

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

ORIGINAL APPLICATION No.4 OF 2007

Dated the.....20. th June, 2008

CORAM:

HON'BLE Dr.K.B.S. RAJAN, JUDICIAL MEMBER  
HON'BLE Dr. K.S.SUGATHAN, ADMINISTRATIVE MEMBER

P.V.Leelamony,  
W/o Raju VK,  
Ex Gramin Dak Sevak Mail Deliverer Edakadathy,  
Residing at Vadakkemannil House,  
Palampra PO, Koovappally-686 518.

.. Applicant

( By Advocate :Mr P.C. Sebastian )

-Versus-

1. The Asstt. Supdt of Post Offices,  
Changanassery Sub Division, Changanassery-686 101.
2. The Supdt. Of Post Offices,  
Changanassery Division, Changnassery-686 101.
3. MJ Hezekiel, Asstt. Supdt (OD),  
Idukki and Inquiring Authority,  
O/O the Supdt. of Pos. Idukki, Thodupuzha.
4. The Union of India,  
Represented by Secretary to Govt. of India,  
Ministry of Communications.  
Department of Posts, New Delhi.

Respondents

(By Advocate :Mr TPMI Khan, SCGSC and Ms Jisha)

The application having been heard on 4<sup>th</sup> April, 2008, the

Tribunal delivered the following on 20-06-08.



ORDER

(Hon'ble Dr.KBS Rajan, JM)

The applicant, earlier serving as G.D.S.M.D at Edakadathy had been put off duty on 19-05-2002 a contemplated proceedings against him, and later on 28-10-2002 he was served with a charge sheet containing the following two charges: -

Article of Charge-I

That the said Smt. PV Leelamony while working as GDS MD, Edakadathy during August 2001, showed Vadakkumpuram MO No. 250 dated 22.8.01 for Rs.1000/- payable to V.S.Raveendran, Vazhapallil House, Edakadathy as paid by her on 25.8.01 without actually paying the full amount to the payee and thereby failed to observe Rule 127 of Postal Manual Volume VI Part-III and thereby violated Rule 21 of the Department of Posts, Gramin Dak Sevaks (Conduct & Employment) Rules, 2001.

Article of Charge No.II

That the said Smt. PV Leelamony while working as GDS MD, Edakadathy during October 2001, showed Towang MO No.744 dated 3.10.01 for Rs.500/- payable to Smt. Santhamma Sukumaran, Parayadiyil House, Edakadathy as paid by her on 11.10.01 without actually paying to the correct payee and thereby failed to observe Rule 127 of Postal Manual Volume VI Part III and thereby violated Rule 21 of the Department of Posts, Gramin Dak Sevaks (Conduct & Employment) Rules, 2001.

2] The applicant having denied the charges, it was decided to hold the inquiry. In view of the fact that the appointing authority was a material witness, the Post Master General, Central Region, Kochi in pursuance of Rule 5 of the Department of Posts Gramin Dak Sevak (Conduct & Employment)

Rules, 2001 appointed an ad hoc disciplinary authority. In addition, another officer had been appointed as Inquiry Officer.

3] The Inquiry Officer had submitted his Annexure A-5 Inquiry report, rendering his finding that both the charges remain proved. The Disciplinary Authority by Annexure A-6 order dated 18-01-2005 agreeing with the findings of the Inquiry Officer, imposed the order of penalty of dismissal from service. The applicant filed an appeal belatedly vide Annexure A-7 dated 27-05-2005. The delay has been to the tune of about 2 months and 20 days. The appeal contained the reasons for the delay. However, the Appellate Authority had refused to condone the delay and rejected the appeal. The applicant has challenged the legal validity of Annexure A-5 Inquiry Report, Annexure A-6 order of the disciplinary authority and Annexure A-8 order of the appellate authority.

4] The following are the grounds of attack: -

The entire Disciplinary Proceedings are illegal, arbitrary and unjust.

The Inquiry Officer had illegally refused access to additional documents kept in the custody of the respondents, on flimsy grounds. The additional documents requisitioned were the paid vouchers of all Money Orders paid on 25-08-2001 when the M.O. involved in the charge sheet was paid.

Applicant was denied opportunity to cross-examine SW-6, the most important witness as far as the first article was concerned. Applicant was disabled to attend the said sitting in the absence of his AGS who was on medical leave and the fact



was intimated to the Inquiring authority in advance by Registered post by applicant's AGS. However, IA conducted the Inquiry *ex parte*.

Disciplinary Authority has without application of mind concurred in with the findings of the Inquiry Authority. He has not considered whether applicant was given a reasonable opportunity of being heard in respect of the charges.

Appellate Authority was highly misdirected in-law in rejecting applicant's appeal on the ground of delay.

5] Respondents have contested the O.A. As regards the allegation that the additional documents have not been made available, the reply given by the respondents is as under: -

"The Inquiring Authority allowed production of the first document. The Inquiring Authority has not allowed production of the paid vouchers of the money orders of dates 25.8.01 and 11.10.01 for the following reasons. The request for the document was based on the argument that there is a chance that the applicant might have obtained the signature of the payee on any other money order forms entrusted to her for effecting payments on 25.08.01 and 11.10.01. If the applicant has obtained the signature of the payee on any other money order, she could have easily traced out the mistake at a later stage on the same day while submitting the returns for the day. Moreover the Branch Postmaster would have pointed out the mistake while verifying the returns submitted by the applicant.

Nothing regarding such a mistake was described in the

statements of imputation and hence the inquiring Authority considered the documents requested as irrelevant. It is also submitted that though one additional document was produced, the applicant did not use it for examination.

As regards ex parte inquiry, the respondents have stated that "the applicant and the AGS were informed well in advance about the sitting to be held on 09.07.03. Registered /AD letters were issued to the applicant and the AGS to inform them about the sitting. But they did not attend the sitting in order to escape from the examination of the prime witness. The witness was a bedridden person and it was inevitable to conduct the examination on the day though the applicant and AGS were absent. The applicant or AGS did not make any attempt to inform Inquiring Authority regarding their inability to attend the Inquiry. Inquiring Authority was not informed that the AGS was on leave. It is clear that the defence side was not serious enough in cross examining the above witness as it did not make any subsequent request to that effect after his examination"

The fact of handwriting expert's opinion, delayed handing over the money order amount etc. have also been brought in the counter.

6] Counsel for the applicant submitted that the spirit of Rule 14 of the CCS CCA Rules supposed to have been followed has not been followed. He has further submitted that the appellate authority is totally unreasonable in not condoning the marginal delay in filing the appeal. Other alleged legal infirmities

in respect of enquiry report and disciplinary authorities order have also been reiterated.

7] Counsel for the respondent submitted that the original records of the proceedings when perused would reflect that full opportunity has been offered to the applicant but it was she who did not avail of the opportunity. He has also submitted on the basis of the proved charges the disciplinary authority passed the order of dismissal. The appellate authority cannot be said to be unreasonable when he has given the reason for his not condoning the delay in filing the appeal.

8] Arguments have been heard and documents perused. The original documents made available for perusal have also been perused. Keeping in view the rule that the spirit of the provisions of Rule 14 of the CCS(CC&A) Rules, 1965, perusal of the records show certain glaring omissions in conducting the inquiry. For example, the enquiry report does not seem to have been made available to the applicant before the passing of dismissal order. In the case of *Union of India vs Mohd Ramzan Khan (1991) 1 SCC 588*, the Apex Court has held that making available to the delinquent a copy of the inquiry report is a pre-request before the Disciplinary authority arrives at a conclusion about the inquiry report. Of course, this has not been stated by the applicant in his O.A.

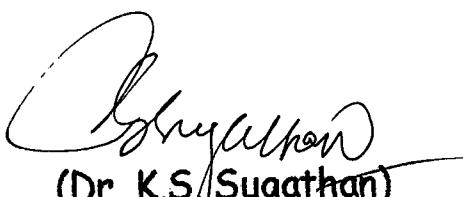
9] Be that as it may. The appellate authority has refused to condone the delay. The delay is marginal only. The appellate authority has powers to re-appreciate the evidence as held in the case of *Narinder Mohan Arya vs United India*

Insurance Co., (2006) 4 SCC 713 "In the context of the Rules, the Appellate Authority was required to see as to whether (i) the procedure laid down in the Rules was complied with; (ii) the enquiry officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive."

10] In the instant case, the appellate authority ought to have allowed the application for condonation of delay and dealt with the case on the above lines. Justice would be rendered to the applicant if the appeal had been disposed of on the basis of merit, instead of dismissing it on technical grounds.

11] In view of the above, the Tribunal is of the considered opinion that the case is remanded to the Appellate authority with the direction that the appeal be considered on merit and decision communicated to the applicant. This may be done within a period of two months from the date of communication of this order. No cost.

Dated the 20th June, 2008



(Dr. K.S. Sugathan)  
Administrative Member



(Dr. K.B.S. Rajan)  
Judicial Member