

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED THE 30TH DAY OF OCTOBER ONE THOUSAND NINE HUNDRED
AND EIGHTY NINE

PRESENT

HON'BLE SHRI S. P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 355/86

P. Mohammed

Applicant

Vs.

1. The Director of Postal Services,
Calicut Region, Calicut

2. The Postmaster General,
Kerala Circle, Trivandrum and

3. The Chairman, P & T Board,
New Delhi

Respondents

Mr. K. R. B. Kaimal

Counsel for the
applicant

Mr. P. V. Madhavan Nambiar, SCGSC

Counsel for the
respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

In this petition, the petitioner who worked as
Assistant Postmaster (Accounts) LSG cadre under the
Respondents attacks the punishment of compulsory retirement
from service imposed on him in pursuance of disciplinary
proceedings initiated against him on the basis of a charge
which reads as follows:

" that Shri P. Mohammed submitted an LTC TA Bill
in respect of journey stated to have been
performed from Tirur to Srinagar from 3.5.79

to 14.5.79 with his family, that this was found to be a bogus claim and that the official failed to give proper account or proof for the spending of the amount of advance taken payment by him either in the bill or during preliminary enquiries. By his above acts, he has failed to maintain absolute integrity and behaved in a manner unbecoming of a government servant."

2. The admitted facts leading to the order are as follows. The petitioner while working as Assistant Postmaster (Accounts) of Tirur Head Postoffice applied for an advance of Rs. 5000/- on 14.3.1979 stating that he intends to avail LTC for his visit to Srinagar along with seven members of his family. The Supdt. of Postoffice, Malappuram granted an advance of Rs. 5,000/- on 31.3.79 which was received by the petitioner on 2.4.79. He again applied for sanction to travel in a car which was also granted on 7.6.1979.

3. The Supdt. of Postoffices, Malappuram received a T.A. bill from the petitioner claiming Rs. 4996/- for the journey. This was sanctioned by the Supdt. of Postoffices. In the T.A. bill the petitioner certified that 'himself' his wife and five children have performed that journey between Tirur and Srinagar. He has also availed of the leave for the period of journey.

4. Subsequently on receipt of a report from the Deputy Director of Postal Services, Trivandrum, the Vigilance Officer and the Assistant Supdt. of Postoffices (Vig.) made certain verifications and the ASP(Vig.) conducted an enquiry

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before whom on 8.8.79 the petitioner gave a statement to the effect that he has performed the journey in Car No. KLD 7531 owned by one K.P.K. Haji Muchikkal, Valanchery residing in Dubai. He further stated that due to illness, the members of his family could not accompany him and he alone performed the journey together with his friend one Mr. Abu Haji of Dubai. But when the driver of the car was examined he denied every thing. The petitioner also offered/refund of the entire amount and in fact he remitted a sum of Rs. 5,000/- on 11.8.79 at Tirur Head postoffice.

5. It is under these circumstances that the aforesaid disciplinary action against the petitioner was initiated. A detailed enquiry was conducted by appointing an enquiry officer. Annexure-III is the enquiry report submitted by the enquiry officer after conducting the enquiry. In the enquiry the petitioner was found guilty of the charge. Accepting the enquiry report, Annexure-IV order was passed by the disciplinary authority imposing the punishment of compulsory retirement from service with immediate effect. Against Annexure-IV order, the petitioner filed Annexure-V appeal before the appellate authority, but the appellate authority by Annexure-VI order after considering the appeal elaborately, agreed with the finding of guilt of the petitioner. The appellate authority could not find any extenuating circumstance so as to enable the authority to take a lenient view and thereby

reduce the punishment. The appellate authority has taken into account the gravity of the petitioner's misconduct and confirmed the order of punishment imposed by the disciplinary authority.

6. The petitioner also filed a representation under Rule 29 before the Chairman, Annexure-VII, which was also heard and disposed of by rejecting the petition.

7. The petitioner is challenging Annexure-IV, VI and VIII on various grounds. But at the time of hearing the learned counsel for the petitioner confined his arguments on the following two points:

(i) The authority which issued the charge in this case is not competent to initiate disciplinary action against the petitioner and impose the punishment on him. Hence, the entire disciplinary proceedings initiated in this case are illegal and they are liable to be quashed. and

(ii) the request of the petitioner to call for certain relevant documents to prove his defence has been rejected by the enquiry officer and hence the whole enquiry is vitiated and there is violation of principle of natural justice.

8. According to the petitioner, he was working as Asst. Postmaster (Accounts) and he was a member of the LSG cadre. The authority competent to impose a major punishment on him is the first respondent, the Director of Postal Services. A major punishment can be imposed only if such a disciplinary authority has issued a chargesheet and

ordered an enquiry. But in this case the chargesheet was issued and ^{the} enquiry was ordered by the Supdt. of Postoffices, who is not the competent authority under the rules.

9. This contention was answered in the counter affidavit filed on behalf of the respondents by stating that Rule 13(2) read with Rule 2(g) and Rule 14(21) of the CCS (CCA) Rules 1965, makes it clear that the Supdt. of Postoffices is competent to issue chargesheets and order an enquiry against the petitioner. The aforesaid rules read as follows:

2 (g) 'Disciplinary authority' means the authority competent under these rules to impose on a Government servant any of the penalties specified in Rule 11;

13(2) A disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of Rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in clauses (v) to (ix) of Rule 11 notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties.

14(21) (a) Where a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (iv) of Rule 11 (but not competent to impose any of the penalties specified in clauses (v) to (ix) of Rule 11) has itself inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own finding or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witness and examine, cross-examine and re-examine the witnesses and may impose on the Government servant such penalty as it may deem fit in accordance with these rules."

10. From a perusal of these rules, it is very clear that the Disciplinary authority competent under the rules may institute disciplinary proceedings notwithstanding that such Disciplinary authority is not competent to impose any of the major punishments. But in this case the enquiry was initiated by a competent authority but when it was found that the offence proved is so grave that it warranted the imposition of a major penalty the matter was referred to the Director of Postal Services.

11. The question of imposition of major or minor penalty will not invariably be relevant when disciplinary action is initiated against a Government servant. It assumes importance only after the conclusion of the enquiry when the authority after making a proper evaluation of the facts and circumstances of each case arrives at the conclusion about the quantum of punishment to be imposed considering the gravity of the offence. It is stated in the enquiry report that on the conclusion of the enquiry conducted by the enquiry officer both sides submitted their written briefs and the enquiry officer after considering the evidence and the written briefs submitted the enquiry

report finding that the charge against the petitioner is proved. By this time, the Tirur Postal Division was formed and the petitioner came under the administrative and disciplinary control of the Supdt. of Postoffices, Tirur. The Supdt. of Postoffices having considered his report and finding that a major punishment is to be imposed in this case and that the imposition of major punishment could be imposed by the Director of Postal Services who is the competent authority for imposing penalty on the petitioner under the circumstances of this case. Hence, the matter was referred to the Director of Postal Services. So having regard to the facts of this case and in the light of the provisions stated above the Supdt. of Postoffices is the competent authority to initiate disciplinary proceedings against the petitioner, but after the enquiry when it was found that the gravity of the offense committed by the petitioner is such that a major penalty contemplated under Rule 11 is to be imposed, the matter was referred to the Director of Postal Services. The Director of Postal Services has imposed the penalty in this case and passed the impugned order Annexure-IV.

12. Thus the procedure followed by the Disciplinary authority for imposing punishment against the petitioner is legal and valid. Hence, under the above circumstances, we find no merit in the first contention raised by the learned counsel for the petitioner.

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12. With regard to the second contention, the facts of the case discloses that the petitioner though represented before the authority that he wanted to avail of the LTC for performing the journey from Tirur to Srinagar, actually he has not performed the journey and this fact was admitted by him before the Vigilance authority referred to in the report in his statement which is produced before the enquiry. He has made an attempt at a belated stage to wriggle out from it and withdraw this statement and contended that this statement has been given by him on account of duress. This aspect is dealt with in the enquiry report as follows:

"The ASP(Vig) had investigated into seven to eight cases of LTC claims as per orders in the course of his official duty and the claim of the Govt. servant happens to be one of them. His report is Ext. D-4 document. PW-9 Koya has corroborated the PW-3's deposition that Ex P-6 statement was voluntarily given by the Govt. Servant. PW-9 Koya is a witness to Ext. P-6 statement, PW-10 Velayudhan's version does not support the defence plea of duress. PW-10 was the postmaster on duty that day. The Govt. servant who has given the statement in his own hand has not chosen to be examined as a witness for reasons best known to himself. The plea of duress actually emerges late and is put forth to explain away the circumstances of the credit of advance made. The Govt. servant credited the amount on 11.8.79 while working as APM (Acct) who was delegated with the duty of issuing ACG 67 receipts for UCR credits etc. The UCR credit on 11.8.79 under Ex. D.5A receipt was accepted by the Govt. servant himself as APM(Accounts) as is evident from the signature in Ext. D-5A."

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The enquiry officer after discussing the whole evidence came to the following conclusion:

"But circumstances reveal the motive of the Govt. servant in raising the issue so as to invalidate Ext. P-6 statement with a view to demolishing the evidence gathered during preliminary investigation. Ex P-6 statement was taken during the normal course of duties of the ASP (Vig) and there is nothing to prove that it was taken under duress as alleged. Evidence show that ASP(Vig) had actually pursued enquiries on the basis of the information given in Ex P-6 statement and traced the driver of the car and questioned him. Shri Viswanathan Menon who signed as witness could not be examined as he could not appear due to illness. He was dropped subsequently from the list of witnesses. Witnesses PW-10 Postmaster and DW-3 Raman Menon were not actually present during the recording of the statement at the spot and therefore their deposition that they did not see Viswanatha Menon cannot be reasonably accepted as conclusive proof. PW-3 and PW-1 have vouched for the presence. PW-10 Postmaster has corroborated the presence of PW-9 Koya. It is therefore evident that the duress theory is an after thought."

13. With these facts in mind we have to appreciate the second contention raised by the learned counsel namely that there is violation of the principle of natural justice on account of the rejection of the request of the petitioner to call for certain documents. This contention has also been dealt with in the report of the enquiry in the following manner:

" The Govt. servant made a written request for discovery and production of the under mentioned documents citing relevancy and accordingly the documents were requisitioned by this Inquiry Authority.

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1. Report of the Postal Accounts Trivandrum to VO referred to in Para 3 of Annexure-II of the Memo of charge (This is required to understand the nature of objection raised by the Audit on the LTC bill, on which the case started)
2. Reports of preliminary investigation conducted in the case by S/S 1. V. Sethumadhavan, 2. E.M.R. Kurup and 3. VO as stated in para 4 of the statement of imputations (These reports will reveal the details of the case as made up)
3. ACG 67 receipt book of Tirur HPO for August 79 to show the credit of LTC advance made in the case on 11.8.79
4. Letter/Application/Order/Authority for accepting the credit of LTC advance in ACG 67 receipt No. 57 dated 11.8.79
5. Letter dated 7.9.79 from PM Tirur to SP Malappuram stating reason for the above credit.
6. Letter No. AC/LTC-79 dated 11.8.1979 from P.M. Tirur to SP, Malappuram
7. Letter No. E/LTC/TA dated 13.9.79 in reply to the letter mentioned at serial (5) above documents at Serial 3 to 7 are required to understand the circumstances under which the credit of the LTC advance was made.
8. Representation dated 17.9.79 from Shri P. Mohamed to SP Malappuram about the compulsions made on him to credit the amount etc. and the letter of the PM Tirur forwarding the same. (This will testify that the statement was taken under duress and the credit made under threat.
9. Service book of Shri P. Mohamed to speak about the family particulars and CGEIS nominations on file. This is required to establish the correctness of the family particulars mentioned in the LTC claim.

10. Letter dated 1979 from Shri P Mohammed to SP, Malappuram seeking permission to undertake the journey of the LTC trip by private car. This will reveal the mode of conveyance sought to be used.

11. Statement taken by the ASP (Vig) PMG's office from Shri P. Mohammed on 8.8.79 at the Tirur HPO during his investigation which has not been mentioned in Annexure-III. This is required to establish the correct particulars as given by me in the first instance.

1.7 The documents requisitioned except those at serials 2(2), 2(3), 4 and 11 were produced on 11.11.80 and the Govt. servant was informed that the documents not produced were reported to be non-existent."

14. Excepting the aforesaid four documents, which were not in the possession of the Govt. authorities, all the other documents requisitioned for proving the defence case have been produced and the petitioner was notified about the production so as to enable him to peruse the same and make use of them in the enquiry. But he did not care to accede to the request. The rejection of the request made by the petitioner for the production of the documents, which are not in possession of the Government cannot be assailed and it would not be a violation of principles of natural justice on the facts of this case especially when the petitioner had sufficient opportunity to make request to summon the persons in possession of such documents. He had possession of documents & could have taken steps for calling those persons who/are witnesses for proving these documents. The petitioner had also ample opportunity to produce the receipts issued to him by the Boat house owners at Srinagar to establish

his case that he had gone there and resided in the Boat house during the relevant time. He did not produce any such receipt in this case. The decision taken by the enquiry officer in this connection with respect to the request for production of documents in this case is unassailable and there is no violation of principles of natural justice on account of the order rejecting the request made by the petitioner in this case.

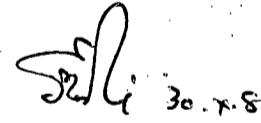
15. No other ground was urged by the learned counsel for the petitioner for consideration. Hence, we are not examining any other aspects.

16. On the facts and circumstances of this case, we find no merit in the grounds raised by the learned counsel for the petitioner in this case and it is liable to be dismissed. Accordingly, we dismiss the same.

17. There is no order as to costs.


(N. Dharmadan)
Judicial Member

30/7/87


(S. P. Mukerji)
Vice Chairman

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