

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 36/2000

THURSDAY THIS THE 14th DAY OF MARCH, 2002.

C O R A M

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

P. Krishnan S/o Chekkotti
Ex Branch Postmaster
Adukat
resident of Paikkathummal House
Kuttiyadi, Vadakara.

Applicant

By Advocate Mr. Sasidharan Chempazhanthiyil

Vs.

1. Superintendent of Post Offices
Vadakara Sub Division
Vadakara

2. Postmaster General
Northern Region
Calicut

3. Director General
Postal Department
New Delhi.

4. Union of India represented by its Secretary
Ministry of Communications
New Delhi ...

Respondents

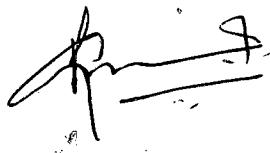
By Advocate Mr. S. K. Balachandran, ACGSC

The Application having been heard on 7.2.2002 this Tribunal delivered the following on 14.3.2002.

O R D E R

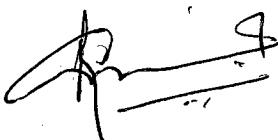
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant while working as Branch Postmaster, Adukat was issued with the charge memo dated 30.3.1995 under Rule 8 of the P&T Extra Departmental Agents (Conduct &Service) Rules, 1964. There were two article of charges. Applicant denied the charges. An enquiry followed and the applicant was found guilty. By A-1 memo dated 28.2.97 of the first respondent applicant was removed from service. Applicant filed A-5 appeal dated 21.4.97 to the second respondent. The appellate authority rejected the appeal by A-2 order dated 30.7.97. Applicant filed revision petition



which was also dismissed by the second respondent by A3 order dated 22.4.98. The Review petition filed by the applicant before the third respondent was also rejected by the third respondent by A-4 order dated 20.10.99. Aggrieved applicant filed this O.A. seeking to quash A1, A2, A3 and A4 and directing the respondents to reinstate him back to service with all consequential benefits. Applicant advanced number of grounds in support of the reliefs sought by him.

2. Respondents filed reply statement resisting the claim of the applicant. According to them there were two specific charges against the applicant. The first charge related to his failure to produce the entire cash balance of the office for verification before the IPO (C&PG) Vadakara on 27.4.94 as required by 'Note' below Rule 11 of the Rules for branch offices. The second charge was that the applicant wilfully delayed and failed to make payment of Vadakara MO NO. 6384/118 for Rs. 455/- dated 11.7.94 payable to the payee. Applicant filed defence statement on 17.5.95 in response to chargesheet. He having denied the charges, a formal enquiry was held. The Enquiry Officer after conducting the enquiry as per Rule 8 of the P & T Extra Departmental Agents (Conduct and Service) Rules, 1964 submitted R-2 enquiry report to the first respondent on 31.1.97 holding both the charges against the applicant as proved. The first respondent forwarded a copy of the enquiry report to the applicant directing him to submit his written representation if any against the inquiry report within 15 days. The enquiry report was received by applicant on 5.2.97. He however did not submit any representation within the stipulated period. When the stipulated period was over, a letter dated 22.2.97 requesting extension of time by 7 days to submit the representation was received by the first respondent on 25.2.97. Since even the

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said request (Annexure R-3) was not received within the stipulated time the same was not granted. After due consideration the enquiry report and the connected records the first respondent issued A-1 orders removing the applicant from service. Appeal was rejected by memo dated 30.7.97. Thereafter applicant filed O.A. No. 1593/97 before this Tribunal. This O.A. was disposed of by this Tribunal as per order dated 17.2.98 directing the applicant to submit the revision petition against the punishment order and the appellate order to the second respondent within 15 days of the date of order. The Review petition filed by the applicant was rejected by A-3 order. Applicant filed review petition before the Ministry of Communications which was rejected by A-4 order. They denied that the charges against the applicant were not proved. The applicant was given enough opportunity to defend his case. It was submitted that all the grounds stated in the O.A. were not true and sustainable.

3. Heard learned counsel for the parties.

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

5. The Articles of charges against the applicant are as follows:

ARTICLE -I

That the said Sri P. Krishnan, while working as Branch Postmaster, Adukkath failed to produce the entire cash balance of the office for verification before the IPO(C&PO) Vadakara on 27.4.1994 as required by 'Note' below Rule 11 of the Rules for Branch Offices and thus failed to maintain absolute



integrity and devotion to duty required of him violating Rule 17 of the Extra Departmental Agents (Conduct and Service) Rules 1964.

ARTICLE - II

That the said Sri P. Krishnan, while functioning as Branch Postmaster, Adukkath wilfully delayed and failed to make payment of Vadakara MO NO. 6384/118 for Rs. 455/- dated 11.7.1994 payable to Smt. Janu, D/o Kannan, Valiyaparambath, P.O. Adukkath to the correct payee violating the provisions of Rule 10 of the Rules for Branch Offices and thereby failed to maintain absolute integrity and devotion to duty required of him violating Rule 17 of the Extra Departmental Agents (Conduct and Service) Rules 1964.

6. According to the learned counsel for the applicant there was no evidence to substantiate the charges levelled against the applicant. He submitted that the first charge was vague and general and the respondents themselves were not sure of the amount of shortage at the time of chargesheet. Drawing attention to the Note under Rule 11 he submitted that the applicant having produced the amount and in the absence of any rule that the cash should be kept in the premises where the Branch Office was functioning the Inspecting Officer made out a case without appreciating the legal position correctly and hence the first charge itself was illegal. The conclusion reached by the enquiry officer was supported by no evidence on record and the findings were perverse.

7. The second ground advanced was that the enquiry was not fair and proper but was vitiated. The applicant was not given sufficient opportunity to prove his innocence. The request of the applicant to adjourn the examination of the expert witness was not granted. The applicant had filed a medical certificate before the enquiry officer seeking adjournment. He was also not given adequate opportunity to

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file written statement of defence with regard to the enquiry report and thus the principles of natural justice were violated.

8. Rule 11 of the Rules for Branch Offices is regarding custody of cash. We perused the Rule. The said Rule and the 'Note' thereunder reads as under:

"11. Custody of cash: (1) It may not be necessary to supply a safe to every extra departmental branch office, but one may at the discretion of the Head of the Circle be provided on the report of the inspector supported by the recommendation of the Superintendent.

(2) When a safe is supplied to a branch office, the cash, postage stamps, articles in deposit, stamps and seal, and in short, all articles of value including money order forms should be locked up in it, special care being taken to lock up insured articles in deposit and the branch postmaster should keep the key or keys on his person by day and night. The greater portion of the stock of postage stamps of the office should always, even during the day time, be kept inside the safe, and only the stamps required for a day's sales, or half a day's sales should be taken out at a time.

Note:- All extra departmental branch postmasters whether their offices are provided with iron safe or not should make their own arrangements for the safe custody of cash and valuables on their own responsibility. They are at liberty to keep the cash and valuables wherever they like provided that they are available when required and that, when called for, they can be produced for inspection within the time required forgoing to and coming back from the place where the cash is kept for safe custody.

9. We find that it is not provided in the above rule that the cash should be kept in the premises where the Branch Office is functioning. The only requirement is that the EDBPM should produce the cash when demanded by the higher officers for inspection within a reasonable time i.e. the time required for going to and coming back from the place where the cash is kept. We find that it is an admitted fact

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that the sister of the applicant brought the cash and handed over the same to the applicant and that the applicant credited the amount under 'unclassified payments.'

In the statement of imputation pertaining to Article-I the following is stated:

10. In the statement of imputation pertaining to Article-I the following is stated.

On receipt of error extracts from the SPM, Kuttiadi regarding irregular retention of money order with cash by the BPM Adukkath, the IPO (C&AG) Vadakara was directed to enquire. The IPO (C&PG) visited Adukkath BO on 27.4.94 at 1015 hours. Sri P. Krishnan the BPM was not present in the office. Sri N. Balan the EDDA told the IPO (C&PG) that Sri P. Krishnan the BPM left the office just before the arrival of the IPO (C&PG) without paying a word to him.

Sri P. Krishnan BPM turned up at 1045 hrs. He told the IPO (C&PG) that he had taken some office cash in the morning to renew a gold loan taken by him and he went to his house to bring the amount. He told that he had not told Sri Balan N. the EDDA where he was going. The cash and stamp balance of the office was verified by the IPO (C&PG) and found a shortage of Rs. 1874.60. The shortage was assessed as follows:

Opening Balance 1137.45	MO Payment	Rs. 100
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Remittance	1800.00
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received



..7..

MO Issue	998.00	Closing balance Rs.3935
	.. 100	
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Total	3935.45	Rs.3835

Cash and stamps actually found for verification.

Cash	1813.95
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Postage Stamps	.138.10
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Revenue Stamps	...8.80
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Total	1960.85 (Rupees One thousand nine hundred & sixty and paise eighty five only)
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Shortage	3835.45
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1960.85

1874.60

(Rupees one thousand eight hundred seventy four and
paid sixty only

The shortage was charged under 'unclassified
payments' in the accounts of the BO dated 27.4.94.
Sri P.Krishnan BPM was not able to make good the
shortage then.

In his statement dated 27.4.94 before the IPO
(C&AG) Vadakara he deposed that his sister would be
bringing the amount. He told that the amount taken
from the office cash was utilised by him to renew a
gold loan and the shortage of the cash existed in the
close of previous day was adjusted in the account by



raising the stamp balance. He also told that he had some debts which prompted him to take the office cash.

Smt. Paikattummal Paru aged 42 years who claimed to be the elder sister of Sri P. Krishnan BPM approached the IPO(C&PG) at 1200 hrs and stated that she had brought the cash borrowed by her from P. Krishnan her brother the BPM. She deposed in her statement dated 27.4.94 before the IPO(C&PG) Vadakara that she was paying Rs. 1874.60 to Sri P. Krishnan the BPM and her brother as was demanded by him Sri P. Krishnan the BPM credited the amount under Unclassified receipt in the accounts of the BO dtd. 27.4.94 towards the shortage found in the cash balance which was charged under UCP by the IPO(C&PG).

It is therefore alleged that Sri P. Krishnan while functioning as BPM Adukkath failed to produce the entire cash balance of the office for verification before the IPO(C&PG) Vadakara on 27.4.94 as provided in the note below Rule 11 of the Rules for Branch Offices" and thereby failed to maintain absolute integrity and devotion to duty required of him violating Rule 17 of the ED Agents (Conduct and Service)Rules, 1964.

11.. The above statement of imputations is in support of the first Article of charge framed against the accused employee. Therefore, it follows that in order to prove the charges, the statement of imputations have to be established. For establishing the statement of imputations, list of witnesses and list of documents are also enclosed to the

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chargesheet as Annexures III and IV. In the inquiry report this aspect has been dealt with by the enquiry officer in para 8 of the enquiry report wherein it is stated as follows:

The fact that the CGS was on duty as BPM, Adukkat on 27.4.94 is undisputed from the evidences tendered by PW-VI and PW-1 and also as per Ext. P-II. The CGS has not denied this even at the time of questioning by I.O. The point remaining to be examined is whether there was shortage of cash at the time of verification by PW-VI on that day. The depositions of PW-VI reveals that her was shortage of Rs. 1874.60 in the cash balance of the office when verified at about 1045 hrs after return of the CGS to office who deserted the office at 1015 hrs just before arrival of the witness and the amount was made good at 1200 hrs when Smt. Paikattummal Paru handed over money to the CGS. His versions are corroborated by PW-1 also who has deposed in clear terms about the shortage found in cash balance at the time of verification by PW-VI. Ext. P-I inventory, Ext. P-XVI(a), P-XVI(b) an P XVI(b) entries reveal that there was shortage of Rs. 1874.60 in the office when verified at 1045 hrs which was charged under UCP and subsequently credited under UCR by the CGS Ext. P-1 inventory has been authenticated by CGS himself besides PW-1. Ext. P-II is a genuine document and there is nothing to suspect that this was taken under duress. The CGS has admitted the shortage in this statement. Ext. P-IV statement also shows that there was shortage of cash with the CGS and he has made good the amount by taking money from Smt. Paikattummal Pasu at 1200 hrs. The veracity of these documentary evidences have not been challenged by the CGS. On the other hand he also admits that there was shortage of cash in office to the tune of Rs. 1974.60 at the time of verification by PW-VI on 27.4.94 as revealed from his answers during questioning by I.O. His version that the amount found short was left behind at his residence has not been substantiated by any oral or documentary evidence. The depositions of PW-VI evidences in Ext. P-II and Ext. P-IV clearly revealed that the cash was not available at his residence and the depositions of the CGS that the money was left behind at his residence is therefore rejected. The CGS has no defence to put forth against the oral and documentary evidences tendered from the disciplinary side in this case. The oral and documentary evidences put forth by the Disc. side in this case have therefore been accepted.

12. When the applicant has produced the cash within 75 minutes as revealed from the charge memorandum itself we fail to understand as to how the 'Note below' Rule 11 had been



violated. Thus we find considerable force in the learned counsel for the applicant's submissions that the violation of the note under Rule 11 alleged is without any basis.

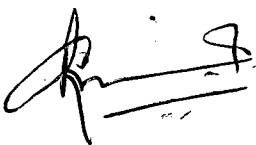
13. From Annexure-4 to the R-1 memorandum of charges issued to the applicant we find that Smt. Paikattummal Paru was listed as one of the witnesses from the Prosecution side by whom the articles of charges framed against the applicant was proposed to be sustained. We find from R2 inquiry report that on 19.6.96 Shri P. Krishnan, Asst. Superintendent of Post Offices (OS), Idukki Division was examined as PW-VI and Smt. Paikattummal Paru P.O. Adukath was dropped from the list of witnesses as per the request of the PO. It was also stated there that the request to include her name in the list of defence witnesses was not permitted and Ext. P-XVI was marked. We find from para 22 of the R-2 enquiry report that Ext. P-IV was one of the documents that was produced and marked from the prosecution side. Ext. P-IV was the statement given by Smt. Paikattummal Paru on 27.4.94. As already pointed out by us in para 8 of the enquiry report Ext. P-IV had been relied on by the enquiry officer and Ext. P-IV is the statement of Smt. Paikattummal Paru. She was listed as one of the prosecution witnesses. However, we find that she had been dropped from the prosecution side. In our view it is not enough to prove that there was a shortage of cash at the time of inspection. What is required to be proved is that the said cash was misappropriated by the applicant. As already shown by us it is not necessary for the EDBPM to keep the cash in the Branch office and he could keep it in his safe custody and that the amount was brought by his sister Smt. Paikattummal Paru. Without recording her statement in the presence of the applicant, the statement recorded during the preliminary enquiry had been relied on by

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the enquiry officer in para 8 of the enquiry report to come to the conclusion that he did not have the amount at his residence. There is no evidence to this effect recorded during the enquiry. Even when the applicant asked for calling Smt. Paikattummal Paru as defence witness the same had not been permitted. In this view of the matter we find substance in the grounds of no evidence, violation of the principles of natural justice and denial of adequate opportunity to the applicant.

14. The respondents have further admitted that the expert witnesses was examined in the absence of the applicant. They have also admitted that the applicant filed a medical certificate while seeking the adjournment. Whatever be the reasons if the delinquent employee was not given adequate opportunity to cross examine the vital witness the same would, in our view vitiate the enquiry proceedings.

15. Another ground advanced by the learned counsel for the applicant was that the applicant was not given adequate opportunity to file written brief nor the statement of defence with reference to the enquiry report. Here again we find from the reply statement that by R-3 letter the applicant sought 7 days period of extension to submit statement. It is admitted that the said letter was received on 25.2.97 by the disciplinary authority but the disciplinary authority did not grant this extension of time for the reason that the request for extension of time was received after the specific period mentioned in the respondents' letter dated 5.2.97 and he issued A-1 proceedings on 28.2.97. We do not find any good reason for this refusal to give the extension of time sought for. We are of the view that in this case

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again the principles of natural justice had been violated because the Disciplinary authority did not have before him the view point of the delinquent employee.

16. In the light of the foregoing we have no hesitation in holding that the applicant did not get a fair hearing. Hence A-1 order of the disciplinary authority is liable to be set aside and quashed. The appellate and revisionary authorities without noticing the above illegalities upheld the disciplinary authority's order, inspite of the latter authority finding thus in respect of the second article of charge.

"There is contradiction about the date of issue of the MO mentioned in Article-II of Annexure-I and II and the benefit of doubt goes in favour of the petitioner. However, I have no grounds to disbelieve the evidence produced in support of Article-I of the chargesheet.

Hence A-2 and A-3 orders are also liable to be interfered with and set aside and quashed.

17. We find A-4 is the order dated 20.10.99 passed by in the name of the President as a reviewing authority rejecting the review petition. It is stated therein that as no new material or evidence which could not be produced or not available at the time of passing the order under review and which had the effect of changing the nature of the case had been brought to notice in the review petition and hence the said review petition has been rejected. Since the order

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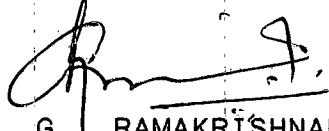
under review viz. A-3 has been set aside and quashed by us, A-4 is liable to be set aside and accordingly we set aside and quash A-4 order dated 20.10.99.

18. In the result, this Original Application succeeds and is liable to be allowed. Accordingly we set aside and quash A-1, A-2, A-3 and A-4 and direct the respondents to reinstate the applicant back into service with all consequential benefits.

19. The Original Application stands allowed as above with no order as to costs.

Dated the 14th March, 2002.


K. V. SACHIDANANDAN
JUDICIAL MEMBER


G. RAMAKRISHNAN,
ADMINISTRATIVE MEMBER

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A P P E N D I X

Applicant's Annexures:

1. A-1 : True copy of the memo No.F1/2/94-95 dtd.28.2.97 of the 1st respondent.
2. A-2 : True copy of the appellate order No.Staff/30-20/97 dated 30-7-97 issued by the 2nd respondent.
3. A-3 : True copy of the order No.Staff/38-3/5/98 dtd.22.4.98 issued by the 2nd respondent.
4. A-4 : True copy of the order No.21-15/99-ED&TRG dtd.20.10.99 issued by the 3rd respondent.
5. A-5 : True copy of the appeal filed by the applicant before the 2nd respondent dtd.21.4.97.
6. A-6 : True copy of the Opinion of the Deputy Government Examiner dtd.8.2.95.

Respondents' Annexures:

1. R-1 : True copy of the charge Memo No.F1/2/94-95 dated 30.3.1995 issued to the applicant.
2. R-2 : True copy of the Inquiry Report dated 24.1.97 with regard to the inquiry conducted against the applicant.
3. R-3 : True copy of the letter dated 22.2.97 sent by the applicant to the 1st respondent.

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15.3.02