

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. NO. 346/2000

THURSDAY, THIS THE 30th DAY OF MAY, 2002.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER  
HON'BLE MR. K. V. SACHIDANANDAN, JUDICIAL MEMBER

Asokan V. S/o Raman  
Vayolipoil, Nayarkuzhi P.O.  
REC (Via) Calicut-673 601

Applicant

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. Senior Superintendent of Post Offices  
Calicut.
2. Director of Postal Services,  
Northern Region  
Calicut.
3. Chief Post Master General,  
Trivandrum.
4. Union of India represented by  
its Secretary to Government of India  
Ministry of Communications,  
New Delhi.

Respondents

By Advocate Mr. P.J. Philip, ACGSC

The Application having been heard on 2.5.2002 this Tribunal delivered the following on 30.5.2002.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant aggrieved by A1 order dated 29.4.99 issued by the first respondent removing him from service and A2 order dated 18.6.99 issued by the Post Master General, Northern Region, Calicut and A-3 order dated 6.12.1999 issued by the third respondent rejecting his appeal has filed this Original Application seeking the following reliefs:

(i) To quash Annexure A1, A2 and A3

(ii) Direct the respondent to reinstate the applicant in service with full back wages.

(iii) Grant such other reliefs as may be prayed for and the Court may deem fit to grant and

(iv) Grant the cost of this Original Application.

2. Applicant while working as EDBPM, Naiyarkuzhi was put off from duty on 1.10.1997 pending inquiry. He was issued with charge sheet dated 10.9.98. The Inquiry Officer and presenting officer were duly appointed and the preliminary hearing was conducted on 16.11.1998. By A-4 order dated 4.12.98 the charge sheet dated 16.9.98 was dropped due to some omissions without prejudice to further action. Thereafter, A-5 charge sheet dated 22.1.1999 was issued to him. A-6 corrigendum dated 28.1.99 was issued correcting A-5 charge memo. Thirty documents were marked by the prosecution and 8 witnesses were examined on their side. The applicant requested for the examination of one witness on his side. According to the applicant he was not permitted to examine one Suresh Kumar even before the defence evidence started on the ground that it was delayed. In A-7 Inquiry Report it was concluded that he was guilty. While the inquiry was pending the applicant made A-8 representation dated 15.3.99 to the third respondent. A-8 was rejected by Annexure A2. The applicant submitted A-9 representation dated 27.4.99 to the first respondent in answer to A-7 inquiry report. A1 order was passed pursuant to A-9. Applicant preferred A-10 appeal dated 31.5.99. A-10 appeal was rejected by A-3 order. Assailing A1, A2 and A3 on various grounds the applicant filed this Original Application seeking the reliefs quoted above.

3. Respondents filed reply statement resisting the claim of the applicant. According to them the applicant while working as EDBPM, Nayarkuzhi since 20.7.90 was put off duty on 1.10.97 upon detection of fraud in savings bank transactions done by him during the period from 5.11.1996 to

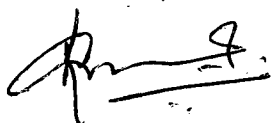


23.7.1997 in a Post Office Recurring Deposit account involving an amount of Rs. 24,500/-. It was submitted that a the fraud came to light upon verification of the Pass Book of the concerned Recurring deposit Account No. 58909 when on 18.9.97 the Postmaster, Calicut Civil Station Head Post Office forwarded to the Sub Divisional Inspector (Postal), Kunnamangalam Sub Division for verification, as it contained many entries of transactions which were not recorded in the Head Post Office Ledger. The depositor having died on 7.8.97 the discrepancies came to light when the nominee of the depositor approached Calicut Civil Station Head Post Office to ascertain the balance in the amount. The pass book was having the following entries.

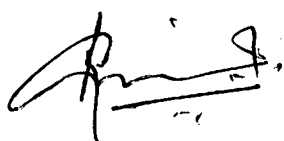
5.11.1996	20,000/-	
20.11.96	200/-	
24.12.1996	200/-	
22.1.1997	200/-	
31.1.1997	2,500/-	22,500/-
25.2.1997	225/-	
25.3.1997	225/-	
19.4.1997	225/-	
30.4.1997	2000/-	24,500/-
24.5.1997	245/-	
24.6.1997	245/-	
23.7.1997	245/-	

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Whereas in the Head Post Office Ledger the only entry was that of the initial deposit of Rs. 20/- dated 5.11.1996. It was submitted that in the course of the enquiries made into the case Shri V. Asokan BPM - the applicant herein admitted to have obtained Rs. 20,000/- from the depositor on 5.11.96 for deposit and having accounted Rs. 20/- only in the Post Office Accounts. He also stated that after getting the pass book issued from the account office for Rs. 20/- he had corrected the entry from Rs. 20/- to Rs. 20,000/- and delivered the pass book to the depositor. He further admitted that all the deposits seen entered in the pass book



were actually made by the depositor but he had not accounted for any of these transactions except Rs. 20/- and that he had thereby defrauded Rs. 24,500/- accepted from the depositor. He also voluntarily credited under the head "Unclassified Receipts" Rs. 24,500/- at Kunnamangalam Post Office on 7.10.1997. The charge sheet dated 16.9.98 was issued to the applicant under Rule 8 of the P & T ED Agents (Conduct & Service) Rules, 1964. The applicant denied the charges. A formal enquiry was ordered. Preliminary hearing of the case was held on 16.11.98. But no proceedings took place as the Presenting Officer and defence Assistant were not available. Subsequently the Charge Sheet issued on 16.9.98 was dropped on 4.12.98 due to some omissions without prejudice to further disciplinary action on the same, similar or other charges and this was intimated to the applicant through A-4. The applicant approached this Tribunal by filing OA No. 1756/98 on 22.12.98 with the prayer to reinstate him revoking the 'put off duty', and to increase his exgratia compensation to 50% of the original exgratia and seeking directions to finalise the disciplinary proceedings against him within a period to be prescribed by the Tribunal. In the reply statement filed the fact of the chargesheet was issued on 22.12.98 was brought to the notice of the Tribunal. This Tribunal disposed of the OA by R-1 order directing the disciplinary authority to finalise the case by 30.4.99. The applicant sent petition to the Postmaster General, Calicut against the revised charge sheet on 15.3.99. This petition was rejected by the Postmaster General, Calicut on 18.6.99 by A2 holding that the petition was against the proposal for disciplinary action and not against any order and that the disciplinary proceedings being by then over the petitioner could submit an appeal to the appellate authority against the order of punishment. As the applicant had denied the charges

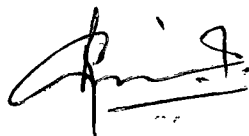


levelled against him a formal enquiry was held into the charges. The charges were held as proved in the inquiry. The disciplinary proceedings culminated in imposition of the penalty of removal from service on the applicant by A1 order. The appeal preferred by the applicant against the order of removal was considered by the Director of Postal Services the Appellate Authority and rejected by A-3 order dated 6.12.99. The grounds given for reliefs sought were legally and factually untenable and are not liable to be acted upon.

4. Heard learned counsel for the parties.

5. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have perused the documents brought on record.

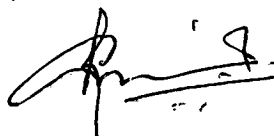
6. The grounds raised by the applicant for assailing the impugned orders are that the enquiry was vitiated by procedural irregularities and non-compliance of principles of natural justice and also that there was no evidence to justify the conclusion of guilt in the case. According to the applicant he was denied permission to examine Mr. Suresh kumar who was the witness to Exhibit P1 referred to in A-7. The reason given for denial of permission was that the stage at which the delinquent could require the examination of the witness was over. Applicant claimed that there was no rule which prohibited the delinquent from adducing evidence in his favour at any stage before the defence evidence was closed. According to him refusal of permission to examine the witness had caused serious prejudice to him. According to the respondents the second sitting of the inquiry was held on 22.2.99 the applicant was directed to submit within 5 days



the list of documents and witnesses to be examined on his behalf. The next sitting of the inquiry was held on 1.3.99, the applicant had given the name of only one defence witness namely A. Sasidharan Ambalakandy to be examined. This was accepted by the Inquiry Officer. Further sittings were held on 2.3.99, 4.3.99, 5.3.99 and 11.3.99. On 11.3.99 the case for the prosecution side was closed and the applicant was directed to submit his statement of defence within 5 days. In another letter dated 15.3.99 the applicant requested to examine one Shri M. Suresh Kumar, EDDA, Nayarkuzhi as a defence witness. As the applicant was given reasonable opportunity, his request to examine one more witness was rejected.

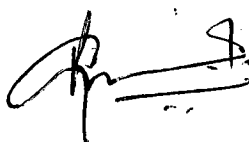
7. We find that the applicant had not given any reason as to why he could not nominate Shri Suresh kumar as defence witness at the first instance. It is true that the respondents had rejected the request of the applicant for not seeking Suresh Kumar as a witness from the defence side at the first instance. But the applicant has also not explained to this Tribunal xxxxxxxxxx as to in what way non-examination of Shri Suresh Kumar as a defence witness has prejudiced his defence. In our view this is a case where the applicant having been given opportunity to present his case has not availed of the same. Nothing had also been brought out as to how the non-examination of Shri Suresh Kumar had affected his defence. In view of the above, we reject this ground.

8. The next ground raised by the applicant is that Exbt. P-22 statement of the applicant was relied upon extensively by the Enquiry Officer. According to the applicant DW-1 in whose presence Ext. P-22 was obtained clearly deposed that it was obtained under coercion and the said piece of evidence



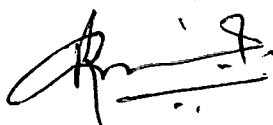
was brushed aside saying that it was unsustainable. He submitted that there was nothing on record other than Ext. P-22 to show that the alleged alterations/entries were made by the applicant. Respondents' case is that the deposition of DW1 to the effect that Ext. P22 was obtained under duress, was rejected for valid and cogent reasons. They referred to A-7 inquiry report and submitted that DW1's statement that P22 statement was given under duress was made to favour the applicant. They also relied on the fact that after one week of giving P-22 statement, the applicant had voluntarily credited a sum of Rs. 24,500/- under unclassified receipts at Kunnamanagalam Post Office. On a consideration of the rival submissions and the factual position we find considerable force in the submission of the respondents that if the applicant had made P-22 statement in duress and under coercion he would not have voluntarily credited the sum of Rs. 24,500/- after one week. In our view if he was under coercion to make a statement, he would have complained to the higher authorities immediately after giving P-22 statement. We are of the view that in the light of the above position, this ground has no force. Under these circumstances we reject this ground and the respondents decision cannot be faulted.

9. It is now well settled that in a departmental enquiry what is required is that there should be some evidence on the basis of which a conclusion of the guilt of the delinquent employee could be reached reasonably. The standard of proof required is not of the level required in a Criminal Court. After considering the charge sheet and the enquiry report, in our view, in this case there is some evidence available to the respondents to come to the conclusion about the applicant's guilt. Hence applicant's contention that this is a case of 'no evidence' has no merit.



10. The next ground advanced by the applicant was that there is no rule to permit a charge sheet to be issued on the same misconduct after dropping the initial charge memo. The initial charge memo was issued on 16.9.98. The charge there in and the charge in A-5 were practically the same. The applicant had submitted a representation on 15.3.99. According to the applicants this representation ought to have been considered and disposed of before issuing A1 and instead A2 was issued after A1. Applicant had also submitted that the ground in A2 was equally unsustainable. A2 was an empty formality with no application of mind. We find from A-4- the order dropping the charge sheet issued to him that the dropping of the charge sheet was without prejudice to further disciplinary action on the same, similar or other charges. When this is ~~xx~~ the case we do not find any infirmity in the action of the respondents. The charge memo was not cancelled unconditionally. Under these circumstances, we reject this ground raised by the applicant.

11. Another ground raised by the applicant was that the punishment meted out was highly disproportionate to the alleged misconduct and hence the impugned action was violative of Article-14 of the Constitution. It is well settled that it is not for the Court/Tribunal to interfere with the punishment imposed on the employees for their misconduct. It is for the concerned administrative authority to decide on the quantum of punishment. Courts/Tribunals cannot act as an appellate authority in the matter of award of punishment unless the punishment is of such a nature which shocks the conscience of the Court. In the facts and

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circumstances of this case we do not find any reason to interfere with the punishment imposed on the applicant on the charges levelled against him.

12. In the result we hold that the applicant is not entitled for the reliefs sought for by him. Accordingly, we dismiss this Original Application with no order as to costs.

Dated the 30th May, 2002.



K. V. SACHIDANANDAN  
JUDICIAL MEMBER

kmn



G. RAMAKRISHNAN  
ADMINISTRATIVE MEMBER

## List of Annexures

### Applicant's Annexures

- A1 True copy of order No. Fl/10/97-98 dated 29.4.99 issued by the 1st respondent.
- A2 True copy of order No. Staff/30-Misc/3/99 dated 18.6.99 dated 18.6.99 issued by the Postmaster General, Northern Region, Calicut.
- A3 True copy of the Order No. Staff/30-10/99 dated 6.12.99 issued by the 2nd respondent.
- A4 True copy of the memo No. Fl/10/97-98 dated 4.12.98 issued by the 1st respondent.
- A5 True copy of Memo No. Fl/10/97-98 dated 22.1.99 issued by the 1st respondent.
- A6 True copy of the corrigendum dated 28.1.99 bearing No. Fl/10/97-98 issued by the 1st respondent.
- A7 True copy of the inquiry report dated 20.4.99 submitted by ASP, PSD, Calicut.
- A8 True copy of the representation dated 15.3.99 submitted by the applicant to the 3rd respondent.
- A9 True copy of the representation dated 27.4.1999 submitted by the applicant to the 1st respondent.
- A-10 True copy of the representation dated 31.5.99 submitted by the applicant to the 2nd respondent.
- R1 True copy of OA 1756/98
- R2 True copy of the reply statement filed in OA 1756/98
- R3 True copy of the order rendered in OA 1756/98
- R4 True copy of the letter given by the applicant.
- R4(A) English translation.
- R5 True photo copy of the pass book produced as Ext. P2