

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 179 of 2007

Thursday, this the 22nd day of October, 2009

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member
Hon'ble Ms. K. Noorjehan, Administrative Member

C.V. Thomas, S/o. C.M. Varghese,
Aged 51 years, Formerly GDS SPM,
Department of Posts, Pariyaram P.O.,
Pariyaram, Mallappally, Residing at Chettinjamatal
House, Pariyaram P.O., Mallappally,
Pathanamthitta District.

Applicant

(By Advocate – Mr. M.R. Hariraj)

V e r s u s

1. Chief Post Master General, Kerala Circle,
Thiruvananthapuram - 695033.
2. Director of Postal Services (SR), Office of
the Chief Post Master General, Kerala Circle,
Thiruvananthapuram - 695 033.
3. Superintendent of Post Offices, Thiruvalla Division,
Thiruvalla - 689 101.
4. Union of India, represented by the Secretary to the
Government of India, Department of Posts,
New Delhi.

Respondents

(By Advocate – Mr. P.S. Biju, ACGSC)

The application having been heard on 08.10.2009, the Tribunal on
22-10-09 delivered the following:

O R D E R

By Hon'ble Dr. K.B.S. Rajan, Judicial Member -

 The applicant commenced his service as Extra Departmental Delivery

Agent (for short EDDA) on 28.11.1979 and later on appointed as ED Sub Postmaster, Pariyaram, Mallappally w.e.f. 1.4.1995. It is case of the respondents that when the SDI, Mallappally inspected the Post Office on 25.3.2002 the applicant committed a fraud and misappropriated money belonging to some depositors. Some statements were obtained from the applicant in this regard. Again on 26.3.2002 according to the respondents the alleged misappropriated amount of Rs. 4050/- was deposited under UCR and the receipt No. 22 indicates that the amount was received from the applicant and the applicant has appended initials acknowledging the receipt. The statements from depositors were also received after they were paid the full amount of the deposit. An inquiry was conducted vide charge memo dated 12.2.2003 at Annexure A-4. Inquiry officer held the charges as proved vide Annexure A-5. The disciplinary authority namely Superintendent of Post Offices, Tiruvalla Division passed Annexure A-3 order dated 17.11.2004 removing the applicant from service.

2. The applicant has filed Annexure A-7 appeal placing various grounds including the one that this is a case of no evidence and non-application of mind by inquiry officer. This was however, not accepted by the appellate authority who has dismissed the appeal vide Annexure A-2 order dated 19.9.2005. Revision filed by the applicant vide Annexure A-8 also was not successful as the revisional authority namely the Chief Post Master General dismissed the petition vide Annexure A-1 order dated 15th March, 2006.

3. The following are the main grounds:

- a) The procedure laid down under Rule 14 of the CCS (CCA) Rules, which is mandatory under DGP&T order dated 16.1.1980 has not been followed.
- b) Especially there has been complete violation of rule 14(16), Rule 14(17) and Rule 14(18) of the CCS (CCA) Rules.
- c) It has been contended that the questions raised by the inquiry officer is indicative of the concluded opinion he had already formed with respect to the guilt of the applicant.
- d) There is no evidence to show that any amount was as such entrusted with the applicant by any depositor.
- e) No documentary evidence was adduced by way of production of paying slips nor is there any difference in the entries made in the RD book and other books/registers maintained in the Post Office and the headquarters.
- f) Confessional statements given by the applicant in the preliminary inquiry ought not to have been relied upon.
- g) Representation made by the applicant against the inquiry report had not been considered properly.

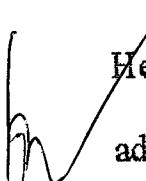
h) The appellate authority completely failed to deal with the matter as per rules, and so is the case with revisional authority.

4. Respondents have resisted the OA. According to them vide Annexure R-1 the applicant had given in his own hand the statement from which he cannot retract now. It is also been contended that the inquiry was conducted as per provisions of Rule 10 of the Department of Posts Gramin Dak Sevak (Conduct and Employment) Rules, 2001, following principles of natural justice. The respondents have further contended that scope of judicial review in disciplinary cases is restricted to ascertain that there is no legal lacuna in the issue of charge sheet and in the decision making process there has been no legal flaw. Supported by statements from order dated 21.6.2006 in OA 1036 of 2003 and order dated 27.3.2007 in OA 140 of 2004.

5. The applicant has filed his rejoinder reiterating his stand as contained in the OA and also elaborating certain points raised in the OA.

6. In their additional reply statement it was stated that the applicant was given all opportunities to defend himself and adduce evidence.

7. Counsel for the applicant took us through the charge sheet, the orders of the Tribunal, the appeal before the appellate authority and its rejection order as well as revision before revisional authority and its rejection order. He has stated that the mandatory procedure as contemplated in Rule 14 admittedly have not been followed in this case. He has also read over from



the department's file and stated that the entire records would show that there is no iota of evidence of any money being deposited by the depositors. He has pointed out that the impugned orders suffer from various legal lacuna. Reference was invited to some of the recent cases relating to disciplinary proceedings. It has also been submitted that his acknowledgment on the counter file of the receipt issued in token of having received amount to be credited under UCR, cannot be taken as a concrete proof for any purpose. Thus, this is a case of no evidence.

8. Counsel for the respondents submitted that the depositions would go to show that on 26.3.2002 the applicant was very much available within the office premises, crying and without any murmur he had received the UCR receipt by duly acknowledging the same. And the statements made by him on the very same day cannot be marginalized and the fact that the applicant has not flatly refused or challenged the signature in the voucher which makes that he accepts the same.

9. Arguments were heard and the documents perused.

10. The Articles of charge are as under:-

"ARTICLE I

That Sri C.V. Thomas, while functioning as GDS-SPM, Pariyaram EDSO during the period from 1.4.95 to 26.3.2002 accepted a sum of Rs. 1500/- (Rs. One thousand five hundred only) for depositing in Pariyaram PO RD account no. 535323 of denomination Rs. 100/- standing open in the name of Smt. Aleyamma Simon, towards the monthly deposits from October 2000 to December 2001 @ Rs. 100/- but failed to credit the amount in PO account violating the provisions of Rule 106 of PO SB Manual Vol.I read with Rules 31(2)

(ii)(a), (b) and (c) ibid and Rule 4(1) of P&T Financial Hand Book Vol. I and thereby failed to maintain absolute integrity and devotion to duty in contravention of Rule 21 of the Department of Posts Gramin Dak Sevaks (Conduct and Employment) Rules, 2001.

ARTICLE II

That the said Sri C.V. Thomas, while functioning in the aforesaid office during the aforesaid period accepted a sum of Rs. 750/- (Rs. Seven hundred and fifty only) from Smt. Mariamma Mathew, Panalikuzhiyil, Pariyaram for depositing in RD account No. 535324 being the monthly deposits from October 2000 to December 2001 @ Rs. 50/- but failed to credit the amount in PO account violating the provisions of Rule 106 of PO SB Manual Vol.I read with Rules 31(2)(ii)(a), (b) and (c) ibid and Rule 4(1) of P&T Financial Hand Book Vol. I and thereby failed to maintain absolute integrity and devotion to duty in contravention of Rule 21 of the Department of Posts Gramin Dak Sevaks (Conduct and Employment) Rules, 2001.

ARTICLE III

That the said Sri C.V. Thomas, while functioning in the aforesaid office during the aforesaid period accepted a sum of Rs. 1300/- (Rs. One thousand three hundred only) from Smt. Sosamma Cherian, Poovanthanathu, Pariyaram from month to month for depositing in RD account no. 535325 of denomination Rs. 100/- standing open in the name of Smt. Jiby Cherian, her daughter towards monthly deposits from December 2000 to December 2001 @ Rs. 100/- but failed to credit this amount in PO account violating the provisions of Rule 106 of PO SB Manual Vol.I read with Rules 31(2)(ii)(a), (b) and (c) ibid and Rule 4(1) of P&T Financial Hand Book Vol. I and thereby failed to maintain absolute integrity and devotion to duty in contravention of Rule 21 of the Department of Posts Gramin Dak Sevaks (Conduct and Employment) Rules, 2001."

As stated above, the counsel for the applicant attacked the orders impugned herein on the ground that the inquiry was not conducted in accordance with the spirit behind the provisions of CCS(CC&A) Rules, which are to be followed in the case of G.D.S. Again, the Appellate and Revisional Authority have not dealt with the case in accordance with the provisions of the Rules. And further that this is a case of no evidence.

11. The main question is whether the inquiry officer has based his finding upon proper evidences. To examine the same, we have to consider the evidences taken into account by him. The evidences he has taken into account are -

- (a) The statement of the applicant before holding the inquiry.
- (b) The statement of the prosecution witnesses (depositors)
- (c) The fact that the Pass Book has been retained by the applicant.
- (d) The fact that when the amount was credited in UCR Account in the name of the applicant, he having duly received the receipt of the same, after appending the signature.

12. The argument of the counsel for the applicant is that for proving the remittance of deposit amount by the depositors what is required to be shown is the counterfoil of the pay in slip and the entry in the R.D. Book, both of which are not found and hence, there is no proof of the depositors having made the deposits. His further argument is that the earlier statement of the applicant as to the receipt of the deposit amounts was due to the coercion and duress and the same has been later on retracted by the applicant. Unless separately proved, the statement cannot be taken into consideration. Likewise, the applicant has only acknowledged the receipt by him of the UCR Receipt but not admitted the contents.

13. The above arguments cannot be accepted. For, when in oral evidence the witnesses have stated that the amounts have been deposited for full sixty months nothing against the same could be brought out by the applicant in the

cross examination. That the depositors did not possess the counterfoil cannot be held to be to confirm that they had not remitted the amount. The applicant had been holding their R.D. Pass book, which is supposed to have been left only with the depositors. He has no business to retain the same. Retention the RD Book by the applicant has to be held to be with a purpose and the same is to ensure that no entry of deposit is made therein. When one of the depositors deposed that counterfoil used to be prepared and entries used to be made in the Pass book, they could be taken as the general happening when the pass book is returned to the depositors. The same cannot be held when the applicant retained the pass book. As regards the admission made before the authorities prior to holding of inquiry, the contention of the counsel that the same should have been proved by the prosecution also does not hold good, for the applicant would have immediately informed the higher authorities of the duress he had to suffer earlier which compelled him to give such a statement. This was not done. Instead, he had acknowledged the UCR prepared in his name which goes to show that he had accepted what he had stated in the statement. The insistence by the counsel that a statement made prior to holding of enquiry has to be proved presumably based on the fact that a confession before the police is not admissible. But the fact is that Under Section 25 of the Evidence Act, a confession made to the police officer is not admissible in evidence to be considered by a court (see *State of Maharashtra v. Siraj Ahmed Nisar Ahmed*, (2007) 5 SCC 161). Had the applicant made such an admission/confession before the Police and had the inquiry officer treated as evidence, the same may not be correct, as held by the Apex Court in the

case of Roop Singh Negi v. Punjab National Bank,(2009) 2 SCC 570, wherein, the Apex Court has held as under:-

"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding."

In the above mentioned judgment, the Apex Court has also held,

"15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left. (Emphasis supplied)."

14. In the case of the applicant, the requisite evidence in addition to the statement filed by the applicant before the commencement of inquiry is the UCR Receipt, which is in the name of the applicant and which the applicant had acknowledged. He would have clearly refused to entertain and would have questioned the same being in his name then and there had he not admitted the receipt of deposits from the depositors which had not been duly and timely credited with the respective accounts, but he had not said so. His holding the R.D. Book without authority also is a pointer to the fact

that his intention in retaining the pass book is not that bonafide. Preponderance of probability tilts against the applicant and in favour of prosecution and hence, no fault could be found over the finding of the inquiry officer.

15. In so far as failure to conduct the inquiry under the 'spirit' of the rules under CCS(CC&A), the same is only to the extent of adhering to the principles of natural justice and the finer niceties as contained in the CCS (CC&A) rules are not contemplated in the regulations governing the disciplinary cases of the GDS employees. In the case of *Union of India v. Kameshwar Prasad, (1997) 11 SCC 650*, the Apex Court has held as under:-

"The Rules lay down a complete code governing the service and conduct of Extra Departmental Agents including proceedings for taking disciplinary action against them for misconduct."

Being a complete code, it does not require any assistance from any other Rules. Thus, failure to follow strictly Rule 14 as contended by the applicant cannot be held as fatal to the inquiry.

16. The applicant has questioned the manner in which the appellate authority and revision authority dealt with the case. Here again, as to the consideration of the appeal, full length discussion has been made by the appellate authority and likewise by the Revision Authority. These do conform to the provisions as contained in the provisions of rules 18 and 19 of the CCS (Conduct and Employment) Rules 2001.

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17. In view of the above, no legal lacuna is discernible from the decisions of the respondents and hence, the OA is dismissed.

18. Under the circumstances, there shall be no order as to cost.


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(K.B.S. RAJAN)
JUDICIAL MEMBER

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