

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

O.A.No.27/12

.....Monday..... this the ..8<sup>th</sup> day of April 2013

**C O R A M :**

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

M.K.Lohithakshan,  
S/o.Kunhikandan,  
Gramin Dak Sevak Mail Deliverer,  
(under put off duty), Padinjare Vemballur PO.  
Residing at Muriyil, Edavilam – 680 671.

...Applicant

(By Advocate Mrs.R.Jagada Bai)

**V e r s u s**

1. Union of India represented by the Secretary, Department of Posts, New Delhi – 110 001.
2. The Post Master General, Central Region, Kerala Circle, Kochi – 682 011.
3. Assistant Superintendent of Post Offices, (OD and Marketing) & Appointing Authority, Irinjalakuda Division, Irinjalakuda – 680 121.
4. Inspector of Post Offices, (Normal Appointing Authority), Kodungallur Sub Division, Kodungallur – 680 664.
5. Post Master, Irinjalakuda Head Post Office, (Adhoc – Appointing Authority) 680 121.
6. Sri.P.G.Babu, Assistant Superintendent of Post Offices, Inquiring Authority, Irinjalakuda Sub Division, Irinjalakuda – 680 121.

...Respondents

(By Advocate Mr.Pradeep Krishna [R1-5])

This application having been heard on 3<sup>rd</sup> April 2013 this Tribunal on .8<sup>th</sup> April 2013 delivered the following :-



.2.

**ORDER**

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

The applicant while working as GDS MD, Padinjare Vemballur Post Office was placed under put off duty in February 2009. He was proceeded against vide memorandum dated 8.3.2010 on certain charges as contained in Annexure A-2 :-

**Article I**

Sri.M.K.Lohithakshan, while working as Gramin Dak Sevak Mail Deliverer Padinjare Vemballur on 14.11.2008, failed to effect delivery of an ordinary letter addressed to Dhanya P.P., Daughter of P.S.Premadasan, Panangattu House, P.Vemballur PO, effected delivery only on 26.11.2008, furnished wrong remarks during the intervening period, and thereby violated the provisions of Rule 115 (1) of Postal Manual Volume VI Part III, 6<sup>th</sup> Edition and thus failed to maintain absolute integrity and devotion to duty contravening the provisions of Rule 21 of the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules 2001.

**Article II**

Sri.M.K.Lohithakshan, while working as Gramin Dak Sevak Mail Deliverer Padinjare Vemballur on 2.2.2009 failed to obey orders of Inspector Posts, Kodungallur Sub Division vide her Memo No.BO/P.Vemballur dated 31.1.2009 relieving him from mail conveyance duties and exchanging the duties of two GDSMDs with effect from 2.2.2009 and thus failed to maintain absolute integrity and devotion to duty contravening the provisions of Rule 21 of the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules 2001.

**Article III**

Sri.M.K.Lohithakshan, while working as Gramin Dak Sevak Mail Deliverer Padinjare Vemballur on 2.2.2009, misbehaved with the superiors, Sri.K.K.Bahuleyan and Sri.C.Balakrishnan, Mail Overseers of Kodungallur Sub Division on a visit to Padinjare Vemballur, made derogatory remarks on officers of the Department and then having left the office without permission, aided reporters of print and visual media to report against the department thus failed to maintain absolute integrity and devotion to duty contravening the provisions of Rule 21 of the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules 2001.



.3.

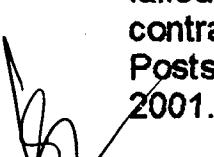
2. The applicant denied those charges and had also contended that the authority which issued the charge sheet cannot act as a disciplinary authority in this case since he happens to be one of the material witnesses in the inquiry proceedings. Accordingly, vide order dated 6.5.2010 the Post Master General, Central Region, Kochi, had appointed the Assistant Superintendent of Post Offices (OD and Marketing), Irinjalakuda Division, to function as appointing authority of the applicant with powers to impose all the penalties specified in Rule 9 of the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules 2001. The said authority, accordingly, dropped the initial charge sheet framed on technical ground pending issue of fresh charge sheet vide Annexure A-6 dated 2.12.2010. This was followed by charge sheet dated 6.12.2010 wherein the following articles of charges are levelled :-

**Article I**

Sri.M.K.Lohithakshan, while working as Gramin Dak Sevak Mail Deliverer Padinjare Vemballur on 14.11.2008, failed to effect delivery of an ordinary letter addressed to Dhanya P.P., Daughter of P.S.Premadasan, Panangattu House, P.Vemballur PO, effected delivery only on 26.11.2008, furnished wrong remarks during the intervening period and thereby violated the provisions of Rule 115 (1) of Postal Manual Volume VI Part III, 6<sup>th</sup> Edition and thus failed to maintain absolute integrity and devotion to duty contravening the provisions of Rule 21 of the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules 2001.

**Article II**

Sri.M.K.Lohithakshan, while working as Gramin Dak Sevak Mail Deliverer Padinjare Vemballur on 2.2.2009 failed to obey orders of Inspector Posts, Kodungallur Sub Division vide Memo No.BO/P.Vemballur dated 31.1.2009 relieving him from mail conveyance duties and rearranging duties of the GDSMDs of the office with effect from 2.2.2009, and thus failed to maintain absolute integrity and devotion to duty contravening the provisions of Rule 21 of the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules 2001.



### Article III

Sri.M.K.Lohithakshan, while working as Gramin Dak Sevak Mail Deliverer Padinjare Vemballur on 2.2.2009, misbehaved with his superiors, Sri.K.K.Bahuleyan and Sri.C.Balakrishnan, Mail Overseers of Kodungallur Sub Division on a visit to Padinjare Vemballur, made derogatory remarks on officers of the Department and left the office without permission, thus failed to maintain absolute integrity and devotion to duty contravening the provisions of Rule 21 of the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules 2001.

3. The applicant has participated in the proceedings and before the inquiry authority has furnished his report, he moved this O.A challenging the very issue of charge sheet and also Annexure A-1 order to put off duty and sought the following reliefs :-

1. To set aside Annexure A-7, the second charge sheet.
2. Reinstate the applicant into service with all consequential benefits quashing Annexure A-1.
3. Any such remedy deemed fit and proper as this Hon'ble Tribunal may be pleased to order.
4. Grant costs to the applicant.

4. Respondents have contested the O.A. They have justified the competence of the authority who has been functioning as a disciplinary authority and has also been vested with all the powers of the disciplinary authority by the Post Master General. They have also relied upon a decision of the Ahmedabad Bench in the case of Mukthiyarahmed Chundrigar Vs. Union of India and others decided on 26.2.2003.



.5.

5. Counsel for the applicant argued that the orders are specific that in case of adhoc disciplinary authority it should be the next immediate senior whereas officer appointed as adhoc disciplinary authority is higher than the immediate superior. It has also been contended that the authority vested with adhoc disciplinary authority is limited to completion of proceedings and does not afford him the power to withdraw the earlier charge sheet. It has also been contended that the applicant has been languishing under put off duty for the past three and a half years without any review of the put off duty (suspension period).

6. Counsel for the respondents submitted that once the competent authority has appointed adhoc disciplinary authority, he stepped into the shoes of regular disciplinary authority and since there is no bar of withdrawing the earlier charge sheet on technical ground pending issue of fresh charge sheet, action taken by the adhoc disciplinary authority cannot be faulted with. He has also submitted that the inquiry has reached an advanced stage and the inquiry report is awaited. As regards put off duty, since the inquiry is pending the applicant has to suffer the same.

7. Arguments were heard and documents perused. As to the competence of adhoc disciplinary authority, the Tribunal is in full agreement with the submissions made by the counsel for the respondents. Though Post Master General has indicated that the adhoc appointing authority will have the powers to impose all the penalties specified under Rule 9, impliedly the said authority has full powers as of regular disciplinary

*✓ A*

authority. It is not the case of the applicant that the withdrawal of the earlier charge sheet was on account of improving the case of the respondents after the disclosure of defence. It was at the earliest stage, that too, when the applicant contended that the disciplinary authority, who is also one of the material witnesses, cannot function as such, that the Post Master General has appointed adhoc disciplinary authority. As a matter of fact, such a withdrawal is inevitable, as, with the same charge sheet issued by the regular disciplinary authority the case cannot be processed further since he happens to be a material witness. As such, the action taken by the adhoc disciplinary authority in withdrawing the earlier charge sheet is fully legally valid.

8. As regards the contention that the said authority is higher than the immediate superior, this contention of the counsel for the applicant also has no merit since the authority appointed by the Post Master General is only the Assistant Superintendent of Post Offices and as long as an authority higher than the disciplinary authority is available to consider appeal, if any, if preferred by the applicant, such an appointment of any other officer, even if higher than the immediate superior, will not be rendered invalid.

9. As regards continuance in put off duty since 2009 is concerned, in the instant case it has so become inevitable as there is a necessity to change the disciplinary authority.

A handwritten signature consisting of a stylized 'S' and a checkmark-like shape.

10. Taking into account the above legal position and also the fact that the inquiry has attained an advanced stage (to the extent of the inquiry officer having concluded the inquiry and is expected to file the inquiry report), while the relief claimed by the applicant cannot be granted as such, ends of justice would be met if this O.A is disposed of with a direction to the respondents to finalize the inquiry proceedings within a period of three months from the date of communication of a copy of this order. This is subject to the applicant filing the representation if asked for within time scheduled by the disciplinary authority. The O.A is disposed of accordingly.

(Dated this the 8<sup>th</sup> day of April 2013)



K.NOORJEHAN  
ADMINISTRATIVE MEMBER



Dr.K.B.S.RAJAN  
JUDICIAL MEMBER

asp