

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 414 of 2002

Monday, this the 20th day of September, 2004

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

1. S. Bhuvanendra Kurup,
Group D,
Kadakkavur Post Office,
Trivandrum North Division,
Kadakkavur PO.Applicant

[By Advocate Shri M.V. Somarajan]

Versus

1. The Senior Superintendent of Post Offices,
Trivandrum North Division,
Trivandrum - 695 001

2. The Director of Postal Services,
Southern Region,
Trivandrum - 695 033

3. The Member (Personnel),
Postal Services Board,
Department of Posts, New Delhi.

4. Union of India, represented by its
Secretary, Department of Posts,
New Delhi.Respondents

[By Advocate Shri K. Kesavankutty, ACGSC]

The application having been heard on 20-9-2004, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The challenge in this application is against the
memorandum of charges dated 31-10-1991 (Annexure A2), the
addenda to it dated 24-12-1991 (Annexure A2[a]), the order dated
6-5-1998 (Annexure A4) of the 1st respondent imposing on the
applicant a penalty of removal from service, the order dated
10-2-1999 (Annexure A6) of the 2nd respondent in appeal
modifying the penalty to one of reduction to the lower grade of

Group D with fixation of pay at the minimum of the pay scale while concurring with the finding of guilt and Annexure A8 order of the 3rd respondent refusing to interfere in revision. The short resume of the facts of the case is as under:

2. The applicant while working as Postal Assistant in Attingal HPO was placed under suspension on 1-2-1991. A memorandum of charges (Annexure A2) with two articles of charges was served on the applicant, which reads as follows:-

"Article I

That Sri.S.Bhuvanendra Kurup while functioning as PA, Attingal HO during 6-11-1987 to 13-9-1990 failed to account for Rs.2408/- (Rupees Two thousand four hundred and eight only) accepted by him as monthly deposits and default interest on different dates from 28-4-1989 to 30-8-1990 in Attingal H.O. R.D. Account No.40977 of Smt.M.Rajalekshmy and failed to maintain absolute integrity in violation of Rule 106 read with 3.1 (2)(b) of Post Office SB Manual Volume I and Rule 4 of FHB Vol.I and Rule 3(1) (i) and (ii) of CCS (Conduct) Rules, 1964.

Article II

That the said Sri.S.Bhuvanendra Kurup while functioning as PA Attingal HO during the aforesaid period failed to account for Rs.200/- (Rupees Two hundred only) accepted by him as monthly deposit on 28.4.1989 in Attingal HO RD Account No.40957 of Sri.R.Lekshmanakumar and failed to maintain absolute integrity in violation of Rule 106 read with 3.1 (2)(b) of Post Office SB Manual Volume.I. Rule 4 of FHB Volume I and Rule 3(1)(i) and (ii) of CCS (Conduct) Rules, 1964."

3. By Annexure A2[a], an additional document was listed. Since the applicant denied the guilt, an enquiry was held. The Enquiry Officer, after considering the entire evidences recorded at the enquiry, the brief submitted by the applicant and the presenting officer, held both the articles of charges established. This report of the Enquiry Officer was accepted by the Disciplinary Authority who, after considering the representation of the applicant, agreeing with the finding of guilt imposed on the applicant by Annexure A4 order a penalty of

removal from service. Aggrieved by that the applicant submitted an appeal. The 2nd respondent, the Appellate Authority, after a scrutiny of the appeal and the connected materials, found no reason to interfere with the finding of guilt or even with the penalty imposed, but took a lenient view and modified the penalty to one of reduction to a lower grade of Group D with fixation of pay at the minimum of the pay scale. Aggrieved by the penalty imposed, the applicant submitted a revision, which was rejected by the impugned order Annexure A8. Alleging that the orders of the disciplinary, appellate and revisional authorities suffer from lack of application of mind, that the finding of guilt was not supported by evidence and that the authorities have gone wrong in accepting the statement of the applicant recorded under duress and have acted upon the preliminary enquiry report, the applicant has filed this application seeking to have the impugned orders set aside with consequential benefits to him.

4. Respondents have filed the reply statement.

5. We have carefully gone through the entire pleadings and all the materials placed on record and have heard Shri M.V. Somarajan, learned counsel of the applicant and Shri K. Kesavankutty, ACGSC, who appeared for the respondents.

6. Shri Somarajan, learned counsel of the applicant, mainly pressed two points: (i) the finding that the applicant is guilty is not based on any evidence and therefore the same is perverse; and (ii) the ultimate penalty imposed, being reduction to a lower grade of Group D that too with fixation of pay at the minimum of the pay scale, in the case of an employee who had rendered 22 years of service is unduly harsh requiring interference by the Tribunal.

7. Shri Kesavankutty, learned ACGSC, on the other hand, argued that a mere reading of the enquiry report and orders of the competent authorities would reveal that the finding that the applicant was guilty has been recorded on the basis of cogent and convincing evidence and that no interference is called for.

8. A careful scrutiny by us of the enquiry report, orders of the disciplinary authority as also the appellate authority convinced us that the finding that the applicant was guilty is the only reasonable finding that could be arrived at on the basis of the materials available on record. Apart from the statement of the applicant admitting the receipt of the various deposits and the late bringing them into account, there is evidence of witnesses whose veracity has not been challenged by the applicant in cross-examination. We find that the witnesses examined in support of the charges were independent witnesses who had no axe to grind against the applicant. The applicant in his statement, which has been relied on by the inquiring authority as also the appellate authority, in unambiguous terms admitted to have received the deposits and that he did not bring them into the account. Although it has been urged on behalf of the applicant that this statement was not voluntary but extracted under duress and coercion, it is interesting to note that the applicant did not make any complaint to higher authorities that he was compelled by coercion to give statement which is not true. The argument of the learned counsel of the applicant that the statement was not given by the applicant voluntarily can only be taken as an after thought which deserves only to be rejected. In the light of what is stated above, we do not find that there is anything wrong in the finding that the applicant is guilty.

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9. Learned counsel of the applicant argued that even if the lapse is assumed to have been established, since the applicant had rendered 22 years of service the penalty of reduction to the lower grade as Group D with pay at the minimum in the scale was unduly harsh. He also submitted that before deciding to award such a harsh penalty the appellate authority should have given the applicant an opportunity of personal hearing. The counsel pleaded that the Tribunal may interfere with the panalty which is unduly harsh and unjustified. We are not at all impressed with this argument. The applicant has not requested the appellate authority for a personal hearing. Further, there is no obligation on the part of the appellate authority to give a personal hearing in all cases. The misconduct proved against the applicant is a very grave one which ~~admittedly~~ ^{undoubtedly} deserves deterrent penalty. In fact, the appellate authority has been very generous in reducing the penalty of removal from service. The revisional authority's decision not to interfere is perfectly justified.

10. In the result, finding no merit, the Original Application is dismissed leaving the parties to bear their costs.

Monday, this the 20th day of September, 2004

H.P. DAS
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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