

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.274/11

Thursday ... this the 15th day of September, 2011

C O R A M :

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

Smt.K.V.Mary,
W/o.M.J.Baby,
Ex.GDS Mail Deliverer, Pannimattam P.O.
Residing at Malayamannarath House,
Puthupariyaramam P.O., Thodupuzha.
Now residing at Merina Hoster Thodupuzha.

...Applicant

(By Advocate Mr.P.C.Sebastian)

V e r s u s

1. The Postmaster General,
Central Region, Kochi – 682 018.
2. The Supdt. of Post Offices,
Idukki Division, Thodupuzha – 685 584.
3. The Asst. Supdt. of Post Offices (OD),
Idukki Division (Ad hoc Disc. Authority)
O/o.the Supdt. of Post Offices,
Idukki Division, Thodupuzha.
4. The Asst. Supdt. of Post Offices
(HQ) & Inquiring Authority,
O/o.the Supdt. of Post Offices,
Idukki Division, Thodupuzha.
5. Union of India represented by
Secretary to Government of India,
Ministry of Communications,
Department of Posts, New Delhi.

...Respondents

(By Advocate Mr.Pradeep Krishna,ACGSC)

This application having been heard on 17th August 2011 this
Tribunal on 15.09. 2011 delivered the following :-

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ORDER

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

The original application No.274 of 2010 is followed by an application (MA No.237 of 2011) for condonation of delay of 409 days. The reasons adduced are that the applicant had, consequent to the loss of her job was not allowed to stay at her spouse's residence and she had to take shelter in a ladies' hostel and she is in a penurious condition. Delay is condoned on the basis of the grounds adduced in the affidavit accompanying the M.A. for condonation of delay.

2. Now as to the facts of the case: The applicant, initially working as Gramin Dak Sevak Mail Carrier (GDSMC) at Devarupara Post Office since October, 1996, was, on her request, transferred as Gramin Dak Sevak Mail Carrier in Pannimattom Post Office and again was, on her request, posted as Gramin Dak Sevak Mail Deliverer (GDS MD) in the same office as the post of Mail Carrier was proposed to be abolished.
3. Initially, in March, 2005 the applicant was put off duties purportedly pending enquiry on delivery of letters, but she was reinstated later on after a month.
4. On 20-06-2006, the applicant was served with a Memo ADA-1/ASP(OD)/05-66 dated 20-06-2006 containing the following charges against her :-



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Article - I

That the said Smt.K.V.Mary, while working as GDS MD Pannimattom during the month of July 2005 failed to deliver the registered with acknowledgement letter No.1212 of Ernakulam addressed to Sri.Mathew Joseph, Chemmarappillil, Pannimattom received at Pannimattom P.O on 20.7.2005 and entrusted to her for deliver on 20.7.2005 after getting acquittance in BO journal but returned by her to post office noting remark "intimation", on the article, on the back of the RP-1 receipt and her postman book, without actually serving the intimation to any body and following BO Rule 10 of the 7th Edition (reprint) corrected upto 31.3.1986. By the above acts Smt.K.V.Mary has exhibited lack of absolute integrity and devotion to duty violating Rule 21 of the Department of Post, Gramin Dak Sevak (Conduct and Employment) Rules, 2001.

Article - II

That the said Smt.K.V.Mary while working as GDSMD Pannimattom during the month of August, 2005 failed to deliver the Thodupuzha RL 1452 addressed to Sri.Raveendran Nair, Kottoor, Pannimattom P.O. received Pannimattom P.O on 24.8.2005 and entrusted to her for delivery to the addressee on 24.8.2005 after getting her acquittance in the BO journal, but returned to PO after noting the remark "intimation" on the article, on the RP-1 and in the postman book, without actually serving the intimation to anybody and following the BO rule 10 of the 7th Editions (reprint) corrected upto 3.3.1986. By the above act, she has exhibited lack of absolute integrity and devotion to duty violating rule 21 of the Department of Posts Gramin Dak Sevak (Conduct and Employment) Rules, 2001.

Article - III

That the said Smt.K.V.Mary while working as GDSMD Pannimattom during the month of July 2005 delivered two interview cards on 4.8.2005 addressed to Vinil V Chandran, S/o.Rama Chandran Valayethil, Pannimattom after the date of interview dated 2.8.2005, which were received as the BO on 28.7.2005 without observing the rule 10 of the Book of BO rules, 7th Edition (reprint) corrected upto 31.3.1986. By her this act Smt.K.V.Mary has exhibited lack of absolute integrity and devotion to duty violating provisions of Rule 21 of the Department of Posts, Gramin Dak Sevak (Conduct and Employment) Rules, 2001.

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Article - IV

That the said Smt.K.V.Mary while working as GDSMD Pannimattom during the month of February 2006 failed to delivery Vaikom RL 5858 dated 31.1.2006 to the addressee Smt.K.M.Marykutty, Kallumdathil Pannimattom entrusted to her on 1.2.2006 by the BPM after obtaining acquittance in BO journal. The RL was returned to the PO with remark 'intimation' on the article, RP-1 receipt and in her postman book without actually serving intimation and following the provisions of BO Rule-10 of the 7th Edition (reprint) corrected upto 31.3.1986. By the above act Smt.K.V.Mary GDS MD has exhibited lack of absolute integrity and devotion to duty violating rule 21 of the Department of Posts, Gramin Dak Sevak (Conduct and Employment) Rules, 2001.

5. The applicant denied the charges and thus an inquiry was set up and the applicant had engaged a defence assistant. Seven prosecution witnesses and two defence witnesses were examined and the inquiry officer had held charges under Articles I, II and IV proved and as regards Article III, the Inquiry Officer had held as under :-

Sri.Ramachandran Valayattil was examined as SW-5. SW-5 deposed that two interview cards arrived at Pannimattom post on 28.7.2005 for his son Vinil V Chandran were received by him only on 4.8.2005. He added that the interview cards were taken delivery by him from the post office. Sri.Vinil V Chandran was examined as SW-6. He deposed that 2 interview cards received at Pannimattom BO on 28.7.2005 were received only on 4.8.2005. Smt.C.K.Amirthakumari BPM, Pannimattom SW-1 deposed that S-1 is the statement given by her before SW-2 on 25.8.2005 and the contents of S-1 are true. SW-1 has stated in S-1 that an interview card addressed to the son of Sri.Ramachandran Valayattil (SW-5) had arrived at Pannimattom 28.7.2005. On 30.7.2005 and on 1.8.2005 son of Sri.Ramachandran, Valayattil came to the post office and enquired whether any interview card has arrived for him. To that Smt.K.V.Mary, the charged GDS replied in the negative. SW-1 has also stated that on 4.8.2005 SW-5 came to the post office and then the charged GDS took out two interview cards from her bag and handed over to SW-5. The circumstantial evidence adduced during the inquiry is sufficient to prove the allegation in Article III. However, in the absence of

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corroborative documentary evidence I am inclined to give the benefit of doubt to the charged GDS. Therefore, I hold that allegation raised against the charged HDS stands not proved.

6. On a copy of the inquiry report served upon the applicant vide Annexure A-5 dated 30-11-2007, the applicant has furnished her representation dated 14-12-2007 against the inquiry report and the disciplinary authority vide Annexure A-3 order dated 31-12-2007, accepted the views of the inquiry officer in respect of Article I, II and IV and as regards III, the disciplinary authority has held as under :-

Article III

Two interview cards addressed to Sri.Vinil V Chandran Valayattil Pannimattom were received at Pannimattom BO on 28.7.2005. These interview cards were delivered to the addressee on 4.8.2005. Smt.C.K.Amirthakumary BPM Pannimattom SW-1 confirmed this in her S-1 statement. Sri.Vinil V Chandran addressee of the interview card confirmed in the oral inquiry that he received the cards only on 4.8.2005 from Pannimattom BO. SW-1 in her S-1 statement confirmed that the cards were received at the BO on 28.7.2005. Sri.Rama Chandran Valayattil father of SW-6 confirmed that he received the cards from the CGDS on 4.8.2005 while in the post office in the presence of SW-1. SW-1 confirmed this in her S-1 statement in the oral inquiry. There is circumstantial evidence to show that the interview cards were delivered only on 4.8.2005. The defence side argued that the SW-6 is now studying in the very same institution where interview had been fixed on 2.8.2005. The PO could have cross examined the witness how SW-6 came to know about the interview on 2.8.2005. There is clear circumstantial evidence to show that the cards addressed to SW-6 were delivered only on 4.8.2005. The argument that SW-6 got admission in the very same institution where interview had been fixed is not an excuse for the delayed delivery of the interview card.

On the basis of oral and documentary evidence adduced in the inquiry I am fully justified to agree with the findings of the inquiry authority that the charges I, II and IV have been proved beyond doubt and charge III proved partially. The CGDS has miserably failed to discharge her

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duty as mail deliverer. The image of the department heavily depends on the performance of its delivery staff. The action of the CGDS has caused much damage to its image, and therefore, she is not fit to work as delivery agent and therefore order the following :

ORDER

I, P.J.James, ASP Idukki Division and Ad hoc Disciplinary Authority order that Smt. K.V.Mary GDS MD Pannimattom be removed from employment with immediate effect.

7. In view of the fact that the applicant was appointed by an authority superior to the SDI(P) who was the disciplinary authority in respect of GDS, the respondents had appointed the Asst. Superintendent of Post Offices (OD), Idukki Division to function as the Ad hoc Disciplinary authority. The Ad hoc Disciplinary authority, ultimately awarded the applicant, a penalty of removal from employment with immediate effect.

8. Aggrieved, the applicant moved the appellate authority vide Appeal dated nil and the appellate authority had in detail itemized various grounds adduced in the appeal one of which relates to the point of disagreement by the Ad hoc Disciplinary authority in respect of Article III. In this regard, the applicant has stated in her appeal as under :-

In the letter ADA-1 ASP(OD)/05-06 dated 30.11.2007 the ADA has given "I agree with the findings of the Inquiry Authority". On page 10 of the ADA's memo ADA-1/ASP/OD/05-06 dated 31.12.2007 he has said "I am fully justified to agree with the findings of the inquiry authority". In paragraph 10 (pages 13 and 14) of the IA's report it reads "I hold that Article I stands proved, Article II stands proved, Article III not proved, Article IV stands proved". In spite of the said agreement the ADA holds (page 10 of his final order) "charges I, II & IV have been proved beyond doubt and charge III proved partially". This is a clear evidence of lack of application of mind.

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9. The appellate authority has addressed the above ground as under :-

(a) The ADA has said I am fully justified to agree with the findings of the inquiry authority. IA report states Article III not proved whereas ADA holds that charge III partially proved.

(b) A minor error has crept in the date of RL No.1452. 24.8.2005 is the date of booking of the registered article No.1452 addressed to Shri.Raveendran Nair Kottoor. This was entrusted to Smt. K.V.Mary on 25.8.2005. The article was addressed to Shri.Raveendran Nair. The witness has deposed that his name is Raveendran. There is no confusion. Nair is only a caste name. There is also no confusion regarding RL. The charge is that the appellant failed to deliver RL No.1452 addressed to Shri.Raveendran Nair, Kottor entrusted to Smt. K.V.Mary for delivery. The ADA has given "I agree with the findings of the inquiry authority". IA report it reads Article-I stands proved, Article II stands proved, Article III not proved, Article IV stand proved. ADA holds Charges I, II & IV have been proved beyond doubt. There is no lack of application of mind.

10. Revision filed by the applicant, vide Annexure A-7 had been fully discussed and analysed by the Revision Authority, who had, however, upheld the penalty imposed on the applicant by the Ad hoc Disciplinary Authority.

11. Aggrieved by the rejection of the revision petition, the applicant has moved this OA on various grounds as enumerated in para 5 of the O.A.

12. Respondents have contested the O.A. They have stated that articles I to IV, save III stood proved by the Inquiry officer which had been accepted by the Ad hoc D.A. And in respect of Art. III, the Inquiry Authority

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in his findings correctly pointed out that the circumstantial evidence adduced in the inquiry was enough to prove the allegation in Article III. The standard of proof required in a departmental inquiry is not proof beyond doubt but on preponderance of probability.

13. Counsel for the applicant confined his arguments to the legal issue as to whether the decision of the Ad hoc Disciplinary Authority could be considered as legal, when, the disciplinary authority, without giving prior notice to the applicant, held as partly proved the charge under Art. III, whereas the the Inquiry authority had held the same as not proved.

14. Counsel for the respondents submitted that the above legal issue has been addressed by the Appellate Authority and as such, the ground does not hold good.

15. Arguments were heard and documents perused. The inquiry officer has in respect of Art. III, inter alia, held as under :-

The circumstantial evidence adduced during the inquiry is sufficient to prove the allegation in Article III. However, in the absence of corroborative documentary evidence, I am inclined to give the benefit of doubt to the charged GDS. Therefore, I hold that allegation raised against the charged GDS stands not proved.

16. The above findings had been taken by the disciplinary authority as partially proved. Obviously, the fact of non delivery of the interview cards had been proved by circumstantial evidence and it was only on benefit of doubt that the said charge was held as not proved. This was



taken as "partially proved" by the Ad hoc Disciplinary authority. Thus, there is no disagreement between the findings of the Inquiry authority and that of the Ad hoc Disciplinary Authority.

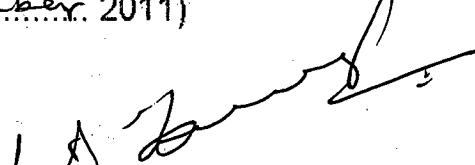
17. Assuming without accepting, if the entire case is considered, other three charges stood proved. The conclusion arrived at by the Disciplinary authority is that the GDS has miserably failed to discharge her duty as mail deliverer. This holds good in respect of Article I, II and IV as well. Thus, this ultimate finding by the Disciplinary authority strikes symphony with that of the inquiry authority as well and the penalty imposed is not fully based on Charge under Article III only. Thus, even if there were disagreement in respect of Article III, since the penalty imposed was with reference to other charges as well, the decision of the Disciplinary authority cannot be faulted with. The proved charges under Article I, II and IV, concurrently are sufficient to have the penalty of removal from service imposed upon the applicant.

18. There being no merit in the case, the OA is, therefore, dismissed.

19. Under the circumstances, there shall be no orders as to cost.

(Dated this the 15th day of September 2011)


K. NOORJEHAN
ADMINISTRATIVE MEMBER


Dr. K.B.S. RAJAN
JUDICIAL MEMBER

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