

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE THIRTY FIRST DAY OF MARCH, 1987

Present : Hon'ble Shri Ch.Ramakrishna Rao

Member(J)

Hon'ble Shri L.H.A.Rego

Member(A)

APPLICATION No.1715/86(F)

Abdul Gafoor,
Sorting Assistant
Bangalore City RMS,
Bangalore - 560 023.

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APPLICANT

(Shri M.R.Achar

... Advocate)

v.

Birdatt,
Senior Supdt.RMS,
Bangalore City Division,
Bangalore Sorting Division,
Bangalore - 26.

M.P.Rajan,
Director of Postal Service,(H.B),
Office of P.M.G.,
Karnataka Circle,
Bangalore - 1.

R.Kishore,
Member(P),
Postal Service Board,
New Delhi - 1.

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RESPONDENTS

(Shri M.V.Rao

... Advocate)

This application has come up before the Court today.

Hon'ble Shri L.H.A.Rego, Member(AM) made the following :

O R D E R

This application has been filed under Sec.19 of the Admini -
strative Tribunals Act, 1985, wherein, the applicant prays that the
orders dated 5.6.1985(Annexure-A), 14.8.1985(Annexure-B) and 20.1.1986
(Annexure-C) passed by respondents(R 1, 2 and 3 respectively, with
mala fide intention, be quashed.

2. The salient facts giving rise to this application are as follows: The applicant, at the relevant period, was serving as Assistant Mail Agent, in Bangalore City, RMS, TMO 3. Departmental proceed-
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ings were initiated against him by R1, under his memo dated 20.11.1984 under Rule 16 of the CCS(CCA) Rules, 1965, on the charge, that while working in the above capacity, he had on 8/9.8.1981, failed to despatch a Parcel Bag bearing No.1/2, from K.G.Road in Bangalore City, to Soalkuchi in M-33-M Section in Tamil Nadu; that he failed to check the postal bags physically, before delivering them to the Mail Guard of M-33-IN Section; that the said bag, contained Parcel No.990 of K.G.Road, Bangalore P.O dated 8.8.1981, insured for an amount of Rs.4100/- and that a sum of Rs.4000/- was paid as compensation, to the sender of the above insured parcel, for which the applicant was responsible. The applicant was charged for contravention of Rule 3(1) (ii) of CCS(Conduct) Rules, 1964. Taking into account his defence, R1 imposed on the applicant, the punishment of recovery of a sum of Rs.500/- from him, in 20 instalments of Rs.25/- each, towards part recoupment of the loss sustained by the Department - vide his order dated 5.6.1985(Annexure-A). The applicant preferred an appeal thereon, on 1.7.1985 to R2, who by his order dated 14.8.1985(Annexure-B), confirmed the punishment imposed by R-1. Thereon, the applicant filed a review petition on 23.9.1985, before R3, who by his order dated 20.1.1986(Annexure-C), rejected the same. Aggrieved, the applicant has now come before this Tribunal, for justice.

3. Substantiating the defence of the applicant, his learned Counsel contended, that the past service record of the applicant was without blemish; that there was no well-defined and specific procedure, in regard to allotment or distribution of work in the Railway Mail Service(RMS) Office in question, in Bangalore City; that essential pre-requisites such as : (a) provision of the latest Due Mail and Sorting Lists and the Error Book and (b) lock and key arrangement for safety of the insured articles were not fulfilled; that the career of the applicant, as well as of the other employees of the RMS Wing,

was in jeopardy, on account of non-compliance by the concerned authorities, with the procedure enjoined in this respect, in the P & T Manual of the RMS and the SSRM Order Dated 31.10.1986; that the concerned officers extract work from the employees, merely on oral instructions but are quick to punish them, in the event of any lapse; that several thousands of postal bags, are entrusted to the employees for checking, within a duration of barely half-an-hour, on the open platform, without any security; that the applicant and the Workers' Union, had on 12.9.1986, served a legal notice on the concerned officers (who were violating the rules with an ulterior motive), impressing on them the need, to comply with the rules and regulations in this respect, meticulously; that the disciplinary proceedings have been inordinately delayed by about four years, which is violative of the principles of natural justice; that the applicant was not afforded due opportunity to defend his case, in that, he was denied access to the work papers, relating to this case, which is violative of Article 311(2) of the Constitution; that the relevant papers have been destroyed, on account of which, the findings of the authorities concerned, was not based on evidence; that in the absence of an Enquiry Report from HMG M-33-IN, who had acknowledged the postal bags, there was no evidence to hold the applicant guilty in this respect, which was illegal; ^{and} ⁴⁴ that such pilferage of postal articles in transit, is not uncommon, to support which, the counsel cited instances of theft, that had occurred in June, 1985, in the Madras Central Railway Station, as reported in the Press.

4. Rebutting each of the above contentions, learned Counsel for the respondents affirmed, that a memorandum showing distribution of work among the employees, did exist, for every set of Mail Offices, inclusive of Bangalore City RMS and that the Due Mail List, Error Book etc., were available in the set. The question of ascertaining

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the contents of the postal bags did not arise, as these bags were not opened in the Transit Mail Offices (TMOs). The main duty of the TMO was, to ensure proper accounting of the receipt of the postal bags and their despatch to the right destination. Lock and key arrangement was not provided individually, to officials working in TMOs, since the postal bags were sorted out, destinationwise and a constant vigil was maintained on these bags, through the help of a Chowkidar. Counsel for the respondents therefore, vehemently denied the accusation of the applicant, that the employees of the RMS Wing, were gravely handicapped, in the proper discharge of their duty, according to rules. Oral instructions, ^{he} said, were given to the employees not as a matter of course, but as an exception, as and when exigency of work demanded. Workload borne by the applicant, was not excessive and certainly not of the magnitude of several thousands of postal bags, as exaggerated by the applicant.

5. We have examined carefully the pleadings of both sides and the material placed before us. We cannot bring ourselves to believe, that the RMS Wing in Bangalore City, was operating in a fancy-free manner, without adherence ^{to} ~~to~~ prescribed rules and regulations and procedure, as alleged by the applicant. The applicant entered service in the Department as long back as in 1961 and at no time earlier to his being involved in the instant case of negligence in duty, is it seen, that he brought this allegation to the notice of the superiors concerned for appropriate action. Apparently this accusation is make-believe and an after-thought, to cover his present negligence for which he was punished. It is seen that the applicant is inclined to distort facts, as is evident from his statement, that he was burdened with several thousands of postal bags, in the discharge of his duty, which has been refuted by the Counsel for the respondents. Except for a vague and bald accusation, nowhere has the applicant

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substantiated, with facts and figures, that the workload on him was so enormous, that he could not cope with it.

6. The applicant has alleged, that he had no opportunity to examine all the work papers relating to this case. Counsel for the respondents however asserts, that the applicant was given due opportunity of access, to these work papers and that he has in his own statement, admitted the negligence, for which a charge was framed against him. The appellate authority, (R2), has however observed in his order, dated 14.8.1985 (Annexure-B), that adequate care should have been taken to preserve all the record pertaining to this case, at the SRO, Bangalore City RMS, but nevertheless, there is sufficient evidence to prove, that the applicant had failed to check the bags before their despatch and was thus negligent in the discharge of his duty. We are consterned at the callousness of the authorities concerned, in not preserving the pertinent work-papers, at least till the finalisation of the disciplinary proceedings, initiated against the applicant. In our view, the applicant should not be penalised on account of the crucial documents such as: the work papers and particularly, the ER of HMG.M33-IN, who had acknowledged the bags, not having been preserved by the authorities concerned, which handicapped the applicant from substantiating his defence, ^{We} ~~we~~ ^{are} therefore, hold, ^{as} ~~as~~ ^{the} that the applicant is entitled to the benefit of doubt, ^{as} the disciplinary, ^{as} ~~as the~~ proceedings held against him, were quasi-criminal in nature.

7. This case, appears to be similar, to Application No.1716 of 1980(F), where the loss is seen to have been caused to the Department, owing the negligence of the selfsame applicant and on which we have passed orders separately. We must observe, that considerable time elapsed between despatch of the parcel bag, detection of its loss and initiation of action against the official at fault. The Railway Mail

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Service in our view, would need to examine critically as to how best the present system of check of receipt and delivery of bags, not only at the source and destination but even in transit, could be improved to render it more determinate, expeditious and efficient to prevent recurrence of such loss.

8. In the light of our discussion in the foregoing, we are convinced, that the guilt has not been conclusively established against the applicant. The application is, therefore, allowed, subject to the above observations. No order as to costs.

Chambers

MEMBER(JM)

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MEMBER(AM)

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