

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.321/2005

MONDAY THIS THE 2nd DAY OF JULY, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

K.P. Indiramma W/o Sivarama Pillai
GDSBPM, Ezhakadavu Branch Office
Mavelikkara Division
residing at Neipurayil House,
Ezhakadavu PO
Cherukol, Mavelikkara.Applicant

By M/s M.R. Rajendran Nair and Associates.

Vs.

- 1 Union of India represented by the Secretary
Ministry of Communications
Department of Posts,
Government of India,
New Delhi.
- 2 The Postmaster General
Central Region
Kochi-682 018
- 3 The Director of Postal Services,
Central Region
Kochi-682 018
- 4 The Superintendent of Post Offices
Mavelikkara Division
Mavelikkara PORespondents

By Advocate Mr. P.S. Biju, ACGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant has filed this O.A. for quashing the penalty, appellate and revisional orders (Annexure A-1, A-8 and A-10), and for directing respondents to reinstate the applicant in service with back-wages, continuity of service and all consequential benefits.

2 The applicant has been working as GDSBPM Ezhakadavu since 12.10.1984. The Mail Overseer Mavelikkara North Sub Division during his second inspection of the Branch Post Office on 9.10.2001 detected non accounting of an SB deposit of Rs. 2500/- and cash tendered for issue of two MOS to the tune of Rs. 788/- on previous dates on 6.10.2001 and 8.10.2001 respectively. The matter was reported to the Assistant Superintendent of Post Offices and cent percent verification of past work was carried out by him. During verification, cases of fraud/misappropriation involving a total amount of Rs. 38225/- was detected in Money Order/Savings Bank/Recurring Deposit/Time deposit transactions and the applicant was placed under put off duty on 27.10.2001. She was proceeded against under Rule 10 of GDS (Conduct and Employment) Rules 2001 under Memo No. F4/2/2001-02 dated 30.9.2002 issued by the 4th respondent on the charges of non credit of savings deposits and the penalty of removal from service was awarded to her as per Memo dated 28.7.2004. The applicant submitted appeal to third respondent on 27.9.2004. The appellate order was served on the appellant on 1.12.2004. The applicant then filed a petition to the 2nd

respondent against the appellate order. Her petition dated 24.12.2004 was received at second respondent's office on 29.12.2004. The petition was rejected by the second respondent and Annexure A-10 memo dated 3.3.2005 rejecting the petition was handed over to her under acquittance. The applicant has now filed the present OA challenging the punishment, appellate and revisional orders.

3 The grounds taken by the applicant are that:

- (i) The memorandum of charges contained the firm opinion of the Disciplinary Authority regarding the guilt of the applicant. An expression of the same by the Disciplinary Authority in the Memorandum indicates prejudiced mind and thus prejudging the issue. Hence the memorandum of charges is vitiated.
- (ii) The prosecution documents which were admitted in the enquiry were not included in the earlier list of documents.
- (iii) The Prosecution witnesses 2 and 3 were not cross examined as the enquiry was held on 24.4.04 in the absence of the Assisting Government servant.
- (iv) Additional documents requested for were not produced for perusal
- (v) No opportunity was given for personal hearing.
- (vi) The applicant was suffering from the serious disease of cancer. The Appellate and the Revisional authorities have not considered this relevant fact.
- (vii) The penalty is disproportionate to the charges.

4 In the reply statement, the respondents have submitted that the findings were arrived at after analysing documentary as well as oral evidences and duly considering the representation of the

applicant. Their further submissions are:- Rule 27 of the CCS (CCA) Rules does not specifically provide for grant of personal hearing to the delinquent officer and in the circumstances of this case where there are very clear charges against the employee defrauding government money, it was not warranted. The applicant has no case that she has not committed the frauds. Affliction from a serious disease cannot be a reason for committing serious frauds or justifying the lapses and omissions on the part of the applicant. A person who defrauds public money does not deserves to be retained in public service. As such, there is no dis-proportionality in the punishment imposed.

5 The applicant has filed a rejoinder reiterating her contentions in the O.A and also submitted that she was directed to remit an amount of Rs. 55,000/- instead of Rs. 31,200/- as alleged in the charges and the amount of Rs. 23,800/- was later refunded and from this, it is evident that the alleged irregularity pointed out by the respondents were not correct. It was reiterated that Ext. P-9 was not listed as a prosecution document earlier and that no opportunity was given to cross examine PW-2 and PW-3.

6 We have heard Shri P.A.Kumaran for the applicant and Shri P.S. Biju for the respondents. The learned counsel for the applicant argued on the same lines as the averments in the O.A.

7 We have gone through the pleadings carefully. According to

Annexure A-1 charge memorandum the applicant was proceeded against on three Articles of Charges of having failed to credit the following amounts of deposits on the dates of their receipt and for having made entries in the accounts of the Post Office on the dates of receipt without actually crediting the same:

- (i) Rs. 25000/- in SB Account in NO. 42410 on 7.4.2000
- (ii) Rs. 5000/- and Rs 200/- on 8.9.99 and 9.11.99 respectively
- (iii) Rs. 400/- and Rs. 600/- on 24.12.99 and 31.7.2000 respectively.

8 The applicant participated in the enquiry and had also engaged a Defence Assistant, though due to change in the Defence Assistant the enquiry on 24.4.2003 was held in the absence of the Defence Assistant. This was duly recorded in the Order sheet. The applicant has submitted a request to proceed with the examination of witnesses PW-2 and PW-3 in the absence of the Assisting Government Servant and if the applicant has decided to cross examine the witnesses she could have gone ahead or submitted the request on the next date of hearing on 28.7.2003. She did not raise this point at all. During the enquiry the applicant never disputed the alleged fraud committed by her. She agreed to having accepted the deposits referred to in the charge memorandum on those days and she has also not taken the stand that the above deposits were fully accounted in the Post Office. Her only plea is that she was suffering from cancer and this fact had affected her mental balance and therefore she was not aware of her actions particularly on that

date namely 7.4.2000 mentioned in charge-I. On the basis of the medical certificate issued by the General Surgeon PM Hospital, Mavelikkara the Enquiry Officer came to the conclusion that she was admitted as a patient only on 30.4.2000 and her discharge was on 2.5.2000. The treatment certificate produced by the CGDS certifies that her treatment in RCC Trivandrum commenced from 21.10.2002 onwards. Therefore the plea that she was undergoing treatment and could not discharge her duties on 7.4.2000 due to serious illness had been rejected by the Enquiry Officer on the ground that her plea that she was not in a balanced state of mind and body cannot be an excuse for dereliction of duty particularly when she has attended office on that day and also on subsequent days.

9 Yet another ground taken by her is that fresh documents were introduced in the enquiry which were not listed in the charge sheet. The documents referred to are at Sl. NO. 17 to 19 in the list of documents enclosed to the charge sheet viz. attested copies of ledger of the Post Office. Instead of these, SB ledger maintained in SO has been produced which is the replica of the SB ledger card maintained in the HO and it was the PW-7 Inspecting Officer who has deposed the fact that he verified the copy with the original ledger. Hence the Enquiry Officer has rejected this contention of it being a fresh document as no prejudice has been caused to the applicant by non-production of the said document listed in the charges and it is not the only document relied on by the Enquiry

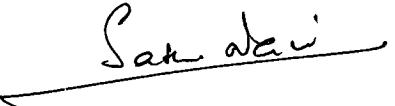
Officer. Further the pass book entries accepted by the applicant corroborated the charges. The applicant has during self examination confirmed that she was usually in the habit of making entries in the pass books and SB journals. Therefore from the evidence which was forthcoming in the enquiry it was clear that the applicant has accepted the failure to credit the deposits into the Post Office account on the respective dates. The applicant had at no stage a case that she had credited the amount into the respective accounts which stands further corroborated by her compliance with the direction to remit back the amount. This question has been gone into by the Apex Court in Syndicate Bank Vs. Venkatah Guru Rao Kurati in which it was held that "it is only those documents which are relied upon by the Enquiry Officer to arrive at his conclusion, the non supply of which would cause prejudice to the case of the officer, and such prejudice must be established by the delinquent officer."

10 We therefore do not see any rationale in the claims of the applicant that the findings of the Enquiry and Disciplinary authorities are perverse and arbitrary. Indeed the findings are based on oral and documentary evidence rendered in the enquiry. The Appellate and Revisional authorities have also examined the matter thoroughly with reference to the contentions in her representation and came to the conclusion that the irregularities which have been conclusively proved cannot be excused on the pleas of ill health as made out in the O.A. The action of the applicant constitutes a breach of trust and

the fact that the amount was made good after a lapse of one or two years does not mitigate the seriousness of the lapse. We do not find any merit in the contentions of the applicant and find that no interference with the impugned orders is called for. The OA is dismissed. No costs.

Dated 2.7.2007


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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