

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 205 / 2008

Wednesday, this the 15th day of July, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

K.Mohanan,
S/o P.S.Kutty,
"Padmasree",
Ex-Postak Assistant,
Devikulam, Munnar.Applicant

(By Advocate Mr Sreekumar G Chelur)

v.

1. The Director of Postal Services,
Central Region, Cochin.
2. The Postmaster General,
Central Region,
Cochin.
3. The Union of India, rep. By
Member(Personal),
Postal Services Board,
New Delhi.Respondents

(By Advocate Mr P.A.Aziz, ACGSC)

This application having been finally heard on 22.6.2009, the Tribunal on 15.7.2009 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance is against the Annexure A-10 order dated 19.7.2001 by which his Annexure A-9 revision petition under Rule 29 of the CCS (CCA) Rules 1965 against the modified penalty of compulsory retirement by the

Post Master General, Kochi has been rejected by the 3rd respondent, viz, Union of India represented by Member(Personnel), Postal Services Board, New Delhi.

2. The respondents, vide Annexure A-1 memo No.INV/2-13/97(Pt) dated 26.11.1997, proposed to hold an inquiry against the applicant under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules (CCS(CCA Rules for short), 1965. The articles of charge against him were as under:

"ARTICLE-I

That the said Sri K Mohanan while functioning as Sub Postmaster, Devikulam SO under Thodupuzha HO during the period from 3.6.93 to 19.6.96, refused to produce the office cash balance amounting to Rs.1,39,835/55 (Rupees one lakh, thirty nine thousand, eight hundred and thirty five and paise fifty five only) before Sri P.M.Hareeswaran Offg. Assistant Superintendent of Post Offices, Idukki Division for verification when the latter visited Devikulam S.O. At 10.00 hours on 19.6.96 and thereby failed to maintain absolute integrity and conducted himself in a manner unbecoming of a Government servant violating Rules 3(1)(i) and 3(1)(iii) of Central Civil Services (Conduct) Rules, 1965.

ARTICLE-II

That during the aforesaid period and while functioning as such in the aforesaid office, the said Sri K Mohanan drew cash as shown below on the dates noted from the drawing account of Devikulam SO with the State Bank of Travancore, Devikulam by issuing the cheques, without justification and thereby failed to maintain absolute integrity contravening Rule 3(1)(i) of Central Civil Services (Conduct) Rules, 1964.

<i>Date</i>	<i>Amount drawn Rs.</i>	<i>Cheque No.</i>	<i>Opening cash balance of the day Rs.</i>	<i>Total payment of the SO on the day of drawal of Cqe. Rs.</i>	<i>Closing cash balance of th day Rs.</i>
09/02/96	1000	B 984450	30009-25	3685-20	44740-25
12/02/96	10000	B 984451	42818-75	1858-20	56844-75
15.2.96	20000	B 984452	57993-75	9200-00	77711-25
20.4.96	20000	B 984453	63846-70	1927-00	87910-20
30.4.96	20000	B 984454	84047-70	13274-00	95859-20
31.5.96	30000	B 984455	93816-60	14903-00	110408-60
07/06/96	10000	B 984456	111360-10	4486-00	122481-60
08/06/96	20000	B 984457	122481-60	23264-00	120490-10
15.6.96	10000	B 984458	123712-15	7314-70	127308-15

ARTICLE-III

That during the aforesaid period and while functioning as such in the aforesaid office, the said Sri K Mohanan retained cash far in excess of the authorised maximum cash balance of Rs.3500/- (Rupees three thousand five hundred only) on the following dates without sufficient liabilities to justify retention of cash to the extent shown below, violating Rules, 102.B of Postal Manual Volume VI (Part-III) sixth Edition and 128 of Posts and Telegraphs Financial Hand Book Volume-I and thereby failed to maintain absolute integrity and conducted himself in a manner unbecoming of a Government servant, contravening Rules 3(1)(i) and 3(1)(iii) of Central Civil Services (Conduct) rules, 1964.

<i>Date</i>	<i>Cash balance retained Rs.</i>	<i>Actual liabilities Rs.</i>
04/05/96	107187-20	----
06/05/96	113682-70	3000-00
07/05/96	109852-20	12000-00
08/05/96	107097-40	461-00
09/05/96	106007-90	1160-00
10/05/96	105365-90	100-00
11/05/96	99051-90	---
13.5.96	101155-60	100-00
14.5.96	100587.3	---
15.5.96	97275-30	1199-00
16.5.96	98552-30	1690-00
17.5.96	102223-35	---
18.5.96	103712-45	---
20.5.96	108472-45	1506-00
21.5.96	106068-95	150-00
22.5.96	106382-95	150-00
23.5.96	114205-45	310-00
24.5.96	124587-95	400-00
25.5.96	126486-45	---
27.5.96	126940-45	2000-00
29.5.96	91485-10	---
30.5.96	93816-60	2000-00
31.5.96	110408-60	2000-00
01/06/96	107732-60	---
03/06/96	108129-60	915-00
04/06/96	109471-10	300-00
05/06/96	111077-60	10000-00

<i>Date</i>	<i>Cash balance retained Rs.</i>	<i>Actual liabilities Rs.</i>
06/06/96	111360-10	100-00
07/06/96	122481-60	300-00
08/06/96	120490-10	300-00
10/06/96	128423-10	500-00
11/06/96	122641-95	10000-00
12/06/96	128714-15	1206-00
13.6.96	122012-15	75-00
14.6.96	123712-15	15-00
15.6.96	127308-15	6742-00
17.6.96	135947-35	23015-00
18.6.96	139835-55	370-00
19.6.96	131195-05	2900-00

2. The applicant denied all the aforesaid 3 charges levelled against him. His contention was that the aforesaid deeds were done in good faith with a genuine hope of achieving certain desirable objectives which inadvertently were violative of rules, if viewed in a narrow mechanical perspective. According to him, those deeds were the symbolic act of non-observance of rules and procedures. He has, therefore, expressed his regrets and requested the disciplinary authority to treat the charges as not proved on dispassionate consideration of the matter so that the ends of justice will be met with compassion. Having not satisfied with the explanation given by the applicant, the disciplinary authority proceeded with the inquiry under Rule 14 of CCS(CCA) Rules, 1965. The inquiry authority in a detailed inquiry in the matter held that the aforesaid charges have been proved against the applicant. Its report reads as under:

"I have to check and find out whether the three articles of charges framed against Sri K Mohanan, PA, Munnar have been proved as per the oral and documentary evidence adduced in the inquiry.

There are three charges against the C.O regarding the non production of cash balance before the acting ASP, Idukki Dn on 19.6.96. As per the S-15, the C.O was present on 19.6.96 and noted as EL w.e.f. 20.6.96. But acting SPM has signed as SPM in S-15 w.e.f. 25.6.96 only. S-12 has been prepared by the C.O upto 18.6.96 and



also as per S-2 C.O has written on 19.6.96 also. The S-5(39) was prepared by the C.O. In S-3 C.O has admitted that he was SPM, Devikulam on 19.6.96 and why he refused to produce cash balance before the (SW-7), acting ASP, Idukki Dn on 19.6.96. During the self examination also the C.O has admitted this fact. There is no dispute in the first charge by the C.O. But only in the cause of his action. The C.O in his statement (S-17) admitted that the authorised maximum cash balance of Devikulam was 3500 and minimum Rs.2000/- and he used to keep the cash balance above maximum "to attract the attention of SPO's" to the long pending needs of his office and staff quarters and also to represent in person to SPO's; and showing cash balance to any other officer was equal to defecting the very purpose of his action and against his consciousness.

In the self examination the C.O stated that he showed the cash balance on 21.6.96 to the ASP(Ag) only when the ASP warned him about the consequences that may happen if he does not produce the cash balance. In the cross examination by the P.O in self examination the C.O has disposed that he would have obeyed the order of the ASP if ASP had warned him about the consequences on 19.6.96 itself. And also the C.O denied shortage of cash in the office on 19.6.96 in the cross examination during the self examination and there is no charge as shortage of cash. Thus the first charge proved beyond any doubt by documental and oral evidence adduced in the inquiry.

As per S-15 the C.O was holding the charge of SPM, Devikulam w.e.f. 3.6.93 to 19.6.96. In his statement the C.O has admitted that Exhibit S-16 (1) to S-16(9) were the cheques used for drawing cash from State Bank of Travancore, Devikulam where the SPM, Devikulam transact with as per S-11 also. In S-14 also these S-16(1) to S-16(9) are seen used to withdraw cash from SBT, Devikulam. The cash paid bank seal on these S-16(1) to S-16(9) shows that these are the cheques used by the C.O to withdraw cash from SBT, Devikulam. In his deposition PW-6 has admitted that he was the Manager, SBT, Devikulam w.e.f. June 94 to June 96. He identified the C.O as the SPM, Devikulam during his stay at Devikulam. PW-6 has identified S-16(1) to (9) are the postal cheques issued from Devikulam PO and drawn from his bank at Devikulam. And also identified the attestation of SBT in S-14 against each entry of each cheque by bank seal and initials of concerned officials of the bank. As per S-6(1), there was a cash balance of Rs.30009/25 in his office on 8.2.96 and no liability and draw Rs.10000/- by S-16(1) for the payment of Rs.3685/20 on 9.2.96. Having a cash balance of Rs.42818.75 overnight vide S-6(3), C.O drew Rs.10000/- vide S-16(2) from SBT for a payment of Rs.1858/20. While having Rs.57993.75 overnight as cash balance in the office vide S-6 (5) withdrew Rs.20000/- by the C.O from SBT for the payment of Rs.9200/- on 15.2.96. On 20.4.96 an amount of Rs.20000/- withdrawn from bank vide S-16(4) for the payment of only Rs.1927/- while there was an overnight cash balance of Rs.63846/70 as per S-6(7). Likewise C.O withdrew Rs.2000/- on 30.4.96 vide S-16(5), Rs.30000/- on 31.5.96 vide S-16(6), Rs.10000/- on 7.6.96 vide S-16(7), Rs.20000/- on 8.6.96 vide S-16(8) and Rs.10000/- on 15.6.96 vide S-16(9) for the payment of Rs.13274/- when there was opening cash balance Rs.84047/70 vide S-6(9), Rs.30,000/- on 31.5.96 for the payment of Rs.14903/- when there was an overnight cash balance Rs.93816/60 on 30.5.96 vide S-5(22), Rs.10000/- on 7.6.96 for the

payment of Rs.4486/- when there was an overnight cash balance in hand Rs.111360.10 vide S-5(28), Rs.20000/- on 8.6.96 for the payment of Rs.23246/- while there was an overnight cash balance of Rs.122481.60 vide S-5(29) on 7.6.96. On 15.6.96 Rs.10000/- for the payment of Rs.7314/70 when there was an overnight cash balance of Rs.123702/15 as per S-5(35). The exhibit S-2, S-12 and S-13 are with S.O account book and S-5 are the copies of the respective days of S-2, S-12 and S-13. These documents have been identified by SW-7 and SW-5. Hence the second charge also proved beyond doubt as per the oral and documentary proof adduced during the inquiry.

In the deposition SW-1 stated that on receipt of S-1 at CPMG's office, Trivandrum he made investigation on 6.8.96 at Devikulam post office. SW-1 identified S-1 as the anonymous complaint received in the name P.Thomas Varghese, CPMG and S-2 as the S.O A/C book of Devikulam S.O in which he wrote satisfactory result after verification of cash and stamp balances on 6.8.96. SW-1 submitted report to CPMG about retention of excess cash by the C.O. The C.O in his deposition during self examination and in S-3 and S-17 admitted retention of excess cash without liability above the authorised maximum cash balance Rs.3500/- as per S-11 since March 96 to 19.6.96 on several days and this was to show protest against non settlement of staff grievances pending for last several years. In his statement S-10, the SW-5 stated that he had requested SPM, Devikulam not to keep excess cash without liability and he cannot function as joint custodian if the practice of keeping excess cash was continued. SW-2 in deposition stated that he had made detailed investigation about the allegations against the C.O and he has identified the S-3 statement as the one given by the C.O before him during the investigation.

SW-2 submitted the report to PMG, Kochi. SW-3 identified S-3 on which he has signed as witness. SW-4 has identified S-4 as his own given before ASP, Vigilance, Office of the PMG, Kochi on 14.11.96. SW-4 identified the C.O and the documents S-5(1) to S-5(39) as the S.O daily account of Devikulam S.O and also S-6(1) to S-6(10), S-12 and S-13 are the S.O account book of Devikulam S.O. S-5(1) to S-5(39) and S-6(1) to S-6(10) are the daily accounts of Devikulam S.O. These are identified documents by SW-4 and SW-5. These documents show retention of excess cash without sufficient liabilities on 4.5.96, 6.5.96, 11.5.96, 13.5.96 to 18.5.96, 20.5.96 to 25.5.96, 27.5.96, 29.5.96 to 31.5.96, 1.6.96, 3.6.96 to 8.6.96, 10.6.96 to 15.6.96 and 17.6.96 to 19.6.96. C.O also admitted this excess retention of cash on these days without sufficient liability in his deposition and by S-3 and S-17. Thus the third charge also proved orally and documentally.


After proving all the three charges orally and documentally I have to see the argument of the defence side is sustainable. The C.O had argued through S-3 and S-17 statements and through his self examination and brief that all these were done to attract the personal attention of the divisional head as a last resort for settling his long pending request for repair of the staff quarters, replacement of faulty pump, construction of compound wall, non supply of water due to curtailment of working hours of pump operator. C.O has produced 39 documents to establish his argument as correct. The C.O has done these in good faith and was the overflowing frustration in his mind due to the non settlement of these problems which he has made so many

correspondence. In his brief also the C.O argued the inaction of the administration towards his request forced him to do all these acts of unbecoming of a govt servant. The administration expects more outputs without little inputs. A 'manager' must be always considerate and be interested in staff welfare also. The requests placed before the administration by the C.O not so far settled. The arguments and defence documents shows administration not at all interested in staff welfare. Welfare means measures to achieve reasonable contentment, satisfaction amongst employees in their status as an individual, member of a community, society and office. The purpose of welfare in an establishment is to enable an individual to enjoy the work and to put a meaning in life and also to raise the morale and attitude, a sense of belonging to the organisation, to promote willingness and ability to work more for the department or organisation. Hence I think department has to do more work in the building/quarters maintenance. For good outputs good inputs are needed.

I have nothing to do with the C.Os arguments that all his acts are the result of his frustrated feeling regarding non-settlement of long pending requests for repairs/maintenance. P.O in his brief said nothing about the argument of the C.O. C.O could have searched for other channels for the settlement of these items. The channel chosen by the C.O is quiet unbecoming of a Govt. servant. Hence his arguments will not sustain. All the three charges are proved conclusively beyond doubt as per the evidence adduced orally and documentally in the inquiry."

3. The applicant was served with the aforesaid report vide Annexure A-4 letter. Applicant has made the Annexure A-5 representation requesting the disciplinary authority to view his lapses with a sympathetic mind. He had also assured that he will learn a lesson from what has happened and that will not come up for adverse notice. However, on consideration of the inquiry report, the submission of the applicant thereon and other material on record of the disciplinary proceedings, the disciplinary authority vide Annexure A-6 memo dated 21.1.2000 imposed the major penalty of removal from service with immediate effect. While imposing such penalty, the disciplinary authority held as under:

"I have gone through the case in detail. I find that all the three charges have been proved beyond doubt. The submission of the charged official offered that by retaining excess cash without liability and by drawing cash from the bank when he already had cash beyond maximum prescribed, he had not actually failed to maintain absolute integrity is not acceptable. It has to be stated that the charged official had actually retained cash much over and above prescribed maximum without liability and had violated rules prescribed by the department with



malafide intention. The very fact that he failed to produce the cash when the offg. ASP visited he office on 19.6.96 without notice would lead to the conclusion that he did not have the cash with him on that day. It is also incredible that the charged official retained over a lakh of rupees in the PO on various days just to register his protest and that he had no malafide intention for retaining excess cash violating the basic tenets of the PO rules. I have no hesitation in concluding that all the three charges against the charged official have been proved beyond doubt and that the charged official had violated Rule 3(1)(i) and 3(1)(iii) of CCS(Conduct) Rules 1964 on various occasions as alleged in article I, II and III and that he violated Rule 102 of Postal Man.VI (Part III) sixth edition and 102 of P&T FHB Vol.I. The charges levelled against the official are grave and I find that the official is not worthy of being retained in the service of the department."

4. The applicant made Annexure A-7 appeal dated 19.2.2000. The appellate authority vide Annexure A-8 memo dated 13.4.2000 modified the punishment of removal from service as compulsory retirement. While reducing the punishment, the appellate authority observed as under:

"The appellant feels the pangs of regret only after having received the penalty. That an incumbent who has almost three decades of service is retaining cash in excess of the authorised maximum that too without liabilities and in addition, he is drawing cash from the SBT without any justification etc cannot be believed to be acts for drawing the personal attention of his higher authorities. Even when the Asst. Supdt. Of Pos visited the office, the appellant refused to produce the cash for verification. All these are deliberate acts. It cannot be forgotten that there were other means of drawing the personal attention of the Supdt. Of POs. The appellant himself admits that technically they were acts in violation of rules. The appellant is bold enough to express that he was doing all these with fond hope and in good faith that this symbolic action of violating Departmental rules would bring about the desired results. The undersigned would sure that the appellant is by now certain as to what the results would be. There is no point in finding fault with the disciplinary authority who hold that Shri Mohanan have been retaining excess cash and unnecessarily drawing from the Bank with malafide intention. No one can ever find any good intention behind any of these acts. It can be held to be an act of wildest imagination to do things that are not permitted under rules, in order to draw attention of superior offices. The appellant holds that the punishment awarded is harsh and even gone to the extent of telling that there is violation of principles of natural justice. He has no explanation as to where the principles have been violated. As the undersigned finds that all reasonable opportunities were extended to him. The disciplinary authority was even kind enough to grant a personal hearing before awarding the penalty. One fails to understand what the appellant means by "symbolic violation of rules". The appellant further argues that his service for the past 32 years had been exemplary. There is no point in making any self praise. There cannot be any doubt that an incumbent having served the Department for



three decades will behave in a strange manner and cognate as an exemplary behaviour. The appellant should have been aware of his duties and responsibilities to his own family much before getting the penalty. There is no point in making that the punishment awarded has thrown him and his family to the streets. Detailing his family set up may not do any good at this late hour. One who is aware of his all doubts and whereabouts should adopt to the situations and without neglecting rules whether in the Department or outside should lead with normal life. The undersigned fails to find any explanation for the strange behaviour or the appellant. As the undersigned finds, there is absolutely no ground to intervene in the orders passed by the competent authority and to modify the same for the benefit of the appellant. The punishment that is awarded is in proportion to the offences committed. However, in consideration of the long service he has put in, and also in consideration of the humanitarian aspects of an incumbent going out of the Department empty handed, the undersigned is inclined to take a very lenient view as a special case, and accordingly

ORDER

I, P.C.Baburaj, Postmaster General, Central Region, Kochi-16 hereby order that the punishment contained in memo read as paper (2) above, be modified as that of compulsory retirement instead of removal from service."

5. Thereafter the applicant filed the Annexure A-9 revision petition dated 31.1.2001 but the same was rejected by the impugned order Annexure A-10 order dated 19.7.2001 against which he has approached this Tribunal in this O.A.
6. According to the applicant, the findings of the disciplinary authority, appellate authority and the revisional authority did not carry any reasons and the said respective orders have been passed in a mechanical manner following the findings of the inquiry officer. He has also submitted that it is nobody's case that the applicant had made unjust enrichment in the transaction and he fraudulently appropriated the money and caused loss to the public exchequer. He has also submitted that it was only a technical error on his part in making the payment belatedly for justifiable reasons and there was no allegation that he has misappropriated the money. He has also got a very good track record throughout his career and has never been punished for any official lapses. He has also submitted that the inquiry officer has considered his case with a closed



mind and therefore the report is perverse and illegal. The other submission of the applicant was that the punishment imposed upon him was disproportionate to the gravity of the charge. He has also refuted the reasoning of the 1st respondent that "the very fact that he failed to produce the cash when the offg. ASP visited the office on 19.6.1996 without notice would lead to the conclusion that he did not have the cash with him on that day" . His contention was that if the aforesaid reasoning was correct, the inspecting officer ought to have taken note of the fraud committed and necessary penal action should have been resorted against him.

7. The applicant has also filed M.A.323/2008 for condoning the delay of 1318 days in filing the O.A. According to him, after his compulsory retirement he was depressed by the fallout of the events he was not in a position to exercise his legal option correctly and he was troubled by the ill health of his wife and his only son.

8. Respondents in their reply have refuted all the contentions of the applicant. They have submitted that the applicant himself has admitted all the charges in all his representations that he had failed to observe certain rules as symbolic violation of rules and the appellate authority observed that a government servant having three decades of service would not have done those acts of wildest imagination that which were not permitted under rules in order to draw attention of superior officers. It has also been observed that the applicant should have been aware of his duties and responsibilities and his argument that punishment imposed is highly irregular and unjust is not correct. They have also submitted that orders issued by the disciplinary authority and the appellate authority and the revisional authority are speaking orders. The revisional authority has also observed that the proven charges against the applicant were



very grave and they were impinging on his integrity and the modified penalty of compulsory retirement imposed by the appellate authority is fully justified and it does not call for any review.

6. We have heard the learned counsel on both sides. All the three charges imposed upon the applicant were very serious. We have no doubt in our mind that the applicant has not maintained absolute integrity in service. He conducted himself in a manner very much unbecoming of a Government servant. As pointed out by the respondents, the applicant has admitted his guilt. His explanation that it was only a symbolic omission to attract attention of the higher authorities cannot be accepted. Government service is a very serious business involving public interest and it is not to be experimented with. After considering the grave nature of the misconduct committed by the applicant, the disciplinary authority has rightly imposed the punishment of removal from service with immediate effect. His plea to the appellate authority was to show mercy upon him and his hapless family stating that after the imposition of the penalty of removal from service he and his family were in pathetic condition and he belonged to a backward class and his wife is hailing from a forward caste. Following the inter caste marriage both of them lost support from family circle. They have neither a house to reside nor a piece of land to build a hut nor any kind of savings to meet such a contingency. He has also submitted to the appellate authority that his wife was ailing for the last 10 years consequent on an accident and is on prolonged treatment. His only son was also sick from the very day of his birth as he is having some serious hormone problems and still under specialist treatment. His mother aged 90 years is bedridden for the last several years and he is now helpless to give her any assistance for treatment. He has also expressed regrets for the inconvenience caused to the department on account of his acts and apologised for the same. The appellate authority in



his order has also stated that though there was no ground to intervene in the orders passed by the competent authority and to modify the same for the benefit of the applicant and the punishment awarded was proportionate to the offence committed by him. However, considering the long service put in by the applicant and all the aspects, the appellate authority took a lenient view in the matter and modified his punishment to that of compulsory retirement, instead of removal from service. The Revisional authority has considered the revision petition carefully and did not intervene with the modified punishment as there was no valid grounds made out by the applicant.

7. In our considered view, the applicant has committed grave misconduct and rendered himself unsustainable for Government service. As observed by the disciplinary authority, appellate authority and the revisional authority, the applicant deserves the extreme punishment. The appellate authority has modified the punishment only on his plea of mercy and after having taken a lenient view in the matter. There is absolutely no justification for the argument of the applicant that the punishment imposed on him is disproportionate to gravity of the offence committed by him. We therefore, do not intend to interfere with the impugned orders. The O.A is accordingly dismissed. There is no order as to costs.


K NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER