

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO.219/2005

Wednesday this 1st day of November, 2006.

CORAM:

HON'BLE SHRI N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE SHRI GEORGE PARACKEN, JUDICIAL MEMBER

R.Sugatha Kumari Former GDSSPM
Malam Post, Kottayam, now residing
at Poovakulath House, Peroor Kara,
Peroor – Kottayam.

... Applicant

By Advocate Shri P.R.Padmanabhan Nair

V/s.

1. Postmaster General,
Office of the Postmaster General,
Central Region,
Kochi – 682 018.
2. Senior Superintendent of Post Offices,
Kottayam Division, Kottayam.
3. Chief Post Master General, Kerala Circle,
Thiruvananthapuram – 695 001.
4. Director General of Posts,
Department of Communication,
New Delhi.

Respondents

By Advocate Smt.Aysha Youseff ACGSC

This application having been finally heard on 28/9/2006, this
Tribunal delivered the following on 01.11.2006;

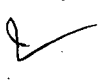
ORDER

Hon'ble Shri George Paracken, Judicial Member

The applicant while working as Gramin Dak Sevak Sub
Postmaster (GDSSPM in short) at Malam DESO, Kottayam Division
was placed under put off duty w.e.f 29.7.1999 on detection of certain

frauds in the monetary transaction and later on after detailed inquiry held under Rule-10 of the Department of Posts GDS (Conduct and Employment) Rules, 2001 the Inquiring Authority came to the conclusion that the Applicant while functioning as GDSSPM, Malam failed to remit the value of the VP letter No.399 dated 13/2/1999 of Kumaranallor P.O. to the sender of the VPL and thereby failed to maintain absolute integrity and devotion to duty as envisaged in Rule 21 of the Department of Posts Gramin Dak Sevaks (Conduct & Employment) Rule 2001 and reported to the Disciplinary Authority that all the charges leveled against her were proved conclusively. A copy of the Inquiry Report was served on the Applicant on 27/6/2003 and she submitted a representation against the same on 10/7/2003.

2 After having gone through the Inquiry Report and other connected records the Senior Superintendent of Post Offices who was the Disciplinary Authority in the case, on the one hand did not agree with the findings of the Inquiring Authority holding that in the absence of material and oral evidences, the charges leveled against the applicant have not been proved conclusively and on the other hand observing that the RD transaction and VP collections done by her were blame worthy activities and since the integrity of the applicant was in question 'exemplary punishment' was required to be imposed upon her. Finally, when the punishment imposed upon the Applicant, it was just debarring her from appearing in the recruitment examinations to the post of Postman or from being considered for recruitment as postal Assistant for a period of three years and reinstated her in service with immediate effect vide the Annexure A-3 proceedings dated 29/10/2003 giving her an opportunity to improve herself.



3 The reasoning for disagreement with the order passed by the Disciplinary Authority is extracted below:-

"Next I am coming to the charges against the GDS Agent. The first allegation is that an amount of Rs.5770/50 received by the GDS on 14/7/1999 was accounted for only on 29/9/1999. The RD deposit was made by Smt. Lalimani MPKBY attached to Malam EDSO Counter-foil of the pay in slip shows that the deposit was made on 14/7/1999. Date stamp impression of Malam EDSO is clear in the counter foil. RD deposit collected by the Agent is presented at the counter of the Post Office along with RD schedules, Pass Book, Pay in slip and cash. After verifying the cash, pay in slip, schedules and Pass Books, deposit is entered in the pass book and date stamped with office date stamp and entered in the RD journal. Schedule and Pay-in-slip are also date stamped. One copy of the schedule, counterfoil of the pay in slip and the Pass Book are returned to the Agent. Date stamp impression on the Pass Book schedule and pay in slip will clearly establish the date of transaction. In this case pass Books, and pay in slip were not produced to prove the charge. The charged official states that the deposits were made only on 29/9/1999. Prosecution has no proof except the counter foil given to the Agent to sustain the charge. In the absence of material evidences, ie. Pass Books, original pay in slip and the schedule presented at the counter on 14/7/1999, the charge is not proved conclusively. It is not clear whether the deposits were made on 14/7/1999 or 29/9/1999. The statement of Smt.Lalimani MPKBY Agent cannot be relied upon fully. She would have received back the pass book wherein entries regarding the deposits and date stamp impression was there. Even a single Pass Book was not cited as documents. RD schedules which were presented along with Pass Books were not produced in the inquiry. Therefore, benefit of doubt is given to the charged GDS.

The second charge is that the GDS has contested Areeparambu Service Cooperative Bank, Director's Board election. To prove the charge, the Secretary of the Bank was examined and was deposed that he did not know the charged ED Agent and he did not even know that whether she is a member of the Society. In case she has contested the election, a nomination paper would have been given by her to the Returning Officer and the nomination paper would have been cited as documents to prove the charge against the GDS. The nomination paper was not produced before the inquiry to sustain the charge. In the absence of the vital piece of evidence, it cannot be stated that the charged ED Agent has contested the said election as alleged. The Returning Officer was also not examined in this case. The Secretary, President or any office bearers of the Bank has identified or examined to prove that the charged EDA is a

member of the said bank. The absence of the above material or oral evidence, the second charge will not stand against the charged GDS.

The last and final charge is that VP amount of Rs.189/- for the value of the VP articles (Rs.180/- + commission Rs.9/-) was not accounted for by the charged EDA. As per the VP journal, the article in question was shown as returned to sender as unclaimed on 22/2/1999. When a VP is delivered to the addressee, the VPMO will be booked at the office and it is journalized and its proceeds are brought under MO issue of the said date. The VP receipt which bear the signature of the addressee is filed along with the registered list. In this case, the VP receipt, MO issue receipt, the SO account etc. are not brought into the inquiry to sustain the charge. The only proof is that the addressee is stated that the VP was taken delivery by her paying Rs.189/- in support of the charge. The VP receipt signed by the addressee was not produced in the inquiry. The amount is not accounted for by the charged GDS. The MO issue list of the said date and the SO account should have been produced in the inquiry to show the amount was not accounted for. This absence of material evidences as discussed above the third charge is not treated as proved conclusively.

4 The Applicant quietly accepted the aforesaid order of the disciplinary authority even though it contained quite a lot of adverse remarks affecting her integrity and the findings that she had indulged in "irregular practice"

5 However, the first respondent, namely, the Post Master General, Central Region, Kerala when came to know about the aforesaid orders of the Disciplinary Authority took suo motu action in the matter and issued notice vide Annexure A-4 memo dated 8/7/2004 informing the applicant that the penalty awarded to her by the Disciplinary Authority was not commensurate with the gravity of the proven charges and proposed to enhance it to that of removal from service by exercising powers conferred upon it under rule 19(1) (ii) of GDS (conduct and employment) rules 2001. The Applicant submitted the Annexure A-5 representation but after considering the same, the

first respondents ordered for her removal from service with immediate effect vide Annexure A-1 order dated 15/12/2004 and she was removed from service accordingly. The applicant has challenged the aforesaid Annexure A-1 punishment of removal from service on the following grounds:-

1. The findings of the Inquiring authority is arbitrary and without sufficient evidence.
2. The applicant was denied the opportunity to produce the document and to examine witnesses for her defence and thereby the respondents have violated the principles of natural justice vitiating the inquiry proceedings.
3. The Inquiry was held not in accordance with the law. as there was a gap of two years from the alleged incident happened in 1999 and the order of inquiry made in the year 2001. Further, it was after a gap of eight months from the date of issuance of Penalty order dated 4/10/2003 by the 11nd Respondent, the 1st respondent initiated suo-motu proceedings against her vide the Annexure A-4 memo dated 8/7/2004 and it was after another five months that Annexure A-1 penalty order dated 15/12/2004 removing her from service was issued. According to the applicant, the revision proceedings, if any, should have been initiated within a reasonable time and that was not the case here and since there was inordinate delay in taking the suo-motu proceedings against her by the 1st respondent, the Annexure A-1 memo is unsustainable.
4. There is no evidence produced to prove the charges and non production of vital documents by prosecution is to be



inferred in favour of the applicant and therefore the findings of the inquiring authority is perverse.

5. The reasons for dis-agreement by the first respondent with the second respondents is not supported by any evidence adduced in the inquiry proceedings and therefore the Annexure A1 impugned order is highly arbitrary and illegal.

6. The Annexure A 4 notice was issued without providing reasonable opportunity to the applicant to make representation against the proposal.

7. The findings of the first respondent is arbitrary and illegal and it has not applied its mind before the Annexure A1 order was passed which is not a speaking one and therefore defective.

8. The punishment is quite dis-proportionate to the misconduct alleged as there is no loss occurred to the department and the alleged misappropriation of VP amount of Rupees One hundred and eighty nine only (Rs.189/-) is only due to a clerical mistake happened in the office which is possible in the day to day transactions.

6 The respondents have denied all the above grounds taken by the applicant to impugn the orders. They have specifically denied the allegations of the applicant that the Annexure A-2 inquiry report and the Annexure A-1 penalty order of the 1st respondent were arbitrary and illegal. They have also denied any inordinate delay in issuing the Annexure A-1 penalty order and the contention that the penalty imposed upon her was disproportionate to the gravity of offenses that have been proved. On the other hand, the contention of the



respondents was that the punishment imposed on the applicant by the 1st respondent commensurates with the gravity of the proven offense. They have also submitted that both the charges related to misappropriation of public money by the applicant have been proved and irrespective of the amount involved, she deserved exemplary punishment of removal from service now imposed upon her.

7 We have heard Shri P.R.Padmanabhan Nair and Smt.Aysha Youseff for the Applicant and the Respondents respectively. We have carefully gone through the Annexure A-2 inquiry report Annexure A-3 proceedings dated 29/10/2003 by the Disciplinary Authority, Annexure A-4 show cause notice of the Respondent No.1 to the applicant dated 8/7/2004, the Annexure A-5 reply of the applicant to the show cause notice dated 23/7/2004 and finally the Annexure A-1 proceedings by the Respondent no.1 dated 15/12/2004 imposing the penalty of removal from service upon the applicant. The three charges leveled against the applicant were that the applicant :-


(i) "while functioning as GDSSPM Malam failed to bring into P.O. Accounts the amount of Rs.5770/50 entrusted by Smt.Lalimani MPK by agent attached to the GDS S.O. On 14/7/1999 towards the amount of deposits including interest on defaulted deposits in 35 RD accounts and in one new R.D. A/c though she made entries of deposit and affixed date of the GDS S.O. On 14/7/1999 against each entry of deposits in the PBS. The amount was brought into the P.O. Accounts only on 29/7/1999."

(ii) "while functioning as GDS SPM Malam contested the election as a candidate to the seat reserved for woman with the support of 'Sahakarana Janadhipathya Munnani' which was having the political support of the United Democratic Front(UDF) in connection with election of members of the Board of Areeparambu service co-operative Bank Ltd. No.1398 held on 27/6/1999."

(ii) "while functioning as GDS SPM Malam failed to bring into p.o. Accounts the amount of Rs.189/- collected from the address of Kumaranallur VPL 399 dated 13/2/1999 for Rs.180/- towards value of the article and Rs.9/- for commission of V.P. Money order on 23/2/1999."

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After detailed inquiry, the Inquiry Officer found that the aforesaid charges were proved against the applicant beyond any doubt. It was further held by the inquiry officer that the applicant failed to maintain absolute integrity and devotion to duty as envisaged in Rule 21 of the Department of Posts, Gramin Dak Sevaks (Conduct & Employment) Rules 2001. However, the Disciplinary authority have not agreed with the findings of the inquiry officer and held that the applicant was entitled for the benefit of doubt in respect of the first charge, second charge would not stand against her and the third charge cannot be treated as proved. We have already extracted the reasoning given by the disciplinary authority in his order to disagree with the findings of the inquiry officer. The findings of the disciplinary authority is indeed strange. It says "in the absence of material and oral evidences, the charges leveled against the GDS Agent are not proved conclusively." but in the next sentence itself it has stated that "it is clear that she has done some blame worthy activities in RD transactions and VP collections." and, "an exemplary punishment is required for such a irregular practice." However, in a highly contradictory manner when the question of penalty came, the punishment imposed upon the applicant was mere debarment from appearing in the recruitment examination for the post of Postman or from being considered for recruitment as Postal Assistant for a period of 3 years. Now, it is necessary to consider the inquiry report to find out whether the findings of the inquiry authority was based on some evidence or whether there was no material evidence as held by the disciplinary authority. It is well settled position of law that this Tribunal has jurisdiction to re-appraise the evidence but it has to ascertain whether the findings of the inquiry



authority are based on some evidence, particularly when the disciplinary authority disagrees with the inquiry authority and hold a different view that there was no relevant evidence.

8 The inquiry authority has held that article 1 of the charge was fully proved beyond doubt. His analysis of evidence with regard to Article I is extracted below:-

"It is true the prosecution did not produce the pass books, ledger cards, the original of the pay in slip and the office copy of the Agents Schedule.

They were not cited as prosecution documents. However the prosecution could prove the charge producing the documents mentioned in the charge sheet.

6. It is argued that the prosecution failed to produce and examined the following witnesses.

- a. APM SB/RD Kottayam HO.
- b. Concerned ledger PA of RD branch of Kottayam HO.
- c. Any of the depositors of the R.D. a/cs concerned

The above persons have not been cited as witnesses in the charge sheet. The witnesses mentioned in the charge sheet were produced and examined. The prosecution could prove the charge by examining the witnesses.

7. Ext.P-3 is the statement given by Smt.Lalimani MPK By Agent PW-1, before the SDI Kottayam cast sub division-PW-6 on 29/7/99. PW-1 has clearly stated in the Ext.P-3 that an amount of Rs.5770/- was entrusted along with R.D.schedule, pay in slip and the related passbooks to Smt.R.Sugathakumari the charged GDS on 14/7/1999 and she had received back the copy of the RD schedule passbooks and counterfoil of the pay in slip only on 29/7/1999 stamped with the date stamp dated 29/7/1999. Ext. P-14 is the statement of submission given by the CGDS before the PW 6 on 29/7/1999. In the Rule-10 inquiry PW-1 identified the statement (Ext.P-1) and deposed that what she stated in the statement are correct. Both the statements P3 & P4 were collected during the preliminary inquiry conducted by PW-6 and the main contents of both the statements are the same. There is no reason to disbelieve the deposition of PW-1. There is no evidence to show that the P3 and P14 statements were taken privately and under pressure denying Natural justice.

8. The argument of the charged GDS that the sentences of her P-3 statement were dictated by Shri P.Vijayakumaran Nair SDI is not sustainable because of the reasons:- PW-1 deposed in the inquiry that she had not given any complaint. When the SDI came to Malam P.O. In connections with inquiry for some other case he saw her passbooks and checking the deposit entry dated 14/7/1999 he found the deposit was not accounted in the P.O. Account and on this base he conducted further enquiry. PW-1 deposed that she had entrusted the cash for RD deposit along

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with the schedule to the CGDS on 14/7/1999 and the schedule was returned after duly accounted on 29/7/99. What she deposed in the inquiry has been recorded in her statement (Ext.P-3). From her deposition it can be understood that PW-6 had given only guidance to PW-1 for recording statement. The argument that none of the pass books concerned on the original pay in slip concerned were shown to her in the Rule 10, inquiry is sustainable because the records have not been shown in the list of documents of the charge sheet. Hence the contention that the prosecution was hiding the real facts is baseless. The date stamp impression 29/7/1999 seen on the agents schedule is an evidence to show that the cash was accounted on 29/7/1999. The trial of the CGDS to show that the date stamp impression 29/7/1999 on the RD schedules an evidence for presenting of cash on 29/7/1999 is futile. The date stamp, the entry of date, the dated signature of the SPM, the entry of S.O. RD journal (Ext. P-12, P-12(A) and P-12(B) and Ext.P-13 only show that the amount was credited on the day. It is wrong to say that they prove that the full cash was presented the post office on 29/7/1999 as long as the deposition of PW-1 and P-3 and P-14 statements sustain. If the full cash was presented on 29/7/1999 the CGDS could have freely told the facts to PW-6 and if he was not agreeable to she should have reported the case to the Divisional Head. But she did not do so. Hence it can be seen that the story or non presentation of the full cash, i.e. shortage in the cash presented is an after thought of CGDS."

According to the Inquiry Report, the Article II of charge also stood proved on the basis of the evidence adduced during the inquiry proceedings. According to the analysis of evidence:-

" PW -6 made inquiry into the P-6 complaint and recorded P-15 statement which establish that the CGDS had contested the election held on 17/6/1999 for electing members to the Director Board of Areeparambu Service Co-operative Bank. PW-4 identified P-8 and P-9 and recognised the candidate mentioned at serial number 22 in P-8 & P-9. Citing the descriptions furnished in P-8 & P-9, PW-4 established that the CGDS contested the election to the seat reserved for woman with the support of "Sahakaran Janadhipathya Munnani" which was having the political support of United Democratic Front(UDF).

While holding that the 3rd Article of Charge was also proved, the Inquiry

Officer observed as under:-

"PW - 7 Shri M.J.George GDSMD Malam deposed in the inquiry that Kumaranalloor VPC No.3999 dated 13/2/1999 entered as Ext.P-17(A) received by him under acquittance on 15/2/1999. It was entered in the Postman book P-18 as P-18(B) on 16/2/1999. It was not entered in the postman book on 15/2/1999 P-18(A).

His explanation for the non entry on 15/2/1999(P-18(A) is that as there was heavy work on 15/2/1999 he could not reach the residence of the addressee and he omitted to make entry in the postman book. He further deposed that he gave intimation to the addressee and tendered VP returns to the GDSSPM on 14/2/1999. From the above deposition it can be seen that the VPL was with the GDSMD on 15/2/1999. Therefore Ext.P-18, 18 (A) and 18(B) can be treated as valid documents.

5. PW-3 has deposed in the inquiry that he had not received the V.P. Money order in respect of VPL No.399 dated 13/2/1999 of Kumaranalloor. Which was sent to Smt.N.N.Bhageerathamma, Cheppathuputhenpurayil, Malam and so he complained against. PW-6 who enquired in to the complaint deposed in the inquiry that his inquiry revealed that the V.P.letter was delivered on 23/2/1999. PW-5 in P-11 stated that the VPL was received by her paying Rs.189/-. Her deposition in the inquiry revealed that the P-11 statement is true. In P-16 statement the CGDS admitted that the VPL was delivered to Smt.Bhageerathamma on 23/2/1999 receiving Rs.189/- but the amount for the VPL was not remitted to the sender of the VPL. The amount was credited under UCR at Malam P.O. By the CGDS on 6/10/1999 Ext.P-4 is certificate of credit of the UCR issued by Kottayam H.P.O. PW-2 has identified the P-4 document. Now the CGDS argues that the VPL was returned to the sender on 23/2/1999. Had the VPL was actually returned to the sender she should have frankly told the SDI Kottayam eash Sub Divison(PW-6) on 4/10/1999. When she had given the P-18 statement. If she had given information of return of the VPL disposal of the article could have been traced with reference to the concerned registered list. It is a fabricated story that the VPL was returned to the sender an subsequently some body in RMS or Mr.A.T.Thomman himself might have stolen the VP letter. This story is the result of an after thought."

9 It is seen from the above observations and analysis of evidences the findings of the Inquiry Authority was based on solid evidence adduced during the inquiry and not based on any surmises. Undoubtedly the Disciplinary Authority is the sole judge of facts. However, reasons for dis-agreeing with the Inquiry Authority's findings are not convincing. The relevant part of the order is extracted below:-

"Next I am coming to the charges against the GDS Agent. The first allegation is that an amount of Rs.5770/50 received by the GDS on 14/7/1999 was accounted for only on 29/9/1999. The RD deposit was made by Smt. Lalimani MPKBY attached to Malam EDSO Counter-foil of the pay in slip shows that the deposit was made on 14/7/1999. Date stamp impression of Malam EDSO is clear in the counter foil. RD deposit collected



by the Agent is presented at the counter of the Post Office along with RD schedules, Pass Book, Pay in slip and cash. After verifying the cash, pay in slip, schedules and Pass Books, deposit is entered in the pass book and date stamped with office date stamp and entered in the RD journal. Schedule and Pay-in-slip are also date stamped. One copy of the schedule, counterfoil of the pay in slip and the Pass Book are returned to the Agent. Date stamp impression on the Pass Book schedule and pay in slip will clearly establish the date of transaction. In this case pass Books, and pay in slip were not produced to prove the charge. The charged official states that the deposits were made only on 29/9/1999. Prosecution has no proof except the counter foil given to the Agent to sustain the charge. In the absence of material evidences, ie. Pass Books, original pay in slip and the schedule presented at the counter on 14/7/1999, the charge is not proved conclusively. It is not clear whether the deposits were made on 14/7/1999 or 29/9/1999. The statement of Smt.Lalimani MPKBY Agent cannot be relied upon fully. She would have received back the pass book wherein entries regarding the deposits and date stamp impression was there. Even a single Pass Book was not cited as documents. RD schedules which were presented along with Pass Books were not produced in the inquiry. Therefore, benefit of doubt is given to the charged GDS.

The second charge is that the GDS has contested Areeparambu Service Cooperative Bank, Director's Board election. To prove the charge, the Secretary of the Bank was examined and was deposed that he did not know the charged ED Agent and he did not even know that whether she is a member of the Society. In case she has contested the election, a nomination paper would have been given by her to the Returning Officer and the nomination paper would have been cited as documents to prove the charge against the GDS. The nomination paper was not produced before the inquiry to sustain the charge. In the absence of the vital piece of evidence, it cannot be stated that the charged ED Agent has contested the said election as alleged. The Returning Officer was also not examined in this case. The Secretary, President or any office bearers of the Bank has identified or examined to prove that the charged EDA is a member of the said bank. The absence of the above material or oral evidence, the second charge will not stand against the charged GDS.

The last and final charge is that VP amount of Rs.189/- for the value of the VP articles (Rs.180/- + commission Rs.9/-) was not accounted for by the charged EDA. As per the VP journal, the article in question was shown as returned to sender as unclaimed on 22/2/1999. When a VP is delivered to the addressee, the VPMO will be booked at the office and it is journalized and its proceeds are brought under MO issue of the said date. The VP receipt which bear the signature of the addressee is filed along with the registered list. In this case, the VP receipt, MO issue receipt, the SO account etc. are not brought into the inquiry to sustain the charge. The only proof is

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that the addressee is stated that the VP was taken delivery by her paying Rs.189/- in support of the charge. The VP receipt signed by the addressee was not produced in the inquiry. The amount is not accounted for by the charged GDS. The MO issue list of the said date and the SO account should have been produced in the inquiry to show the amount was not accounted for. This absence of material evidences as discussed above the third charge is not treated as proved conclusively.


10 Even though inquiries against the ED Agents under Rule 10 of the GDS (Conduct & Employment) Rules, it is not necessary to follow the procedure as laid down in the relevant rules in CCS(CCA) Rules." the D.G.Posts vide letter No.151/4/77-Disc.II dated 16/1/1980 desired to follow the provisions of Rule 14 of CCS (CCA) Rules 1965 to provide opportunities as laid down in Article 311(2) of the Constitution. In the present case also, the said procedure has been followed. Under Rule 15 of the CCS (CCA) Rules dealing with "Action on the Inquiry Report". It has been stipulated as under:-

(1) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for further Inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.


(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favorable or not to the Government servant.

(2-A) The Disciplinary Authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).

From the Annexure A-3 orders of the disciplinary authority it is seen that it forwarded a copy of the inquiry report to the applicant inviting his




representation without its own tentative reasons for disagreement with the findings of the Inquiring Authority. Since the Inquiring Authority is holding the inquiry on behalf of the Disciplinary Authority, it is of course open to the Disciplinary Authority to agree with the report or disagree with it. However, in both cases of agreeing with the findings of the Inquiring Authority and disagreeing with it, it should be an independent decision of the Disciplinary Authority based exclusively on record of inquiry forwarded to him by the Inquiring Authority enumerated in Rule 14(23)(ii) of the CCS (CCA) Rules, 1965, namely, (a) the report prepared by it under clause (i), (b) the written statement of defence, if any, submitted by the Government servant, (C) the oral and documentary evidence produced in the course of the inquiry, (d) written briefs, if any, filed by the Presenting Officer or the Government servant or both during the course of the inquiry; and (e) the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry and none else. If the Disciplinary Authority dispenses with the findings of the Inquiring Authority, tentative reasons for such disagreement has to be recorded and the disagreement note together with the Inquiry Report has to be sent to the delinquent for making a representation before the decision on the question of guilt of the delinquent is taken. If there is no disagreement with the findings of the Inquiring Authority, then also the copy of the inquiry report is to be sent to the delinquent for his representation for the same purpose. In the present case, it is only after consideration of the representation of the applicant on the inquiry report that the disciplinary authority has disagreed with the findings of the inquiring authority and came to the conclusion that the charges were not proved conclusively and,



therefore, it was not an independent decision of the Disciplinary Authority but it was the one influenced by the delinquent's representation against the findings of the Inquiring Authority. The procedure adopted by the Disciplinary Authority is obviously against the relevant rules.

11 In departmental proceedings, there may be rare cases of collusion between the Inquiry Officer and the delinquent employee or between the Disciplinary Authority and the delinquent employee as there are cases of bias against the employee either by the Inquiry Officer or by the Disciplinary Authority who may be bent upon punishing the employee for extraneous reasons. If there are any such collusion/bias vis-a-vis the Inquiry Authority and the Government servant, the Disciplinary Authority can interfere in the matter to render justice by invoking the provision of Sub Rule (1) and (2) of the Rule 15 of the CCS (CCA) Rules. If there is bias/favoritism or collusion at the level of Disciplinary Authority with the delinquent government servant and where no appeal has been preferred against its orders, Rule 29 of the CCS (CCA) Rules which provides for revision of such orders only can remedy such situations. Similar provision has also been provided in Rule 19 of the GDS(Conduct & Employment) Rules. In the present case the Disciplinary Authority itself has held that the applicant deserved exemplary punishment as it was clear in its mind that she had done some blame-worthy activities in RD transactions and V.P collections leaving a question mark on her integrity. In such circumstances, imposing a meager punishment upon the Applicant can well be inferred as subjective consideration of the case, lacking objectivity. Interestingly, the applicant had not made any appeal in



response to the findings of the Disciplinary Authority even though the Disciplinary Authority has raised doubts about her integrity in its order. It is in this background that the Revisionary Authority has issued the Annexure A-4 notice to the Applicant. The applicant submitted the Annexure A-5 representation expressing satisfaction on the orders of the Disciplinary Authority. However, the Revisionary Authority has gone through all the relevant documents of the inquiry proceedings and also weighed the submissions of the applicant. The Revisionary Authority's opinion was that both the Article of charges I & III have been fully substantiated by documentary evidences and the findings of the Disciplinary Authority was erroneous. While awarding the punishment of removal from service, the Revisionary Authority observed as under:-

"The Department of Posts greatly depends on the Gramin Dak Sevaks for running the postal services countrywide. The GDS Postmasters therefore occupy a prominent position in the society. They are bound to maintain impeccable integrity and devotion to duty while discharging their obligation to the public. As custodians of the public funds, it is their bounden duty to account for the public funds that they handle. In the case here, a GDSSPM has deliberately misappropriated a huge amount of public money that she has subsequently made good after several days. Non-accounting of Public Funds even for a day amounts to temporary misappropriation and in this case it's unaccounted for 15 days. It is nobody's case that the gravity of the charge or the malfeasance is light because as a Gramin Dak Sevak Sub Postmaster she is holding public money and has to conduct herself in a responsible manner worthy of the public office she is holding. Any leniency shown is totally misplaced and fraught with the risk of becoming a precedent for others. Further, the employee will be emboldened to commit such deviations in future. Therefore, I consider that she is not a fit person to be retained any more in service, in the public interest."

12 The Disciplinary Authority is also bound by the principles that strict rules of Evidence Act should not be insisted upon in the departmental inquiry when the Inquiry Officer has based his findings on



some evidence adduced during the inquiry. It was the duty cast upon the Disciplinary Authority to impose adequate punishment to the delinquent government servant commensurate with the gravity of offence proved during the inquiry. As held by the Apex Court in the case of Siddarama & Ors. V/s. State of Karnataka (Appeal(ord) 959 of 2006 decided on 15/9/2006, such grossly inadequate punishment "would do more harm to the justice system to undermine the public confidence in the efficiency of law." The grounds taken by the applicant to challenge the Annexure A-1 order are absolutely misplaced. The Revisionary Authority has given adequate opportunity to explain her position and the principles of natural justice have been scrupulously followed. In the above facts and circumstances of the case, we do not find any infirmity with the orders of the Revisionary Authority and the manner in which the punishment was imposed upon the applicant. The OA is therefore dismissed with no order as to costs.

Dated this the 1st day of November 2006


GEORGE PARACKEN
JUDICIAL MEMBER


N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

abp