as to what it is that the court is addressing its mind. It is not only the amount involved but the mental set up the type of duty performed and similar relevant circumstances which go into the decision making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money is engaged in financial transactions or acts in difuciary capacity the highest degree of integrity and trustworthiness is a mustand unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal."

10 It is settled law that in disciplinary cases the Court/Tribunal shall not reassess the evidence to arrive at its own conclusion unless it is shown that there is procedural irregularities in the conduct of the inquiry proceedings and that there is no evidence at all to arrive at the finding of the Inquiry Officer. In this case, we notice that the Inquiry Officer has come to the conclusion that all the three charges are proved in the inquiry. As regards charge No. 1 the applicant himself has stated that:

"Hence it is evident from this deposition that his wife had received the money after affixing the signature of David. The only lapse on the part of the applicant was that he did not obtain the signature of the payee instead of the signature of his wife. This is assuming the worst a technical irregulariity not warranting a major penalty. As the parties are known such course is adopted to help the customer."

The applicant has admitted that he has not given the money order to the payee and submitted that such a course is adopted by him



to help the customer.

As regards charge No. II, the payee Smt. Sindhu Gopi had disowned the signature appearing on the MO paid voucher and confirmed non-receipt of the MO. The contention of the applicant is that the signature on the paid voucher was not sent for expert opinion.

As regards charge No. III Sri K.P.Antony the payee has submitted that he was not in the house at the time the Postman brought these Money orders. He was at Kozhikode for about 33 days. That means the money order was not given to the payee but to the relatives of the payee.

From what have been stated above, the evidence adduced during the inquiry proved the charges against the applicant. The proceedings against him were conducted in accordance with the provisions of CCS (CCA) Rules and that he was given reasonable opportunity to defend himself.

11 The finding of the inquiry officer on each charge is extracted below:

(i) Article -I: The contention of the defence is that SW-1 categorically replied that the signature in S-2 paid voucher is that of his wife and the payee has no complaint in this case. In the absence of valid authorisation from the payee the version that the amount was received through his wife is lacking credibility. Similarly, whether the payee had any complaint or not is not a question as the point to be examined was whether the money order with required cash entrusted to the charged official was paid to the correct payee. From the above discussions I conclude that the Article-I of the charge sheet is proved beyond doubt.

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(ii) Article -II: The charged official could not produce any evidence orally or documentarily to establish that the signature appearing in S-4 document is that of SW-2 since the burden of proof rests on the delinquent. He could not disprove the charge.

(iii) Article -III: Hence it is crystal clear that the MOs entrusted to the CGS on 22.5.03 and 13.6.03 payable to SW-2 were not paid to the correct payee while submitting his return or while the SW-2 giving statement before SW-6. Thus the article-III of the charge is also conclusively proved.

12 As regards the argument of imposition of penalty of removal is disproportionate to the gravity of the offence, the Apex Court in V. Ramana Vs. APSRTC and Others (2006 SCC (L&S) 69, held that unless the punishment shocks the conscience of the Court/Tribunal there is no scope for interference.

13 The applicant a Postman, committed a grave offence in not disbursing the money orders to the payee and misappropriating the money by forging the signature of the payee. He has abused the trust reposed in him by the public as well as the Postal authorities and tarnished the reputation of the Department by misappropriating the money. Such an employee cannot be allowed to continue in service. Removal from service is the only punishment which could be imposed on him. The relevant portion of the judgment is extracted below:

"12. To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the Court/Tribunal there is no scope for interference. Further to shorten litigations, it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed."

TJ.

The Apex Court in Karnataka Bank Ltd. Vs. A. L. Mohan Rao
(2006 SCC (L&S) 59 held as follows:

6 "In our view, a gross misconduct of this nature does merit termination. We fail to see what other type of misconduct would merit termination. It is not for the courts to interfere in cases of gross misconduct of this nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved. In such matters, it is for the disciplinary authority to decide what is the fit punishment. In any case on such misconduct, it could never have been said that termination of service is not the appropriate punishment.

7 We therefore set aside the orders of the learned Single Judge as well as the division Bench and restore the order of termination of service."

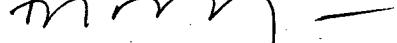
The Apex Court in the above case of a Bank employee charged with gross misconduct held that it is not for courts to interfere in cases of gross misconduct of this nature with the decision of disciplinary authority on any mistaken notion of sympathy, so long as inquiry has been fair and proper and misconduct proved. In such matters, it is for the disciplinary authority to decide that is the fit punishment. In the case on hand the applicant, a Postman was charged for taking payment of money orders forging the signature of the payees and utilised the amount for his personal use. His nature of duty is only to deliver mail including money orders and he cannot be given any alternative job which does not involve monetary transaction.

14 In view of the discussion above, we are of the view that all the charges are proved in the inquiry, reasonable opportunity has been granted to the applicant to prove his innocence and that the appellate and revisional authorities have considered the various points raised by the applicant and concurred with the order passed by the disciplinary

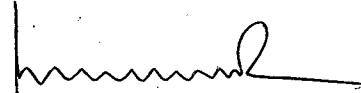
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authority. In the circumstances, we do not find any infirmity with the impugned orders warranting interference of the Tribunal. The O.A. is accordingly dismissed. No costs.

Dated 4th August, 2009


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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GEORGE PARACKEN
JUDICIAL MEMBER