

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 399 of 2005

Friday, this the 9th day of February, 2007

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

P. Venugopalan,
S/o. Krishnakurup,
Ex-Extra Departmental Sub Postmaster,
Mokeri P.O., Residing at
Valiyaputhanpurayil House,
Karandode P.O., Kuttiady - 673 508 .. Applicant.

(By Advocate Mr. P.C. Sebastian)

v e r s u s

1. The Union of India represented by
Secretary to Government of India,
Ministry of Communications,
Department of Posts, New Delhi.
2. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
3. The Director of Postal Services,
Northern Region, Kozhikode.
4. The Senior Superintendent of Post Offices,
Ernakulam Division, Kochi - 682 011. .. Respondents.

(By Advocate Mrs. Mariam Mathai, ACGSC)

The Original Application having been heard on 9.2.07, this Tribunal
on the same day delivered the following :



O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant who was functioning as GDS BPM, Mokeri, was proceeded against for certain alleged misconduct vide Memorandum dated 10-06-199, and the charge was as under:-

"That the said Sri P. Venugopalan, EDSPM Mokeri failed to pay the closed amount of RD A/c No. 360165 of Mokeri ED 50 to Smt. V. Swarnalatha, Ayilet House P.O. Mokeri, the depositor, but unauthorisedly taken payment of the amount himself signing as the depositor on the receipt side of the withdrawal form on 22-12-92 and thus failed to maintain absolute integrity and devotion to duty violating the provisions of Rule 17 of the P & T ED Agents (Conduct and Services) Rules, 1964."

2. The second respondent appointed the 4th respondent, i.e. the Senior Superintendent of Post Offices, Ernakulam to function as the appointing authority of the applicant. The Superintendent of Post Offices Vadakara Issued orders appointing Inquiry authority and Presenting Officer to hold the inquiry. Inquiry was conducted and the applicant participated the same. The 4th respondent imposed upon the applicant punishment of removal from service, vide order dated 27-04-1994. Appeal dated 05-08-94 and revision dated 20-12-96 attempted by the applicant were rejected vide order dated 10-11-94 and 29-04-1999 respectively. It was by then that in respect of two criminal matters, relating to certain misappropriation, but independent of the alleged misconduct in the present case, the criminal court had acquitted the applicant. Utilizing this relief, the applicant filed a Review Application to



the Ministry of Communication but the same too was rejected vide order dated 21st May, 2004. The applicant has assailed the said Review order dated 21 May, 2004 and Revision Order dated 29-04-99.

3. Respondents have contested the OA, stating that there is no legal lacuna in the decision making process.

4. Counsel for the applicant contended that unlike the case of other Government servants to whom the CCS (CC&A) Rules apply, the case of GDS stands in a different footing and strict compliance of the rules and regulations under the provisions of GDS Rules are to be followed. Under the Rules, once, invoking the provisions of Rule 3A of the GDS Rules, when the competent authority had nominated a particular authority as appointing authority for dealing with the disciplinary matter, all the actions relating to the proceedings should be conducted by such authority only. In the instant case, while Respondent No. 4 was duly appointed under Rule 3A of the Rules, issue of orders appointing Inquiry Officer and Presenting Officer by Superintendent - an authority subordinate to the Respondent No. 4 has vitiated the entire proceedings.

5. Per contra, the counsel for the respondents has invited the attention of the Tribunal to order dated 16th December, 1981, wherein it has been provided that there will be no violation of Article 311 of the Constitution if




the prescribed appointing authority issues the charge sheet and ultimately the penalty awarded by the ad hoc disciplinary authority. It may, however, be desirable to appoint an ad hoc disciplinary authority even before the issue of charge sheet.

6. Arguments were heard and documents perused. The above orders would suffice to hold that there is no legal infirmity in the conduct of the proceedings by the respondents. The law is settled on this score. In **Registrar of Coop. Societies v. F.X. Fernando, (1994) 2 SCC 746** the Apex Court has held as under:-

"... it is worthwhile to refer to a recent decision of this Court reported in P.V. Srinivasa Sastry v. Comptroller and Auditor General. The relevant observations at pages 1323-24 are as under: (SCC pp. 422-23, paras 4, 5 and 6) -

"But Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, it is open to Union of India or a State Government to make any rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority. Any such rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holder of a civil post. But in absence of any such rule, this right or guarantee does not flow from Article 311 of the Constitution. It need not be pointed out that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences, and the framers of the Constitution did not consider it necessary to guarantee even that to holders of civil posts under the Union of India or under the State Government. At the same time this will not give right to authorities having the same rank as that of the officer against whom proceeding is to be initiated to take a decision whether any such proceeding should be initiated. In absence of a rule, any superior authority



who can be held to be the controlling authority, can initiate such proceeding.

In the case of State of M.P. v. Shardul Singh the departmental enquiry had been initiated against the Sub-Inspector of Police by the Superintendent of Police, who sent his inquiry report to the Inspector-General, who was the appointing authority. The Inspector-General of Police dismissed the officer concerned from the service of the State Government. That order was challenged on the ground that the initiation of the departmental enquiry by the Superintendent of Police was against the mandate of Article 311(1) of the Constitution. This contention was accepted by the High Court. But this Court said: (SCC p. 112, para 10)

'[W]e are unable to agree with the High Court that the guarantee given under Article 311(1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that Article.'

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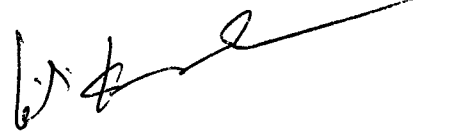
Although Article 311 of the Constitution does not speak as to who shall initiate the disciplinary proceedings but, as already stated above, that can be provided and prescribed by the rules. But if no rules have been framed, saying as to who shall initiate the departmental proceedings, then on the basis of Article 311 of the Constitution it cannot be urged that it is only the appointing authority and no officer subordinate to such authority can initiate the departmental proceeding. In the present case, it was not brought to our notice that any rule prescribes that the Accountant General, who is the appointing authority, alone could have initiated a departmental proceeding."

7. In view of the above, the OA is dismissed. No costs.

(Dated, the 9th February, 2007)



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



Dr. K B S RAJAN
JUDICIAL MEMBER

Cvr.