

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A No. 22/2010

*Tuesday*, this the 27<sup>th</sup> day of September, 2011.

CORAM

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

Smt Delma C Baby,  
W/o Tinu V Paulose.,  
Ex. GDS BPM, Kuruvamoozhy P.O.  
Residing at Cherikkal House,  
Velloor, Pampady.P.O.  
Kottayam. ....Applicant

(By Advocate Mr P.C.Sebastian)

v.

1. The Superintendent of Post Offices,  
Idukki Division,  
(Adhoc Disc. Authority),  
Thodupuzha.
2. The Director of Postal Services,  
Central Region,  
Kochi (Appellate Authority),  
Kochi-682 018.
3. The Asstt. Supdt. Of Post Offices,  
Changanassery Sub Division,  
(Inquiring Authority),  
Changanassery.
4. The Union of India represented by  
Secretary to Govt. of India,  
Ministry of Communications,  
Department of Posts, New Delhi. ....Respondents

(By Advocate Mr Varghese P Thomas, ACGSC )

*This application having been finally heard on 22.9.2011, the Tribunal on 27.9.2011  
delivered the following:*

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

The applicant initially appointed as Mail Deliverer, Kavumbhagom Branch Office since 1999 was posted as Branch Postmaster some time in 2001 or so. In 2006, she had been served with a memo of charge which contained the following three articles of charge:

"Article 1:

That the said Smt Delma C Baby while working as GDS BPM Kuruvamoozhy did not produce the entire office cash and stamp balances of Rs.19520/10 before the Superintendent of Pos, Changanassery Division on 18.10.2006 at the time of verification, but produced only a sum of Rs.18460/85 leaving a shortage of 1059/25. She failed to produce the full amount of cash for inspection. Thus, Smt Delma C Baby, BPM Karuvamoozhy, violated the provisions of Rule 11 of Rules for Branch Offices (seventh edition corrected upto 31.3.1986). By this act, Smt Delma C Baby failed to maintain absolute integrity and devotion to duty violating provisions of Rule 21 of the Department of Posts, Gramin Dak Sevaks (Conduct & Employment) Rules 2001.

Article 2:

That the said Smt Delma C Baby while working as GDS BPM, Kuruvamoozhy failed to credit to PO account a sum of Rs.1500/- deposited on 25.8.06 by Smt Beena George, Puthenpurackal, Kuruvamoozhy PO in her RD account No.80010187 standing open at Kuruvamoozhy PO thereby failed to follow the provisions of Rule 133 (2) of Rules for Branch Offices (Seventh Edition corrected upto 31.3.1986) and thus failed to maintain absolute integrity and devotion to duty violating the provisions of Rule 21 of the Department of Posts, Gramin Dak Sevaks (Conduct & Employment) Rules, 2001.

Article 3:

That the said Smt Delma C Baby while working as GDS BPM Kuruvamoozhy failed to credit into Post Office account the following monthly premium paid by Shri Thomas Sebastian, Nagathunkal, Kuruvamoozhy in respect of his RPLI policy No.EA 55702 on the dates noted against each:

Rs.217/-	on 18.4.06
Rs.217/-	on 25.5.06
Rs.217/-	on 24.6.06
Rs.217/-	on 29.7.06

Thus Smt Delma C Baby, GDS BPM Kuruvamoozhy by the above acts failed to maintain absolute integrity and devotion to duty violating Rule 21 of Dept. of Posts, Gramin Dak Sevak (Conduct & Employment) Rules, 2001."

2. The applicant having given her version, an enquiry was conducted. The Enquiry Officer vide Annexure A-5 enquiry report dated 15.4.2008 held that all the 3 charges against the applicant stand proved.

3. Applicant was given an opportunity to represent against the enquiry report. Vide Annexure A-6, the applicant has given her version stating that she had done nothing intentionally and the mistakes had taken place due to her ignorance and inexperience. She had stated that all the amounts involved were returned.

4. The disciplinary authority vide Annexure A-1 considered the entire matter and imposed a penalty of removal from service. The applicant had filed an appeal against the same and the said appeal was also considered vide Annexure A-2 order dated 30.12.2008 upheld the penalty.

5. The applicant has challenged the enquiry report, Annexure A-1 and A-2 orders of penalty on various grounds as contained in para 5 of the O.A.

6. Respondents have contested the O.A. They have justified that the imposing of penalty taking into account the gravity of the charges proved.

7. Counsel for the applicant has been very fair in making a very brief submission conforming and confining to the pleadings. He has referred to the articles of charges and the decision by the authorities and submitted that the three articles of charge belonged to the same period i.e. between July to October, 2006. By that time the applicant had an experience of only five years as Branch Post Master, though she was earlier functioning as Mail Deliverer since 1999. The counsel has submitted that the stand taken by the applicant

has throughout been that it was by mistake than by intention that the omission had been committed. The penalty awarded is disproportionate to the gravity of the misconduct. He has, therefore, prayed for lenience and further requested that the applicant may be permitted to prefer a revision petition so that the Department could well consider the same sympathetically.

8. Counsel for the respondents submitted that in departmental inquiry, the scope for judicial review is limited i.e. any legal lacuna in the decision making process alone is to be located and in the absence of the same, the Tribunal is left with no alternative but to dismiss the O.A.

9. Arguments were heard and documents perused. The applicant has, right from the beginning, been consistent in her stand – that she regretted the mistake having been committed, which was not deliberate but due to ignorance and inexperience. The money involved in all the three articles of charge was returned. She had been pleading mercy all through. Annexure A-4, Annexure A-6 and A-7 refer. As stated earlier, the counsel for the applicant too has been very fair in making the same submission. His further submission is the charge of dishonest intention has not been proved though the shortage etc., stood admitted by the applicant. Such shortage etc., could be by way of negligence as well and need not necessarily be presumed to be with dishonest intention. The penalty awarded is disproportionate to the gravity of the misconduct. Hence the counsel prayed that the applicant may be awarded some other punishment so that her livelihood is not hampered. He has also prayed in the alternative that the applicant be permitted to prefer a revision petition to the Post Master General who may consider the entire conspectus of the case, the contrite apology preferred by the applicant right from the beginning for the omission on her part and show mercy upon her. Counsel for the applicant also referred to

the decision by the High Court in yet another case of one C. Rajan in OP No. 28631 of 2000 vide Annexure A-8.

10. In the case of **Chairman & Managing Director, V.S.P. Goparaju Sri Prabhakara Hari Babu**, (2008) 5 SCC 569, the Apex Court has held as under:-

“20. The jurisdiction of the High Court in this regard is rather limited. Its power to interfere with disciplinary matters is circumscribed by well-known factors. It cannot set aside a well-reasoned order only on sympathy or sentiments. (See *Maruti Udyog Ltd. v. Ram Lal, State of Bihar v. Amrendra Kumar Mishra; SBI v. Mahatma Mishra; State of Karnataka v. Ameerbi; State of M.P. v. Sanjay Kumar Pathak and Uttar Haryana Bijli Vitran Nigam Ltd. v. Surji Devi.*)

21. Once it is found that all the procedural requirements have been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved. (See *Sangfroid Remedies Ltd. v. Union of India.*)

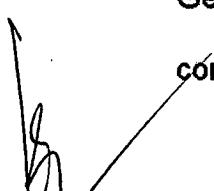
22. The High Court in exercise of its jurisdiction under Article 226 of the Constitution of India also cannot, on the basis of sympathy or sentiment, overturn a legal order.”

11. Thus, in so far as the scope of judicial review, nothing is available to grant any relief to the applicant. However, taking into circumstances the stand taken by the applicant from the beginning and that the three articles of charge pertain to a short period of three to four months and not spread over a long period, the submission of the counsel that the applicant may be permitted to prefer a revision petition could be considered. For, past conduct of an employee, which is not normally taken into account while proving a charge (unless the very past conduct happens to be one of the articles of charge) is taken into account while arriving at the quantum of punishment. If the penalty is to be severe which could be justified when past conduct is taken into account, subject to prior notice to the delinquent, the authorities could well take into account the same. Of course in

such case, notice is a must (See **Mohd. Yunus Khan vs State of Uttar Pradesh** (2010) 10 SCC 539. Certainly, a discretion is available with the administrative authorities, in considering the quantum of penalty that should be imposed. In this regard, the observation of the Apex Court has, in the case of **Administrator, Union Territory of Dadra and Nagar Haveli vs Gulabhai M. Lad** (2010) 5 SCC 775 as under is apt to be referred to here:-

“The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or a tribunal would not substitute its opinion on reappraisal of facts.”

12. In the case of GDS employees, the kinds of penalty are not many. Debarring a GDS from participating in a competitive examination for appointment to Group D post and removal from service are the two kinds of penalty. Once the disciplinary authority is convinced that a misconduct has been committed, he is left with no option but to impose a penalty and in view not there being no wider choice of penalties, the disciplinary authority resorts to removal in majority of the case. However, the higher authorities have the discretionary power as penalty could well be by taking into account the nature of the functions, the gravity of misconduct, past conduct etc., as mentioned in the above mentioned decision. The revisional authority could well consider, taking into account the past conduct, the reputation of the GDS in the delivery zone, and other factors, whether the misconduct committed is one which could be treated as a mere negligence or there is dishonest intention. As such, justice demands that in the instant case, the applicant is permitted to prefer a revision petition to the Chief Post Master General, so that he could consider the case dispassionately and arrive at a just conclusion.



13. In view of the above, the OA is disposed of with liberty to the applicant to move a revision petition within a period of four weeks from the date of pronouncement of this order and if such a revision petition is filed, the Chief Post Master General Kerala Circle may consider the same and communicate the decision within a reasonable period. Save bringing forth the legal position in regard to the judicial scope and the administrative discretion vested with the authorities, we have not expressed anything about the merit of the case, which is left purely to the discretion of the revisional authority.

14. No cost.

  
K NOORJEHAN  
ADMINISTRATIVE MEMBER

  
Dr K.B.S.RAJAN  
JUDICIAL MEMBER

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