

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 402/2000

THURSDAY, THIS THE 13th DAY OF JUNE, 2002.

C O R A M

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

M. Moosa
Meluveetttil House
P.O. Pazhur Via Mavoor
Kozhikode District.

Applicant

By Advocate Mr. R. K. Venu Nair

Vs.

1. The Sub Divisional Inspector of Post Offices
Calicut North Sub Division
Calicut-5

2. The Senior Superintendent of Post Offices
Calicut Division
Calicut-2

3. Union of India represented by Secretary
Department of Post
Ministry of Communications
New Delhi.

Respondents

By Advocate Mr. K. Sri Hari Rao, ACGSC

The Application having been heard on 4.6.2002 the Tribunal delivered the following on 13.6.2002.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant aggrieved by A1 order dated 30.9.99 by which the appeal submitted by him against the penalty of removal imposed on him was rejected by the second respondent filed this Original Application seeking the following reliefs:

(i) to quash orders Annexure A1 passed against the applicant holding that he is guilty of charges levelled against him and also to hold that the appellate order is also invalid and hold that the applicant is not guilty of charges levelled against him.

(ii) to direct respondent NO. 3 to direct appropriate authority under him to reinstate the applicant with retrospective effect from the date on which he was kept off duty with back wages and other service benefits.



(iii) to grant such other orders and reliefs as this Hon'ble Tribunal deem fit and proper to grant

and

(iv) to grant costs of this proceedings

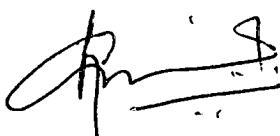
2. According to the averments of the applicant in the O.A. he joined Postal Department as Extra Departmental Delivery Agent (EDDA in short) in the year 1960 and by 1999 he completed 37 years service with an unblemished record. He was 61 years of age when he was chargesheeted. After issuance of notice, enquiry was conducted and based on the enquiry, the first respondent held the applicant guilty of the charges levelled against him and passed A-2 order dated 19.2.99 to remove the applicant from service with immediate effect. Aggrieved by the said order the applicant filed appeal before the second respondent. The second respondent passed A1 order dated 30.9.99 and rejected the appeal. According to the applicant a reading of the charges levelled against him would suggest that he on his own accord had delivered the registered letters to the school authorities though fictitious but A-3 and A-4 would indicate the said registered letters were delivered to persons duly authorised by the Postmaster - Ashokan. It was the Post Master's duty to find out whether the authorisation was duly given by the addressees. When the Post Master directed the EDDA to deliver as per authorisation, he had to act accordingly. This fact had been ignored by the enquiry officer and the appellate authority. This error had vitiated the enquiry. The evidence of defence witness Sri Ahmed Kutty had been discarded without valid legal reasons. A lot information not elicited in the enquiry was imported in the proceedings. Hence this OA seeking the above reliefs.

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3. Respondents filed reply statement resisting the claim of the applicant. According to them the applicant had worked as EDDA at Nayarkuzhi Post Office during the period from 20.10.60 to 5.2.97. When a new Post Office was opened at Pazhoor he was posted as EDDA there w.e.f. 6.2.97. He was kept under "put off duty" with effect from 22.3.97 pending enquiries, in the wake of allegations of wrong delivery of registered articles made by him at Nayarkuzhi P.O. R-1(a) letter of complaint dated 8.11.96 addressed to the Post Master General, Calicut was received from the Passport Officer, Kozhikode alleging wrong delivery of certain registered letters at Nayarkuzhi Post Office. An enquiry was conducted through the Inspector of Post Offices (Public Grievances) Calicut which revealed that four registered letters which were sent by the Passport Officer, Calicut and addressed to the Head Master, KMUP School, Koolimadu Nayarkuzhi were delivered to some fictitious addressees. There was no school at Nayarkuzhi by name KMUP School, Koolimadu. In another case another letter, also sent by the Passport Officer, Calicut and addressed to the Headmaster MMUP School, Poolakode Nayarkuzhi, which was deliverable by the EDDA -II of Nayarkuzhi Post Office, as Poolakode locality fell within his beat, was unauthorisedly taken out by the applicant and delivered to some fictitious addressee. The applicant could not identify the persons to whom the said 5 registered letters were delivered by him. The applicant was therefore chargesheeted under Rule 8 of P&T ED Agents (Conduct & Service) Rules 1964 by the first respondent - his Disciplinary Authority - on 3.6.97. The applicant denied the charges and a formal inquiry as per Rule 8 of P&T ED Agents (Conduct & Service) rules 1964 was held by the Asst. Superintendent Railway Mail Service, Calicut as the inquiring authority. The inquiring authority submitted his report on

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16.9.98 holding the charges framed against the applicant as proved. A copy of the Inquiry Report was forwarded to the applicant on 2.10.98. He submitted his representation on the Inquiry Report, on 27.10.98. After considering the Inquiry Report the representation of the applicant and other connected records the Disciplinary Authority made A2 order imposing on the applicant the penalty of removal from service. The applicant submitted appeal dated 16.3.99 to the 2nd respondent. The said appeal was rejected upholding the penalty imposed by the 1st respondent by A1 order. The OA was filed against the appellate order. The applicant had not filed any revision petition against the appellate order and had approached this Tribunal without exhausting the Departmental remedy. According to them the applicant was given all reasonable opportunity to defend the case. All the prescribed formalities were complied with by the 1st respondent and the inquiring authority. There was neither violation of any provisions of the rules nor denial of natural justice. The Inquiring Authority had properly analyzed the evidence and held that the charges were proved. The 1st respondent had issued a self contained speaking and reasoned order imposing the penalty after proper application of mind. The 2nd respondent had also issued A1 order after going through the connected records analysing the points raised by the applicant in his appeal dated 16.3.99 after proper application of his mind. A3 and A4 were statements recorded on 8.3.97 during the course of the fact finding enquiry made into the complaint. The applicant who claimed to have 37 years of long service as EDDA at Nayarkuzhi, should have delivered the postal articles especially the registered ones to the correct addressees only. The applicant was born and brought up at Koolimadu and was living in the same place and doing duty at the same place. He

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should have very well known that there was no institution by name KMUP School, Koolimadu. The defence witness produced by the applicant was an imposter. During the course of cross examination by the presenting officer he ran away from the enquiry and therefore his deposition was incomplete. The act of running away suggested that the person was not Sri K.P. Ahamed Kutty, but someone else. The registered letters addressed in the name of a non-existing school, were delivered by the applicant and he was not in a position to identify the school to which he had delivered the articles. Blaming the Branch Post Master for the lapses on the part of the applicant was quite against the law and not on the basis of the evidence. The OA was liable to be dismissed.

4. Heard learned counsel for the parties. Learned counsel for the applicant submitted that the two articles of charges against the applicant were that he effected four registered letters to fictitious addressees and that he unauthorisedly took possession of a registered letter which was to be delivered by EDDA NO. 2 and he delivered it to a fictitious addressee. He submitted that the applicant had delivered the articles under the first article of charge as per the instructions of the Post Master. The Post Master, on the basis of the authorisation letter, had instructed the applicant to deliver the letters and the applicant had done so. Further even if the applicant had done the alleged offence, the appellate authority should have taken into consideration the long service of the employee and also the fact that the applicant was acting on the directions of the Branch Post Master and should not have confirmed the extreme penalty of removal from service. The evidence on the basis of which the applicant was found guilty were the statements recorded even before the issue of charge sheet. The said

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procedure was unjust and violative of principles of natural justice. He submitted that the reliefs sought for by the applicant are liable to be allowed.

5. Learned counsel for the respondents took is through the reply statement and reiterated the pleas of the respondents. He submitted that even if the knowledge of the Branch Post Master in the wrong delivery of the registered letter was there, the applicant was duty bound to ensure their correct delivery. It had also come out in the evidence that the applicant had presented the instruction to the Branch Post Master. In any case the Branch Post Master had been removed from service for committing Savings Bank fraud. The evidence on record showed the applicant's guilt as per the charges and there was no violation of any rules or procedure or the principles of natural justice. The proved charges being serious in nature, the penalty imposed could not be treated as disproportionate. There was no case for interference by the Tribunal and the OA was liable to be dismissed.

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

7. We find from A2 that the articles of charges against the applicant are as follows:

Article -I

That Shri M. Moosa EDDA NO.1, Nayarkuzhi during the period from 1.6.97 to 5.2.97 delivered Calicut HO RL Nos 4954 dated 19.6.96, 5293 dated 26.6.96, 5377 dated 27.6.96 and 5418 dated 1.7.96 sent by Passport Officer, Calicut and addressed to the Headmaster, KMUP School, Koolimad on 25.6.96, 1.7.96, 2.7.96 and 8.7.96 respectively without making



proper inquiries to identify the addressee and caused delivery to fictitious addressee violating Rule 127(1) and (2) of Postal Manual Vol. VI, Part III and thereby failed to maintain absolute integrity and devotion to duty as required of him vide Rule 17 of P&T ED Agents (Conduct and Service) Rules, 1964.

Article-II

That during the aforesaid period and while functioning in the aforesaid post, Shri M. Mossa unauthorisedly took possession of Calicut HO LR NOs 5353 dated 27.6.96 sent by Passport Officer, Calicut and addressed to the Headmaster, MMUP School, Poolakode, Nayarkuzhi which is to be delivered by EDDA No.2 violating Rule 115(1) of Vol.VI Part-III and delivered to a fictitious address without making proper enquiries to identify the addressee violating Rule 127(1) and (2) bid and thereby failed to maintain absolute integrity and devotion to duty as required of him vide Rule 17 of P&T ED Agents (Conduct and Service) Rules, 1964.

8. We also find that by A2 memo dated 19.2.99, the first respondent removed the applicant from service. This A2 memo is not challenged in this OA and no relief is sought for against A2. A1 is the appellate order of the second respondent rejecting the appeal submitted by the applicant. A1 is impugned in this OA and the first relief sought is for quashing A1 and for holding that the applicant was not guilty of the charges levelled against him. Even though the appellate order A1 rejecting the appeal is under challenge, we find that the applicant had not enclosed the appeal preferred by him along with the OA. Due to this fact, this Tribunal can only consider A1 order in the context of the grounds raised by him in the OA and the pleadings in the reply statement and the points raised by him in the appeal and their consideration as reflected in A1.

9. One of the grounds raised by the applicant was that he had acted as per the instructions of the Branch Post Master. According to him he delivered the registered letters to the authorised person, duly authorised by the Post Master. Respondents' plea is that the authorisation itself was



presented by the applicant to the Branch Post Master and the applicant being a person of the area. On a careful consideration of the rival contentions we find substance in the respondent' plea that the applicant having been born and brought up in Koolimadu, living in the same place and doing duty in the same place should know that there was no institution by name "KMUP School, Koolimadu." The applicant had not denied these averments made in the reply statement. Moreover, we find that applicant in para 4(3) submits that the "authorisation was to deliver the registered letter coming in the address of KMUP School, Koolimadu to one Abdullakutty, the duty of the EDDA is only to deliver it to a person as per instruction." However in para 5(A) of the O.A. applicant submits "all the postal articles addressed to KMUP School, Koolimadu was to be handed over to the said one K.P. Ahammedkutty". The said K.P. Ahammedkutty was also a Defence Witness. It is not clarified as to who exactly was the person who was authorised to receive the letter addressed to KMUP School, Koolimadu. Abdullakutty or Ahmedkutty. In any case if the applicant could produce Ahmedkutty as a Defence Witness stating that he was the person authorised to receive the letters which were addressed to the School, the same would indicate, in our view, that the applicant was privy to all the details and the respondents could not be faulted for the conclusions arrived at. In view of the above, we are unable to accept the ground advanced by the applicant that he had only acted as per the direction of the Post Master. May be the Post Master had complicity in the whole affair but that by itself will not exonerate the applicant from the charges framed against him.

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10. Another ground raised by the applicant was that the evidence of the Defence witness K.P. Ahammedkutty was discarded without valid reasons for the same. The applicant had not produced or averred as to what were the reasons stated in the enquiry report for discarding the evidence rendered by the said Defence Witness. He had not also annexed a copy of the enquiry report. In the reply statement the respondents had averred that the said Ahmmedkutty was apparently an "impostor." It had also been averred in the reply statement that the said witness during the cross examination by the Presenting Officer had run away from the enquiry and hence his deposition was incomplete. They also submitted that " This act of physically running away from the inquiry itself suggests that the person produced as defence witness was not Shri K.P. Ahammedkutty but someone else." These had not been denied by the applicant either by filing any rejoinder or during the course of hearing. Under these circumstances, in the light of the averments in the reply statement we cannot fault the respondents' action in discarding the said Ahmmedkutty's evidence.

11. The applicant had also submitted that a lot of information not elicited in the enquiry was imported in the proceedings. The enquiry by the police about a travel agent was not germane to the enquiry but that was imported to prejudice the authorities against the applicant and that this was a clever move to save the Post Master and to hide the most important fact that there were latches on his part in not exercising due care in directing the applicant in accordance with authorisation. We find that in A-4, which was a statement submitted by the Branch Post Master, Nayarkuzhi Sri Asokan before the IPO, Calicut on 8.3.97 a reference to the Travel Agency at Mavoor named Saffar and the

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agreement the applicant had made with the said Travel Agency, etc. are referred to there and the said Asokan was amongst the Prosecution Witnesses listed in Annexure-4 to the charged memorandum. Naturally the applicant could have cross examined the said Asokan on his statement to disprove the evidence. There is no indication ~~xxxxxx~~ as to whether the applicant had done this or not. In this view of the matter, we cannot hold that the respondents had brought into the report anything which had not been brought to the notice of the applicant.

12. Another ground raised by the applicant was that the respondents had relied on the statements rendered even before the issuance of chargesheet viz. A-3 and A-4 recorded on 8.3.97 as against the date of issue of charge sheet on 3.6.97. We find that the submission made by the Branch Postmaster Sri Asokan and by the applicant were listed in Annexure-III List of documents by which the Articles of Charges were framed against the applicant were proposed to be sustained. This would indicate that the applicant was put on notice that these documents would be made use of to sustain the charges made against the applicant. Under such circumstances, we cannot fault the enquiry proceedings if the enquiry officer had relied on these documents to hold that the charges are proved. The applicant did not have a case that during the course of the cross examination the Branch Post Master had gone back on the statements made by him on 8.3.97 nor did he have a case that the statement made by him on 8.3.97 were extracted from him under coercion.

13. The last ground advanced by the learned counsel for the applicant was that the penalty imposed on the applicant was disproportionate to the charges proved against the

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applicant. The learned counsel for the applicant submitted that the applicant had an unblemished record of service of 37 years and for delivery of 5 Registered Letters wrongly the applicant had been removed from service. It is now well settled law that it is for the concerned authorities to decide the quantum of punishment and generally Courts/Tribunals exercising power of judicial review would not interfere in the quantum of punishment unless the punishment is such that it pricks the judicial conscience-the penalty being totally disproportionate to the offence committed. In this particular case on a careful consideration of the facts and materials placed before us we do not find any reason to interfere with the punishment imposed on the applicant considering the gravity of the proved charges levelled against the applicant.

14. In the light of the detailed analysis given above, we are of the considered opinion that the applicant in this O.A. is not entitled for any of the reliefs sought for. Accordingly, we dismiss this Original Application with no order as to costs.

Dated the 13th June, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

kmn



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

APPENDIX

Applicant's Annexure

- A1 True copy of the Order NO. B.79/2/97 dated 30.9.99 passed by the second respondent.
- A2 True copy of the Memo No. SDI/INQ/1/97 dated 19.2.99 of the 1st respondent
- A3 True copy of the statement dated 8.3.97 by the applicant before the IPO(PG).
- A3(a) True copy of Translation in English of A3.
- A4 True copy of the statement dated 8.3.97 by Sri Ashokan, BPM, Nayarkuzhi before the IPO (PG)
- A4(a) Translation of A4 in English

Respondents' Annexure

- R1(a) True copy of the letter No. KOZ/557/65/96 dated 8.11.96 of the Passport Officer, Kozhikode sent to the Post Master General, Calicut.