

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 181 OF 2008

TUESDAY, this the 28th day of July, 2009.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

EP Mahesh, Working as Postal Assistant,
Mayyil Post Office, Cannanore,
residing at Chelari, Kannadiparamba,
Cannanore.

... **Applicant**

(By Advocate Mr. K.S Bahuleyan)

versus

1. Senior Superintendent of Post Offices,
Tirur Division, Tirur-676104.

2. Director of Postal Services,
Calicut,
O/o Postal Master General
Northern Region, Calicut

3. Union of India represented by
Director General (Posts)
Government of India,
Ministry of Communications,
Department of Posts,
New Delhi.

... **Respondents**

(By Advocate ^{Mr.} TPM Ibrahim Khan, SCGSC)

The application having been heard on 22.07.2009, the Tribunal
on 28-07-09 delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant while functioning as Postal Assistant at Valancheri Post Office was engaged as officiating Treasurer with effect from 25.03.2004. On the night of 26/27.03.2004 a burglary took place at Valancheri Post Office resulting in a monetary loss of Rs.3,15,980/- The applicant was issued with a show cause notice in August, 2004 in this

regard vide Annexure A-1 which reads as under :-

" You were working as Treasurer, Valancheri on 26.3.2004. On the night of 26/27-3-2004 a burglary had taken place in the office on the result of which an amount of Rs.316584/- were lost.

The authorized minimum/maximum cash balance of Valancheri SO is fixed as Rs.50,000.00/75000.00. The liability of the officer as per the entry in SO account dated 26-3-2004, without any details, was Rs.1,40,000/- So the retention of an amount more than Rs.3 lakhs was not at all justified. On 26.03.2004, you had remitted Rs.4 lakhs only to the bank.

According to the statement of GDS SPM, Tolavannur on 26.03.2004 she had brought a special remittance of Rs.95,000/- at 13.20 hours. This was before you departure to bank for remittance of Rs.4 lakh. Prior to that, you were having with you a cash of Rs.4,31,482.70 as per the treasurer's cash book. So, taking into account of the special remittance of Rs.95,000/- from Tolavannur EDSO, a remittance of Rs. 5 lakhs could have been made to the bank on the date. Being treasurer you failed to remit the available maximum cash to the bank on 23.06.2004. Your failure to remit maximum cash to the Bank caused retention of excess cash in the office over-night, and this contributed to the loss in the burglary in the night dated 26.3.2004/27.3.2004.

You are directed to show cause within 10 (ten) days of receipt of this letter, why disciplinary action should not be taken against you for the contributory negligence on your part."

2. The applicant has given his version vide Annexure A-2. He has indicated therein that he was able to deposit an amount of Rs. 4 lakhs leaving a balance of Rs.31,000/- in the Post Office. However, he could not, due to paucity of time, deposit another amount of Rs.95,000/- which was received by the Post Office from Tolavanur GDS SPM which was handed over to the Post Office around 13.30 hours. However, this amount together with the other amount and amount kept as liability for the ensuing day were kept in tact in the safe embedded to the grounds. It is unfortunate that the burglary took place in respect of which none in the Post Office

staff can be held responsible. Proceedings under Rule 16 of CCS(CCA) Rules commenced and thereafter considering the responsibility, the Disciplinary Authority held the applicant guilty of misconduct and imposed a penalty of recovery of an amount of Rs.54,000/- vide Annexure A-8. On the applicant's preferring the appeal, the Appellate Authority vide order dated 02.04.2007 (Annexure A-11) observed that the penalty awarded in the case of Sub Post Master who was equally responsible has recovery of Rs.6600/- only and as such, the penalty awarded to the applicant was reduced to Rs.6000/- recoverable in four instalments. The applicant has challenged the aforesaid penalty order on various grounds.

3. Respondents have contested the OA. According to them the applicant is guilty of mis conduct on account of his failure to deposit in the bank the amount over and above the maximum prescribed for retention. Had the same been done the extent of loss would have been sizeably reduced. The applicant's failure to deposit Rs.95,000/- has not been explained justifiably when at 13.20 hours on 26.03.2004 the aforesaid amount was deposited with the Post Office by the GDS BPM. The respondents have also annexed the duties and responsibilities of various officials of the Post Office including that of the Postal Assistant/Treasurer.

4. The applicant has filed his rejoinder stating that it is not correct that the amount of Rs.95,000/- was tendered at 13.20 hours. Since there is dispute of facts, respondents ought to have conducted the inquiry as per Rule 16 (1) (b) of CCS (Conduct) Rules, 1965, whereas the respondents have failed. In addition, the fact that there had been deficiency of two hands on that particular day and that as Treasurer, the applicant is not

under any obligation to ensure deposit of the amount over and above the permissible amount for retention have already been pointed out by the counsel for applicant.

5. Applicant has also cited decision by the Apex Court in Bhardwaj vs. Union of India which deals with opportunity to be given by way of departmental enquiry to the delinquent individual.

6. Counsel for respondents submitted that inquiry under Rule 16 (1) (b) is purely discretionary and in this case the question of holding such inquiry does not arise since it cannot be said that there is disputed fact. Again penalty has been kept to the minimum of Rs.6000/-

7. Arguments were heard and documents perused. Provision exist for retention of certain amount in the Post Offices and the balance has to be necessarily remitted with the Bank or deposited in the Head Post Office as the case may be. Notwithstanding the fact that there might be shortage of hands on that day, a duty is cast upon the Sub Postmaster and the Treasurer to ensure that money over and above the specified maximum amounts is not retained but deposited in the Bank. Had the GDS SPM, Tolavannur tendered the amount after the applicant had left for the Bank, perhaps it can be held that the amount could not be deposited in the Bank. Admittedly, the amount of Rs.95,000/- was made available for deposit at least half an hour in advance of the closing hours of the Bank. It is understood that the Bank is situated very nearby and thus it would not have consumed much time to reach the Bank. Thus, this is a clear case of failure to adhere to the stipulation of depositing the amount over and above

the maximum permissible amount of retention. Both the Sub Postmaster as well as the Treasurer were held responsible and rightly so. The penalty imposed cannot be considered as disproportionate since the penalty to the Postmaster was Rs.6300/- and to the applicant Rs.6000/- while the loss to the exchequer is to the tune of Rs.3.15 lakhs. Failure to conduct enquiry under Rule 16 (1) (b) is not fatal to the decision adhered to this case as there cannot be said to be any such disputed points of facts, warranting inquiry. As such, we do not find any merit in this OA and accordingly this OA is dismissed. No costs.

Dated, the 28th July, 2009.



K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

VS