

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 234 of 1995

Thursday, this the 20th day of June, 1996

CORAM

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR P V VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

P.N. Sreedharan, S/o Narayanan,
Pachilamkunnel House,
Mazhuvannoor P.O., Mangalathunada.
(Worked as Extra Departmental Delivery Agent,
Mazhuvannoor P.O. prior to removal from service).

... Applicant

(By Advocate Mr Paul Varghese)

Vs

1. Sub Divisional Inspector (Postal),
Muvattupuzha Sub Division,
Muvattupuzha - 686 661.
2. Assistant Superintendent of Post Offices,
Alwaye Sub Division,
Alwaye - 683 101.
3. Senior Superintendent of Post Offices,
Alwaye Postal Division,
Alwaye- 683 101.
4. Post Master General (Central Region),
Kochi - 16.

... Respondents

(By Advocate Mr MHJ David.J, Addl.CGSC)

The application having been heard on 20th June 1996,
the Tribunal on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR (J), VICE CHAIRMAN

Applicant, an Extra Departmental Delivery Agent challenges an order passed by the disciplinary authority, affirmed in appeal and revision (called review in this department). Five charges were levelled

against applicant. Three were found against, and two were found. The charges found are that applicant did not deliver 88 letters entrusted with him for delivery, and that he committed misappropriation (though temporary) of a Money Order to the value of Rs 500/- intended for one Leelamma. The statement of Leelamma and the confessional statement of applicant himself (S.34) were relied on by the authorities below for finding the second charge. In S.34 applicant clearly admitted that he had forged the signature of Leelamma on the Money Order form, and appropriated the amount, though he paid it to Leelamma later. Learned counsel for applicant would submit that an opportunity was denied to applicant to cross-examine Leelamma. Leelamma was examined on 5.3.93. Applicant had attended the enquiry on the previous day alongwith his defence assistant. On the next day 5.3.93, neither turned up when the proceedings commenced. Assuming that the applicant was ill, his defence assistant could have appeared. It is said that he appeared later and made a request for adjournment. The fact finding authorities noticed that applicant was not handicapped for any genuine reason, that his assistant atleast could have appeared and that applicant was more keen on establishing that there were infirmities in the proceedings than defending his case. The enquiry report dealt with these aspects in extenso, and so did the orders of the other authorities. For instance in A-13 the disciplinary authority found that applicant tried to keep himself away from the proceedings and that on 5.3.93 he and his defence assistant absented themselves without even prior intimation, though they had been

specifically informed on the previous day about the posting. We do not think that there is a violation of principles of natural justice. If a party does not avail of reasonable opportunities granted to him, it cannot be said that reasonable opportunity to defend was denied. At any rate, these considerations are academic because applicant himself had admitted the charge in S.34. As laid down by the Supreme Court in A.D.M (City) Agra Vs. Prabhakar Chaturvedi and another, (1996) 2 SCC 12, a confession of guilt by the charged official is conclusive evidence to prove the charge. In the light of S.34 statement, the charge must be considered proved. At any rate, the authorities below thought so and it is not for this Tribunal exercising the power of judicial review, to re-appreciate evidence, evaluate the same, and enter independent findings.

2. Counsel for applicant contended that applicant was coerced into making such a statement by the Sub Divisional Inspector. We do not find any such suggestion put to the Sub Divisional Inspector during his examination.

3. We find that the second charge relating to misappropriation is clearly proved. We have our reservations regarding the first charge, but that is academic in view of the fact that the second charge stands proved.

4. We find no justification for interfering with the quantum of punishment, and it is not possible to say that the punishment of removal for misappropriation is harsh. Besides, it is not for us to determine the

quantum of punishment. We will notice an argument made by counsel for applicant in this context, to the effect that applicant was a tubercular patient, and was in a very poor state of health at the material time, that his brother was acting as his substitute and it was his brother who committed the acts of misconduct. He has not raised such a contention before the authorities below. Whether this is a ground for interfering with the quantum of punishment is a matter for the Head of the Department to consider, if there is a provision for considering the same.

5. With the aforesaid observation, we dismiss the application. No costs.

Dated the 20th June, 1996.


P V VENKATAKRISHNAN

ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR (J)

VICE CHAIRMAN

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LIST OF ANNEXURE

Annexure- A13: True copy of the Memo No.ASP/ADDA/93
dated 31.8.93 issued by the 2nd respondent
to the applicant.

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