

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 255 of 2006

Wednesday, the 10th day of January, 2007

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

M.R. Satheesh Kumar,
S/o. Raghavan Nair,
Postal Assistant,
Kottakkal Post Office,
Malappuram District,
Residing at Moolakunnel House,
Thiruvanchoor P.O., Kottayam - 37

...

Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India represented by
The Secretary to Government of India,
Ministry of Communications,
Department of Posts, New Delhi.
2. The Superintendent of Post Offices,
Tirur Division, Tirur.
3. The Director of Postal Services,
Office of the Postmaster General,
Northern Region, Calicut - 11.

...

Respondents.


(By Advocate Mr. Varghese P. Thomas, ACGSC)

The Original Application having been heard on 20.12.06, this Tribunal
on 10.01.2007 delivered the following :



O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant, a Postal Assistant, posted at Kottakkal, was to handle the Post Office from 13-10-2003 to 31-10-2003 due to absence on leave of the Post Master. The duties involved during this period included collection of deposits and remittance of over certain amount, in the Bank. On 22-10-2003, the applicant at about 1.30 p.m. remitted a sum of Rs 1,45,000/- in the Bank leaving an amount of Rs 23,895/- (while the maximum amount that could be retained is Rs 1,20,000/-). However, after such remittance, further deposits were made in the Post Office, and a sum of Rs 2,72,441.95 (Rs 35,406/- being counter collection and Rs 1,99,700/- being remittances from various offices in cash bags which have been received after such remittance) was available at the closing hours of the Post Office and the applicant had secured the same in the post office. A burglary took place on the night of 22-10-2003 whereby a sum of Rs 93,487.50 in cash and philatelic stamps worth Rs 45.00 were lost from the office cash safe. After conducting certain preliminary inquiry, the applicant was issued with a charge sheet under Rule 16 of the CCS (CC&A) Rules, 1965 vide memo dated 07-02-2005 imputing the charge that the applicant while holding charge of Kotakkal MDG on 22-10-2003 permitted to retain a cash balance of Rs 2,72,441.95 including temporary advance of Rs 7,400/- on that day without taking any action to remit the excess cash above the authorized limit to the HO and thus contributed to a loss of Rs 93,487.50 in cash in the burglary taken place at the post office on that night and thereby failed to maintain devotion to duty and conducted himself in a manner unbecoming of a Government



servant in violation of Rule 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964. The applicant gave his explanation but the disciplinary authority, vide Annexure A-1 order dated 25-04-2005, imposed penalty of recovery of loss to the government to the tune of Rs 64,476/- from the pay of the applicant, recoverable in 36 installments beginning from the pay of April, 2005. The applicant's appeal had been dismissed, vide Annexure A-2 order dated 31st March, 2006, holding that remittance of surplus cash to HO is not an unprovided procedure in the rules and it is evident that the applicant had not taken any steps to clear the excess cash and when rules provide certain procedure, he cannot take shelter under the procedure or practice in vogue. The the applicant has moved this O.A. challenging the orders of the disciplinary authority and appellate authority on various grounds as contained in para 5 of the O.A.

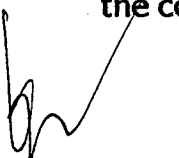
2. Respondents have contested the OA by filing the reply, contending that the applicant did not take any action to remit the excess cash available in the office on 22.10.2003 and that he was fully aware that the Bank authorities had restricted acceptance of cash upto 13.30 hours and yet the applicant failed to take any steps to remit the excess cash to Tirur Head Post Office. Instead of remitting the excess cash to the HO, the applicant retained huge amount of cash in excess of the authorized balance in the Post office and that this failure on the part of the applicant resulted in retention of the money, which was ultimately lost when the office was burgled.

3. Counsel for the applicant argued that the applicant was functioning only on a stop gap arrangement in the absence of the Regular Post Master on leave. During his so



functioning, he had followed the practice that was prevalent so far as remittance/retention of the deposits in the Post Office and as such, no misconduct had been committed by the applicant. The counsel had also submitted that as per rule, whatever collection was available before 13.30 hours, retaining an amount of Rs. 23,895/- to cater for immediate requirement of withdrawal the next day (while the amount that could be retained was Rs 1,20,000/-), the applicant had remitted a sum of Rs 1,45,000/-. It was not expected by the applicant that there would be a bulk receipt from other S.Os to the tune of Rs 1,99,700/- after such remittances in the Bank had been made. As regards the contention of the respondents that after remittances in the Bank, if further receipt with the available balance exceeded the maximum amount that could be retained, then, such excess amount would have been remitted in the Head Office, Tirur, the counsel submitted that never in the past such a practice was in vogue and incidentally on that very particular day, apart from the post master, two more hands were on leave and there was no provision of police escort and such, it was simply not possible for any one to remit the excess amount in the HO situated as many as 16 km from the post office. The counsel also relied upon the preliminary investigation report, wherein there was no finding as to any negligence on the part of the applicant. The counsel also submitted that his act cannot be brought within the term "misconduct" as per the provisions of the Rules, and in this connection he had relied upon the decision of the Apex Court in the case of State of Punjab vs Ram Singh, (1992) L & S 793.

4. Counsel for the respondents reiterated the stand of the respondents as given in the counter.



5. Arguments were heard and documents perused. The question is whether the penalty imposed upon by the disciplinary authority is legal or not.

6. The stand taken by the applicant is that he had done what has been the prevailing practice and lack of devotion to duty cannot be fastened upon him to charge him with the alleged misconduct under Rule 3(1)(ii) of the Conduct Rules. Nor could he be branded as having acted in a manner unbecoming of a Government servant to be brought under the clamp of Rule 3(1)(iii) of the said Rules. According to the applicant, his having taken the charge of post master is for a few days and that on that particular date, there was shortage of two more hands; that he had promptly deposited in the Bank the excess amount available around 13.30 hrs.; that the distance between the office and HO being 16 kms, and the further deposits having been received late, there was no possibility of depositing the excess amount in the HO, more so when there was shortage of hands and no escorts were available. He had taken all possible care to secure the amount of cash in the Post Office. Thus, he had done his part in the manner he had been expected to do. In so far as misconduct is concerned, he relied upon the decision of the Apex Court in the case of State of Punjab vs Ram Singh (*supra*). In the said case, the Apex Court has held as under:-

*6. Thus it could be seen that the word **misconduct** though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite*



rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order. (Emphasis supplied).

7. The above view of the Apex Court has been referred to in another case of **M. Malhotra vs. Union of India, (2005) 8 SCC 351**, wherein the Apex Court has held,

20. Similarly, in *State of Punjab v. Ram Singh Ex. Constable* it was held that the term misconduct may involve moral turpitude. It must be improper or wrong behaviour, unlawful behaviour, wilful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character.

8. In fact, the Apex Court has dealt in the above case, a number of other decisions as under which gives a clear picture of the definition of the term, 'misconduct' within the meaning of CCS (Conduct) Rules and the same is as under:-

16. The scheme of the disciplinary rules in general is to identify the conduct which is made punishable and then to provide for the various punishments which may be imposed for the acts which are inconsistent with such conduct. For example, the Central Civil Services (Conduct) Rules, 1964 contain provisions which pertain to the standards of conduct which government servants (within the meaning of those rules) are to follow whereas the Central Civil Services (Classification, Control and Appeal) Rules, 1965 provide the punishment or penalties which may be imposed for misconduct. The Conduct Rules and the Rules for punishment may be provided in separate rules or combined into one. Moreover, there are a host of departmental instructions which elucidate, amplify and provide guidelines regarding the conduct of the employees.

17. *The range of activities which may amount to acts which are inconsistent with the interest of public service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct as closed. It has, therefore, to be noted that the word misconduct is not capable of precise definition. But at the same time though incapable of precise definition, the word misconduct on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the statute and the public purpose it seeks to serve.*

18. *In Union of India v. Harjeet Singh Sandhu(2001) 5 SCC 593 in the background of Rule 14 of the Army Rules, it was held that any wrongful act or any act of delinquency which may or may not involve moral turpitude would be misconduct under Rule 14.*


19. *In Baldev Singh Gandhi v. State of Punjab(2002) 3 SCC 667 it was held that the expression misconduct means unlawful behaviour, misfeasance, wrong conduct, misdemeanour, etc.*

20. ... (Already extracted in the preceding paragraph)

21. *Misconduct as stated in Batts Law of Master and Servant (4th Edn. at p. 63) comprised positive acts and not mere neglects or failures. The definition of the word as given in Ballentines Law Dictionary (148th Edn.) is: A transgression of some established and definite rule of action, where no discretion is left except what necessity may demand, it is a violation of definite law, a forbidden act. It differs from carelessness.*

22. *It may be generally stated that the conduct rules of the government and public sector corporations constitute a code of permissible acts and behaviour of their servants." (Emphasis supplied)*


9. The appellate authority had rejected the appeal on the ground that when rules stipulate as to deposit of excess amount in the H.O., the applicant cannot take shelter under the procedure or practice in vogue. This reasoning does not appeal to logic for the following reasons:-



(a) First, the applicant is not a regular incumbent to the post of Post Master. He had joined the said post office only recently. He would normally abide by the Rules if the rules have been followed for a considerable time. One such example is his prompt depositing of the amount at 1330 hours in the Bank. However, when unexpectedly after such remittance, certain other receipts came in from other S.Os, and when there have been no adequate hands to man the post office and when the distance between the Post Office and HO is as many as 16 kms, without proper escort the applicant could not have been in a position to follow the rule of depositing the excess amount in the HO. He had, therefore, followed the prevailing practice i.e. keeping the excess amount received after due deposit in the Bank with the Post Office itself. The loss would have been much more, had he ventured taking the excess cash for deposit with the HO without due escort and had certain untoward incidents occurred during that period.

(b) There is no inflexible rule that amount in excess of the authorized quantum should invariably be deposited in the HO. The only condition is that in such an event, the SPM shall have to record the reasons for having such excess amount in the post office. Where treasury/Bank is available, the amount in excess shall have to be deposited therein which the applicant had done. It was the amount which was ^{to be} ~~to be~~ received after such remittance in the bank that had to be kept in the post office.

(c) Rule of Law and Rule of practice go in tandem. Where rule of law is not there, it is the Rule of practice that invariably prevails. Where rule of law does exist and for certain good reasons, deviating from the same there is some other rule of



practice, especially when discretion is vested with the authority, such rule of practice if followed would not mean violation of rule of law. The following cases would illustrate the fact that rule of practice is one of the recognized forms:-

(i) In ***Mohd. Siddiq Ali v. High Court of A.P., (2005) 13 SCC 207.*** the Apex Court has held as under:-

... the Rule which says that a court may not inquire into belated or stale claims is not a **rule of law but a rule of practice** based on sound and proper exercise of discretion

(ii) In ***State of W.B. v. Manas Kumar Chakraborty, (2003) 2 SCC 604*** it has been held by the Apex Court :

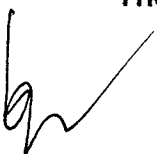
... the question appears to have been admitted, either as a matter of **rule or practice**, that in the Karnataka cadre an officer not holding the substantive post was ineligible to the post as DG&IGP.

(iii) In the case of ***Chandra Prakash v. State of U.P., (2002) 4 SCC 234*** the Apex Court's view is :

But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India **as a general rule of practice** and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate.

(iv) In ***K.C. Gupta v. Lt. Governor of Delhi, 1994 Supp (3) SCC 408,*** the Apex Court held:

The TGTs (Middle) who were in the lower grade/scale of pay till 27-5-1970 became



unreasonably ambitious to be reckoned as equals to the TGTs in higher grade from the date of their initial appointment which within no stretch of any **rule or practice** can be said to be justified.

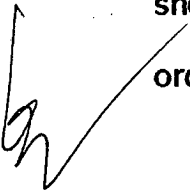
(v) In ***U.P. Public Service Commission, U.P. v. Alpana, (1994) 2 SCC 723***

the Apex Court stated:

No rule or practice is shown to have existed which permitted entertainment of her application.

10. Thus, the applicant, on account of not depositing in the HO, the excess amount which he received after his having deposited in the Bank at 1330 hours, cannot be said to have violated the provisions of Rule 3(1)(ii) and 3(i)(iii) of the CCS (Conduct) Rules, as his act cannot even be said to be one of negligence. Even if it is negligence, as per the Apex Court's decision in the case of Ram Singh (*supra*) as followed in the case of M. Malhotra (*supra*), the same cannot be said to be one of misconduct within the purview of Conduct Rules.

11. In view of the above, the O.A. fully succeeds. The impugned Annexure A-1 order dated 25-04-2005 and Annexure A-2 order dated 31st March, 2006, are hereby quashed and set aside. It is declared that the applicant is not liable to make good any loss occurred on account of burglary that took place in the office on 22-10-2003. The applicant is entitled to the refund of the amount recovered from him from the Salary of April, 2005 onwards in the wake of the order dated 25-04-2005. Refund of the amount should be made within a period of two months from the date of communication of this order. If there be any delay beyond the stipulated period in making the refund,

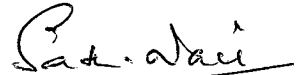


respondents shall pay interest @ 6% per annum from the date of communication of this order and such amount paid as interest shall be recovered from the official who is responsible for delaying refund.

12. Under the circumstances, there shall be no order as to costs.



Dr. K B S RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

CVR.