

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.333/96

Thursday this the 9th day of July, 1998.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI S.K.GHOSAL, ADMINISTRATIVE MEMBER

K.S.Rajendra Panicker,
Ex-Extra Departmental Branch Postmaster,
Kumaramperoor, Thekkekara Branch Post Office,
Kuzhikalayil,
Kumaramperoor, Thekkekara P.O.,
Vadasserikara,
Pathanamthitta District. ..Applicant

(By Advocate Mr.M.R.Rajendran Nair)
Mr.Thomas Mathew

vs.

1. Senior Superintendent of Post Offices,
Pathanamthitta.
2. Director of Postal Services,
Headquarters, Trivandrum.
3. Union of India, represented by its
Secretary, Department of Posts,
New Delhi.
4. Chief Post Master General,
Kerala Circle,
Trivandrum. ..Respondents

(By Advocate Mr. P.R.Ramachandra Menon, ACGSC(R1-4))

The Application having been heard on 25.6.98 the Tribunal on
9.7.1998 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant who was working as Extra Departmental Branch Post Master, Kumaramperoor, Thekkekara Branch Post Office has filed this application challenging the order dated 30.9.94 of the first respondent imposing on him the penalty of removal from service (Annexure -All) and the order dated 25th August 1995 of the second respondent confirming the order of the disciplinary authority and the order dated 29th August 1996 of the 4th respondent refusing to interfere with the orders of the disciplinary authority and the appellate authority in revision and rejecting the

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revision petition. The facts are shortly stated as follows.

2. The applicant was working as Extra Departmental Branch Post Master ('BPM'- for short) , Kumaramperoor, Thekkekara. On receipt of a complaint from one V.P.Ambujakshy, the depositor of R.D.A/c No. 1587252 that there has been some irregularities in her R.D. Account bearing a balance of Rs.980/- as on 11.9.1993 , the applicant was put off duty by the SDI by the order dated 6.10.93 with immediate effect. After holding a preliminary enquiry , the applicant was served with a memorandum of charges dated 22.3.94. There are two articles of charges. The allegation contained in the first article of charge was that the applicant while working as BPM, Kumaramperoor for the period from 4/89 to 9/93 failed to account for a sum of Rs.1060/- entrusted with him for depositing in R.D. A/c No.1587252 in contravention of Rule 144 read with Rule 143(3) and 131(1),(2) and (3) of Rules for Branch Offices Sixth Edition violating Rule 17 of the P&T ED Agents (Conduct & Service) Rules, 1964. The allegation forming second article of charge was that he failed to account for a sum of Rs.75/- entrusted with him for depositing in R.D A/c No.1587264. The applicant denied the charges. An enquiry was held. The enquiry officer submitted a report holding the applicant guilty of both the charges. The disciplinary authority after giving the applicant a copy of the enquiry report and on considering his representation, the enquiry report and other materials, found the applicant guilty of both the charges and taking into account the gravity of the misconduct imposed on the applicant the penalty of dismissal from service by the impugned order (Annexure-All). His appeal and revision petitions were also

dismissed by the orders at Annexures A13 and A15.

3. The applicant has filed this application challenging the orders. The main attack against the impugned orders is that as the enquiry itself was initiated on the basis of an alleged complaint of Smt.V.P.Ambujakshy, the depositor of R.D.A/c No.1587252, the non-examination of Smt. Ambujakshy as a witness while reliance has been placed on the letter alleged to have been sent by her has vitiated the entire proceedings, that the non-supply of the preliminary enquiry report to the applicant while reliance has been placed on the evidence collected therein, is in violation of the principles of natural justice, that the enquiry authority has violated the provisions contained in Rule 14(18) of the CCS(CCA)Rules by putting incriminatory questions to him, that there was no sufficient evidence to bring home the guilt of the applicant and therefore, the finding that he is guilty is not maintainable, that the first respondent had no jurisdiction to act as disciplinary authority as she was only a Group-B officer working as Senior Superintendent of Post Offices on adhoc basis as a stop gap arrangement and that in any event, the penalty imposed is excessive. The appellate and revisional authorities have not discharged their statutory obligations of considering the appeal and revision in accordance with the rules and for these reasons the applicant prays that the impugned orders may be set aside with all consequential benefits.

4. The respondents have filed detailed reply statement to which the applicant has filed a rejoinder.

5. We have very carefully gone through the pleadings and all the materials on record and the file relating to the enquiry which was made available for our perusal by the

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learned additional Central Govt. Standing Counsel. We have also heard at length the arguments advanced by Shri M.R.Rajendran Nair on behalf of the applicant and by Shri P.R.Ramachandra Menon on behalf of the respondents.

6. Learned counsel of the applicant argued that while the basis of the disciplinary proceedings initiated against the applicant was an alleged complaint of Smt.Ambujakshy that there has been discrepancies in the passbook relating to R.D.A/c No.1587252 ,the non-examination of Smt.Ambujakshy cuts the root of the case against the applicant inasmuch as the entrustment of the money with him for making deposit has not been established. Learned counsel argued that the respondents have failed to establish the entrustment of money either by Smt.Ambujakshy or by anybody on her behalf for making periodical deposit in the R.D.Account and that the finding of the disciplinary authority that Article No.1 has been established is therefore perverse. We do not find any substance in this argument. The enquiry officer has very carefully analysed the evidence and has stated cogent reasons for holding that Article No.1 of the charge has been established. The disciplinary authority has also reached his own independent conclusion that Article No.1 of the charge against the applicant has been established after a very detailed discussion of the evidence available on record. The applicant himself has given a statement to the SDI that he used to credit into the R.D. A/c of Smt.Ambujakshy amounts which was due to her husband Sasi as wages payable by him, though the applicant has detracted from the statement when he was questioned by the enquiry officer as required under Rule 14(18) of the CCS (CCA) Rules.

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He has stated that though he did not receive any amount from either Smt.Ambujakshy or her husband, he made entries in the passbook(Exhibit P4) as if amounts were received from Smt. Ambujakshy for which he gave an explanation that he had to do so because Smt.Ambujakshy and her paramour Anirudhan threatened him. However that entries were made in the passbook and that corresponding credit was not made in the accounts has been admitted by the applicant. Though, according to the applicant, no amount was at all entrusted with him for crediting in the R.D. A/c of Smt.Ambujakshy, his own witness DW-1 Sasi, husband of Smt.Ambujakshy has sworn that the reason why the applicant had made entries in the passbook(Exhibit P4) relating to R.D. A/c of his wife was that the money due to him as wages from the applicant was remitted in the R.D. A/c. That there has been entrustment of money for remitting in the R.D. A/c of Smt.Ambujakshy has been established by the deposition of DW-1. The records maintained by the Postal Department such as the daily account etc. have been produced and marked as exhibits on the side of the department which have not been challenged by the applicant. The finding that the applicant has failed to account for a sum of Rs.1060/- entrusted with him for deposit in R.D. A/c No.1587252 of Smt. Ambujakshy has been established by cogent evidence. The fact that Smt.Ambujakshy did not come forward to give evidence and that she had sent a letter to the department withdrawing the complaint against the applicant, is of no consequence as the charge against the applicant has been established by other evidence, which is convincing. Though the applicant has stated that the statement made by him to the SDI was

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directed and dictated by SDI, the applicant has not adduced any evidence to substantiate that statement.

7. There is sufficient evidence to find that the applicant is guilty of the second charge also because the applicant has admitted that he received Rs.75/- for depositing in R.D.A/c of Sri T.V.John for the period June 1993 to September 1993, that the deposits were shown in the passbook with date stamps, but has stated that he could not make the deposits as the amount was received by him on the date on which he was put off duty while the SDI was there. Though Shri T.V.John one of the PWs has detracted from his statement given earlier, the deposition of Ammini Varghese examined as PW 5 establishes the case against the applicant. We are convinced that the finding of the disciplinary authority that the applicant is guilty of both the Articles of Charges is supported by cogent and convincing reasons that it cannot be held that the finding is perverse. The argument that the finding has been arrived at basing on the statements made by persons during the preliminary investigation behind the back of the applicant without affording the applicant an opportunity to cross-examine those who made the statements is also not true, because for arriving at the finding that the disciplinary authority did, there has been very clear and cogent evidence, other than the statements made during the preliminary investigation.

8. The appellate and revisional authorities have considered the various grounds raised by the applicant and have decided the appeal and revision according to the rules. The order of the appellate authority confirming the order of the disciplinary authority and that of the revisional authority refusing to interfere with the penalty

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imposed and rejecting the revision petition, cannot be faulted for non-application of mind because due application of mind is clearly reflected in the orders and the orders are well-reasoned.

9. The applicant has raised a contention that the first respondent who was appointed only on ad-hoc basis as Senior Superintendent of Post Offices is not competent to function as the disciplinary authority in his case and that she is not competent to impose on him the penalty of dismissal from service. This argument is also without any substance. The applicant has produced Annexure-A17, an extract from the notification dated 8th June, 1995, whereby the President had appointed the first respondent to officiate on a post in the Indian Postal Service, Group-A, purely on ad-hoc and temporary basis for the period from 1.1.94 to 31.12.95. From the above order it is clear that on the date on which the first respondent acted as the disciplinary authority and issued the impugned order Annexure-A11, the first respondent was holding the post of Senior Superintendent of Post Offices in Group-A. The fact that she was appointed on an ad-hoc basis does not debar her from exercising the statutory duties of a Senior Superintendent of Post Offices in Group-A. Therefore, this argument also has absolutely no merit.

10. In the result finding no merit, the Original Application is dismissed leaving the parties to bear their own costs.

Dated the 9th July, 1998.



S.R. GHOSAL
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN